CHAPTER II

The Indian Constitution
A) HISTORICAL BACKGROUND OF INDIAN CONSTITUTION:

The right of self-determination for every country was advocated by a few advanced nationalists in the world during the I World War (1914-1918). The Indian national leaders especially the Moderates like Mahatma Gandhi thought what Great Britain was preaching would also be applied to India. Though the Indian people extended all possible help during the I World War, the British Government refused to grant the right of self-determination to the Indians. Therefore Mahatma Gandhi launched his famous movement of Non-Co-operation against the British Government in December, 1920 to win Swaraj.

The demand of Indians for the constituent Assembly was conceded in March, 1942 when Sir Stafford Cripps brought the proposals of His Majesty's Government in India in order to achieve active co-operation of the Indian National Congress during II World War, when Great Britain was facing a life and
death struggle to save its existence against the onslaught of Japan. Cripps in his proposal declared that an elected body will be set up which will be responsible for giving a Constitution for India and each community will be given seats in accordance with its population. It was said that it was the responsibility of the British Government to defend India and that Indians should give money and material to make the war a success. After detailed consideration Indian National Congress and the Muslim League refused the Cripps proposal because the proposal did not provide for common and co-operative national life. Gandhi described these proposal as a post-dated cheque on a crashing bank.

Gandhi declared a mass movement which came to be known as "Quit India Movement" demanding the British Government to Quit India immediately. As a first measure Gandhi and other top Congress leaders were arrested and the people in thousands were killed. Meanwhile the British Government also thought it advisable to release Gandhi from jail so that he could control the movement and run it on non-violent lines. In order to solve constitutional deadlock C. Rajagopala Chari gave his own formula (A) Muslim League should accept India's demand for independence. (B) It should co-operate with the Congress in the formulation of an interim Government (C) Before plebisite every Political Party will be given the fullest opportunity to express its view points before the people. Jinnah did not agree to the formula and wanted Congress to accept two nation theory and partition without plebisite. He was not in favour of allowing the non-muslim majority areas to take part in deciding the issue of a separate state for the Muslims.
THE WAVELL PLAN:

Lord Wavell who came to India as Viceroy put forward some proposals. 
(a) Executive Council of the Viceroy will be reconstituted (b) In the executive Council the Muslims and Hindus will have equal representation and all other communities will be given balanced representation (c) The Governor-General will sparingly use his Veto Power (d) Indians will frame their own Constitution notwithstanding anything contained in this scheme (e) Secretary of State will interfere in Indian affairs only in the interest of India.

Lord Wavell invited Indian leaders to Simla to discuss the scheme. Jinnah turned down proposals on the plea that Muslim League should have the exclusive right to send Muslim representatives to the executive Council of the Viceroy. He was not prepared to accept the idea that Congress should nominate any Muslim even from its own quota.

TOWARDS CABINET MISSION:

Cabinet Mission came to India at a very critical time of Indian history. On 19th September, 1945 on behalf of British Government Lord Wavell declared that "His Majesty's Government is determined to do its utmost to promote in conjunction with the leaders of Indian Public opinion the early realisation of self-government in India." He also assured the people of India that His Majesty's government was quite keen for setting up a constituent Assembly in India. As a result of these elections Congress came to power in all Hindu Majority provinces. After the elections were over Lord Attlee issued a statement on March 15, 1946
in which India's right of self-determination and framing her own constitution was clearly admitted. During the course of his discussion Gandhi made it clear that "Pakistan which connotes the division of power will be a sin and two nation theory propounded by Jinnah is absured".¹

Accordingly the total strength of the constituent Assembly was fixed at 292 from the Indian provinces, 4 from Chief Commissioner provinces and to a maximum of 93 from the Indian States. The Constituent Assembly met on December 9, 1946 without representatives of the Muslim League, to accomplish the historic and the most arduous task of drafting a constitution for free India. The Assembly elected Dr. Rajendra Prasad as its President. He made it amply clear from the beginning that the Assembly was a sovereign body and no outside power was to be allowed to interfere in its proceedings in any manner. Four days later Pandit Nehru in the objectives resolution pointed out that it was our firm decision that India should be a sovereign republic. The Constituent Assembly of India continued to work with its task of giving a constitution to free India though the country was partitioned. But its composition some what changed due to partition and the strength came down to 299 as against 389 originally fixed in 1946.

It was not an easy task to prepare a constitutional document because that is the life line of the nation and reflects the will and wishes of the people. It was also to see that such a document should come up to the expectations of the people and it must not only meet immediate need of the people but also must be responsive to future needs. It was also to see that such a document was not
very rigid and at the same time not inelastic. The Assembly decided to follow
committee system and for the purpose several committees were set up. These
included Fundamental Rights Committee, Committee on Supreme Court, Advi-
sory Committee on Minorities, Rules Procedure Committee, Steering Committee,
Union Power Committee, Ad-hoc Committee on National Flag and so on. But
most important Committee was Drafting Committee. It was this Committee which
mainly shared the responsibility of giving a constitutional document to the
country. It's composition was.

Dr. B.R. Ambedkar ... Chairman
N. Gopal Swamy Ayyanger ... Member
Alladi Krishna Swamy Ayyair ... ,
K.M. Munshi ... ,
Mohammad Saadullah ... ,
N. Madhava Rao ... ,
T.T. Krishnama Chari ... ,

Dr. Ambedkar and other members of the Drafting Committee really
defended the draft of the Constitution in a very remarkable manner and did not
allow the members go home dissatisfied. The Commission gave thorough
consideration to all the proposals which were received from different Commit-
tees. The Assemble adopted an objective resolution moved by Pandit Nehru.
The resolution said that India shall be sovereign democratic state. The Commit-
tee presented a Draft Constitution on 21st February, 1948 for the consideration
of the Assembly. The Assembly adopted Constitution on 26 the November, 1948
for the consideration of the Assembly. The Assembly adopted Constitution on 26
the November, 1949. After the passage from the Constituent Assembly, it
received the signature of Dr. Rajendra Prasad, president of the constituent Assembly on the same date and it was declared passed. The final session of the Constituent Assembly began on January 24, 1950 and decided to enforce from January 26, 1950 and Dr. Rajendra Prasad was unanimously elected as the first president of India.

(B) SOURCES OF THE INDIAN CONSTITUTION:

Indian Constitution is a very important and pious document. It has a supreme and unique position in country's political arrangements and all the laws of the land must be in accordance with the provisions of the Constitution. The laws which go against any article of the Constitution can be declared as unconstitutional or ultra-vires by our Courts of Law. Constitutional fathers drew inspiration from different sources and so our Constitution is a beautiful amalgam of the best features of the different Constitutions of the World. The fathers of Indian Constitution were very wise and clever with rich political sagacity, abundant administrative capacity combined with high ethical values. They firmly decided to present the best possible document to India, which will pave the way for the establishment of Welfare State. Though our Constitution has been called a borrowed one and a beautiful patch work by some people, the credit of its framers lies in the fact that they gathered the best features of other Constitutions; avoided the faults which had been disclosed in their working and adopted those features to the requirements of our country.
GOVERNMENT OF INDIA ACT, 1935:

The Government of India Act of 1909, 1919 and 1935 are very significant Acts passed by the British Parliament for the Indian people so as to cool down their idea of agitation over the British Government. The lengthiest Act enacted by the British Parliament was Government of India Act, 1935 which provided for the distribution of powers, federal structure of India, provincial autonomy, responsible form of government, bicameral system in the centre and some states, discretionary and emergency powers of the governors and governor-General. The Indian Constitution adopted these provisions after modifying them to suit the changed conditions after independence. The Federal Court of 1935 Act has been converted into Supreme Court with suitable changes.

BRITISH PARLIAMENTARY SYSTEM:

The Indian Constitution mainly adopted the British Constitutional system and Parliamentary and bicameral system has been borrowed from that country. It is on the analogy of the British system that head of state in India (President) is simply a nominal head like a British Monarch, who does not interfere in day-to-day working of the government. India has also very closely followed conventions being followed in England. It is, for example, a convention that the head of the state both in India a Britain will invite the leader of the majority party in the Lower House to form the government. Similarly there is a convention that the head of the state will accept the advice of prime minister regarding the dissolution of the Lower House of Parliament. In India, the 4th Lok Sabha was dissolved by the president V.V. Giri on the advice of prime minister Indira Gandhi on December
27, 1970. The 6th Lok Sabha was also dissolved on 22nd August, 1979 by the President Neelam Sanjeeva Reddy on the advice of prime Minister Charan Singh. Just as in England, the Indian Cabinet works on the system of joint and collective responsibility and absolute secrecy is maintained about Cabinet decision. just as in England, the Prime Minister is head of the Cabinet and his resignation of political ground is to be treated as the resignation of the whole Cabinet in India.

**IMPACT OF OTHER CONSTITUTIONS:**

The framers of the Constitution never aimed to give India a novel document but aimed a workable Constitution to suit Indian conditions and environment. Therefore they did not hesitate to borrow from other working constitutions of the world. They consider it useless to waste time in inventing new principles but devoted their whole energy in evolving such a constitution which may be quite workable under prevailing conditions. It is from the constitution of America that they have borrowed the idea of Fundamental Rights and the concept of independence of Judiciary. It is on the analogy of Canadian parliamentary system that federation in India has a very strong centre, which has made critics feel that India is over-centralised. Chapter on Directive principles has been borrowed from Irish Constitution.

**DEBATES OF CONSTITUENT ASSEMBLY:**

The debates of the constituent Assembly which deliberated for about 3 Years is another very useful source of the Indian Constitution. It was in the Assembly that each and every aspect of the Constitutional problem was thor-
oughly discussed and various alternatives and suggestions on the recommendations of various Committees were discussed.

COMMENTARIES OF THE CRITICS:

In a dynamic society in which we live today, there can neither be permanency nor perfection in any walk of life. Moreover in a democratic set up differences are bound to arise and the critics and commentators view the constitution according to their own viewpoint. They appreciate as well as condemn different clauses of the Constitution in a logical and convincing way. Many critics, both in India and abroad, have commented on India by throwing ample light on the hidden aims and aspirations of the Constitution. The commentaries not only help us in understanding minutest details of the constitution properly, but also draw our attention to the defects and drawbacks of our constitution.

SYSTEM OF JUDICIAL REVIEW:

The judiciary, which infuses blood into the skeleton of the Constitution, it has rightly been said, is responsible for the success and failure of a constitution. The judiciary in India like the Judiciary in the U.S.A., is empowered to have the power of judicial review. In India the judiciary has been made independent of the executive and has also been made guardian of the Constitution. It can declare any law as null and void if it conflicts with the constitution. It will not be an exaggeration to say that the decision of the Supreme Court has provided flesh and blood to the skeleton of the Constitution and made it workable.
CONSTITUTIONAL AMENDMENTS:

India has adopted parliamentary form of government which implies supremacy of parliament over other institutions of the country. One of the most important functions of the parliament is to give the nation laws needed by it for smooth running of the administration. Therefore the government has to bring amendment to the constitution whenever it is needed because the constitution is not something static but a dynamic document which requires some changes as the nation marches ahead. It will not be surprising that though the framers of our constitution had given the country the best possible document, yet during a span of 44 Years more than 80 amendments have been made to the constitution.

ORDINANCES:

Another source of the Constitution is ordinances which are promulgated from time to time by the president of India on the advice of the Central Government or the Governor on the advice of the State government to meet any emergency or peculiar situation when parliament or State Legislature is not in session. They enable the president or the Governor as the case might be to discharge his constitutional obligations. These ordinances have the same force as the Law of the land.

A BAG OF BORROWING:

Many critics have alleged that the Indian Constitution is a bag of borrowing. It is true that the framers of our constitution did not hesitate in borrowing some good features from the constitutions of Great Britain, U.S.A., Canada and
Ireland, but they did not borrow anything from the constitution of U.S.S.R., Australia and Switzerland. If it is a bag of borrowing, the constitution could be prepared at the most within six months. The beauty of the Indian constitution lies in this that it has been nicely adjusted to the changed circumstances and conditions. It is absolutely an original document, of course, with the imprint of some Western Constitutions.

(C) PREAMBLE/OBJECTIVES/PHILOSOPHY OF INDIAN CONSTITUTION:

The Constitution of India is prefaced with a preamble which supposed to reflect the image of the Constitution and ambition of its makers. About the preamble former Chief Justice P.B. Gajendragadkar Wrote “It is often said that a preamble to the Constitutional document affords a key to its spirit and its meaning”. C.J. Subba Rao in the case of Golaknath Vs the State of Punjab expressed that the preamble of the Constitution contains in a 'nutshell' its ideals and aspirations. It occupies a pivotal position in the interpretations or clarification of any vengueness in the Constitution and gives constitution greater dignity. The whole constitution can be measured with this yard stick. The preamble of the Indian Constitution, however not only reflects basic character of the state but also specified at some length purposes and objectives of the Constitution. In the words of Basu "In other words preamble shows the general purpose behind the several provisions of the Constitution ...." It is however not an integral part of the main document and as such not subject to judicial review.

Indian Constitutional makers were inspired by the Constitution of U.S.A., Australia France, Italy and West Germany, which contain a preamble to their
constitutions. In addition to this while drafting the preamble to the constitution, our constitution makers were influenced by the Resolution of Constituent Assembly passed as in January, 1947.

The Resolution of the Constituent Assembly thus promised to make India a sovereign, Democratic, Republic with a federal polity and vesting all power and authority in the hands of the masses. Similarly social, economic and political justice and equality before law was also promised in this very Resolution.

PREAMBLE OF THE CONSTITUTION:
The preamble of the Constitution of India makes lofty promises and has been dedicated to the people of India and not to any particulary class of the society. It reads as under.

"We the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic and to secure to all its citizen's justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. In our constituent Assembly this twenty six day of November, 1949, do hereby adopt, enact and give to ourselves this constitution". It may, however, be pointed out that the words "Socialistic, secular and the word integrity were inserted by Forty-second Constitution amendment, enacted in 1976.

Thus, the preamble is a true picture of the Constitution. It may be discussed as under.
WE, THE PEOPLE OF INDIA:

The preamble to the Constitution begins with the words "We the people of India having solemnly resolved to constitute India into a sovereign, Democratic, Republic". These words clearly prove that the people are the ultimate source of all authority. We, the people of India is important because it implies that the Constitution eliminates the British king externally and Indian Princes internally from claiming any vestiges of sovereignty. The use of the words "We, the people of India" shows that the authority of Government of India is derived from the people and powers given to the Government of India and States have not been given by any authority but by the people of India as such. No political party in India can challenge the authority of the State which is derived from the people. The Constitution of India is a sacred document which is not to be touched by all.

SOVEREIGN:

The Indian Constitution is not a gift of the British Parliament. It was given to themselves by the people of India assembled in the constituent Assembly which was competent to determine the political future of the country in any manner it liked. Sovereignty implies freedom of national action internally and externally. Internal sovereignty means freedom to enact and amend both ordinary and Constitutional laws without any external pressure. External freedom implies nation's right to formulate and execute her own foreign policies.
SOCIALIST:

The Indian Constitution was amended by the 42nd amendment (1976) and the word "Socialist" was inserted in the preamble to ensure the goal of Indian polity. It is however to be noted that Indian type of socialism is quite different from the Western type of socialism, which involves nationalisation of all means of production. Therefore the Indian socialism does not abolish private property altogether. Instead of total nationalisation of all property and industries, India has followed a concept of mixed economy which aims at offering equal opportunities to all and the abolition of vested interests. The state is entitled to adopt all possible measures to secure the welfare and happiness of all sections of the people.

SECULARISM:

The word secular has been added to the preamble of the Constitution by 42nd Amendment (1976) and retained by the 44th Amendment (1978). To quote Dr. Dayal "Secularism in Indian context does not mean negation of all religions. It means equal respect for the religions"\(^3\). The state protects all religions equally and does not itself uphold any religion as the state religion. In India no discrimination has been made since independence for any political or administrative office on the basis of caste, creed, religion or sex and equal opportunities are available to all the citizens of India which is a glowing achievement of our democracy. There is no official religion in India as we find in some Muslim States of the world.
DEMOCRATIC:

The Indian Constitution provides for an indirect or representative democracy. All men and women above the age of 18 have the right to vote and no discrimination will be followed on the ground of religion, race, colour, place of residence, sex and the like. As in Switzerland there is no provision for Referendum, Initiative, Recall and plebiscite. The entire authority of conducting the government is in the hands of the representatives chosen by the people in a democratic manner. Emphasis has been put on social, economic and political, justice, liberty of thought, expression, belief, faith and worship, equality of status and opportunity, and fraternity in the preamble.

REPUBLIC:

In India we have an elected president instead of a hereditary king as the head of the State. There is an absence of any ruling or privileged class in the country. All officers including that of the president of Prime Minister are open to all citizens without any distinction of caste, creed, religion or sex.

JUSTICE - SOCIAL, ECONOMIC AND POLITICAL:

The preamble ensure Justice for all citizens of India and there will be no differentiation on the basis of caste, creed, religion or sex. For crimes of similar nature, there will be equal punishment. The people have been ensured social justice and all have been given the right to get the type of education they like. Untouchability which was a slur on the fair name of society has now been abolished. Temples have been thrown open to the so-called schedule castes.
who are now very much an integral part of the society and their betterment depends on advancement of Indian society. Beggary has been legally banned and those who continue beggary can be legally punished. Similarly steps are being taken to see that equal wages are paid for equal work without any sex-differentiation. The working conditions of the workers should be improved and the bonded labour system has been abolished.

LIBERTY OF THOUGHT, EXPRESSION, BELIEF, FAITH & WORSHIP:

Liberty, as promised in the preamble has been given to the people in the form of fundamental rights. The people have been ensured that as long as they are peaceful, they are at liberty to form associations and assemblies to discuss their problems. In the Constitution it is clearly stated that the state shall neither praise nor patronise any religion, nor shall it condemn or discourage any religion in any manner. The state shall also neither extend nor deny financial assistance to any religion.

EQUALITY OF STATUS AND OPPORTUNITY:

Guaranteeing certain rights to each individual is meaningless unless all inequality is banished from the social structure and each individual is assured of equality of status and opportunity for the development of what is best in him. All have been provided equal opportunity for seeking employment and also for getting higher posts. Honours and titles which used to distinguish one man from the other have altogether been abolished with a view to giving a sense of equality for all.
FRATERNITY ASSURING THE DIGNITY OF THE INDIVIDUAL:

The preamble promises that all individuals in the state shall have dignity. All those who are socially downtrodden and had suffered in the past in the hands of one section of society or the other, are to be brought forward on levels with others. Each man and woman should have adequate means of livelihood. Just and human conditions of work and a decent standard of life and full enjoyment of leisure and social, cultural opportunity.

UNITY AND INTEGRITY:

Without unity and integrity there will not be any solid progress in the country. In the words of Dr. Dayal "The insertion of word integrity can not rationally be Questioned for it is impossible to arrange that unity can be safe without integrity of nation. Integrity is vital to encounter fissiparious tendencies". 4

EVALUATION:

The preamble is not something superficial but a very useful addition to the Constitution because it expresses the hopes, aspirations and wishes of the framers of the Constitution. In the words of Justice Hidayathulla "The preamble is more than a declaration. it is the soul of our Constitution and lays down the pattern of our political Society".

(D) NATURE OF THE INDIAN CONSTITUTION:

There is a difference of opinion about the nature of the Indian Constitution. One view is that it is quasi-federal Constitution and has more unitary features
than federal features. Another view is that it is a federal Constitution but changes have been made in it to suit the requirements of the country. The supremacy of the Constitution, the division of powers between the union government and the units, written, rigid constitution and the independent judiciary are the most important features of a Federal government. Both the union government and the state governments are free to exercise their powers independently as directed by the Constitution.

DISTINCTIVE FEATURES OF THE FEDERAL SYSTEM IN INDIA:

There are many distinctive features of the federal system established in India under the Constitution of 1950. Unlike in United States, in India there is no dual policy but single citizenship. In India no state has the power to amend the Constitution because it has no Constitution of its own like that of United States. However, the Parliament of India can alter or amend the Constitution. The residuary powers in India are given to the union government and the Parliament of India can make laws with regard to them. The Indian Constitution can be both unitary as well as federal according to the requirements of time and circumstances.

1) Many factors have made the federal government in India strong. The union list contains almost all the important items and that makes the union government strong. The residuary powers are also left to the union government.

2) Article 249 provides that if the Council of States have declared by resolution supported by not less than two-thirds of the members present and
voting that it is necessary in the national interest that Parliament should make laws with respect to a matter enumerated in the state list in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India.

3) Article 250 lays down that while proclamation of Emergency is in operation, Parliament shall have power to make laws for the whole or any part of that territory of India with respect to any of the matters enumerated in the state list.

4) Article 252 provides that if it appears to the legislatures of two or more states to be desirable that any of the matters with respect to which Parliament has power to make the laws for regulating that matter.

5) Article 253 lays down that the Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association.

6) Article 256 provides that the executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and the union may give directions to the state in this regard. The executive power of the union shall extend to the giving of directions to a state as the construction and maintenance of means of communications declared in that direction to be of national or military importance. Parliament has power to declare highways. The executive power of the union shall also extend to the giving of direction to a state
as to the measures to be taken for the protection of the railways within the state.

7) Article 353 provides that while a proclamation of emergency under Article 352 is in operation, the executive power of the union shall extend to the giving of directions to any state as to the manner in which its executive power is to be exercised.

8) Article 356 lays down that if the President of India is satisfied that situation has arisen in which the government of state cannot carried on in accordance with the provisions of the Constitution, he may be proclamation assume to himself all or any of the functions of the government of the State.

9) Article 360 lays down if the President of India is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of its territory is threatened, he may by a proclamation make a declaration to that effect. During the period of financial emergency, the executive authority of the union shall extend to the giving of directions to any State.

10) Article 3 provides that Parliament may by law form a new State by separation of territory from any State or by uniting two or more states or parts of states or by uniting any territory to a part of any state. Parliament may also increase or diminish the area of any state.

11) The Governors of the States are appointed by the President and they are answerable to him when they act in their discretion.
12) The members of the election commission, the Comptroller and Auditor General are appointed by the President and this implies the control of the Central Government over the units.

13) Article 169 provides that Parliament may by law entirely change the composition of the legislative council of a State having such Council.

14) Through grant-in-aid the Union Government exercises control over the States. The States receiving grant-in-aid from the Union Government automatically come under the control of the Union as they have to abide the conditions on which those grants are given.

15) The Planning Commission has come to occupy a very important position in the country. It not only decides the policy to be followed both at the centre and the states but also controls the actual carrying out of that policy. Neither any department of the Government of India nor of any department of the Government of India nor of any state can embark upon any major projects without the approval of the Planning Commission, and the Prime Minister is the Chairman of Planning Commission.

16) In the Constitution there is a provision for the appointment of Inter-state Councils for the settlement of Inter-State and Centre-State disputes. The members of each Council are appointed by the president.

17) The Central Government has been given power to appoint enquiry Commissions against Chief Minister or a particular Minister to investigate
charges of misuse of power and authority or corruption and other charges of similar nature.

18) In India there is a provision for All-India Administrative services. The people belonging to All India Services (I.A.S., I.P.S.) etc. can be posted in any state.

CRITICISM:

The view of Dr. K.C. Wheare is that the "The Indian Constitution has established a system of government which is at the most Quasi-Federal, almost devolutionary in character, a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features". The view of Granville Austin is that the Indian Federation is "a new kind of federalism to meet India's peculiar needs". Paul Appleby calls the Indian Constitution as "extremely federal". The view of Chief Justice P.B. Gajendragadkar is that "The Indian Constitution could be both unitary as well as federal according to the requirements of time and circumstances. Ivor Jennings wrote "India has a federation with a strong centralizing tendency". K.C. Wheare observed that India had a "Quasi-federal Constitution", W.H. Morris Jones held the view that Indian federalism was a kind of "Co-operative federalism". Dr. B.R. Ambedkar said that the Indian Constitution would be "both unitary as well as federal according to the requirements of time and circumstances".

The existence of a strong centre is not inconsistent with the theory and practice of federalism. Each country evolves its own pattern of Union-State relations in the light of its historical background and its political, economic and
social conditions. Indian federation is a sure improvement on other federations of the world. It incorporates what is best in both federal and unitary forms.

(E) SALIENT FEATURES OF THE CONSTITUTION:

The Indian Constitution is the result of the sweat and toil of a galaxy of top ranking Congress and Muslim League leaders, seasoned politicians, self-less freedom fighters, constitutional experts, famous Jurists and great intellectuals from all walks of life. The present Indian Constitution was inaugurated on 26th January, 1950 and made India a Sovereign, Democratic, Republic and ensured equality of every citizen before law. A few critics considered our states as dignified Municipalities because they felt that the Indian federalism is over-centralised as per the provisions of the Constitution. The new Constitution has some very significant and important features.

BULKY CONSTITUTION:

India's Constitution is one of the bulkiest constitution of the world and in size and volume it is much more bulky than the Constitution of the U.S.A., U.S.S.R., or Switzerland. Dr. Ivor Jennings remarked "The Indian Constitution is the longest and most detailed in the world".11 It is a document containing 441 Articles and 12 Schedules and has been grouped into 22 parts. Constitution discusses the relation of three organs of the government, namely the legislature, the executive and the judiciary. It also discuss in detail such administrative matters as emergency powers of President, Fundamental Rights, Directive Principles of State Policy, structure of States, problem of minorities, Citizenship, National Language, Union Territories etc., which form an integral part
of the Indian federalism. N. Srinivasan once remarks about the Constitution that "It is not merely a constitution but also a detailed legal code with all important aspects of the Constitutional and administrative system of the Country".  

**SOVEREIGN, DEMOCRATIC, REPUBLIC:**

Constitution has made India a Sovereign, Democratic, Secular, Socialist, Republic which implies that in the formation and formulation of both international and internal policies India will be guided by consideration her national interests. Similarly being democratic state India has adopted democracy both as a creed and way of life and the sovereignty ultimately vests with the people, who are masters of the nation's destiny through their power of ballot. India will not be guided by consideration of religion of any person in matters of appointment, nomination or selection to public offices. India has set its goal; the establishment of socialistic pattern of society.

**INCORPORATION OF FUNDAMENTAL RIGHTS:**

The elaborate enumeration of Fundamental Rights of the citizens in Chapter-III of the Constitution is deemed to be distinguishing feature of a democratic state. Prof. Laski says that "A state is known by the rights it maintains". The Judiciary is the guardian of the Constitution and the Fundamental Rights can be suspended during emergency. These rights are embodied in Article 12 to 35 of the constitution. They refer to right of equality, right of freedom, right against exploitation, right of freedom of religion, cultural and educational rights, right of property and right to Constitutional remedies. The object of these Fundamental Rights was not merely to provide security to
and equality of citizenship of the people living in this land and thereby helping the
process of nation-building, but also to provide certain standards of conduct, citizenship, justice and fair play.

DIRECTIVE PRINCIPLES OF STATE POLICY:

The Directive principles of State policy in part-IV (Article 36-51) are a novel features of the Constitution. The Union and State Governments must keep these ideals in mind, while they formulate policy or pass a law. The Directive Principles unlike the Fundamental Rights are not justiciable. The principles are not mere precepts or the manifestation of our aims and aspirations but the principles with a great moral force. Directives are:- Just and proper distribution of wealth and means of production, free compulsory primary education, just and human conditions of work, social and cultural opportunities for all, raising of living standard of the people, organisation of village panchayats, separation of executive from the judiciary, prohibition of intoxicating drinks and ban on cow slaughter.

FEDERAL POLITY:

The constitution creates a Federal state eventhough the term federation has not been used anywhere in the document. Like all other federations, India has a written Constitution which is rigid to a large extent. There is also division of powers and both the centre and states are supposed to remain within their sphere of activity. India also has a Supreme Court which is the guardian of our Constitution and decides all disputes which may arise between the centre and the states or between the states themselves. The centre has full control over the
subjects mentioned in the central list, concurrent list and enjoys residuary powers. In the words of D.D. Basu "The Constitution of India is neither purely federal nor unitary but is a combination of both. It is a union or composite of a novel type".

PARLIAMENTARY FORM OF GOVERNMENT:

In India Constitution has basically provided for Parliamentary form of government by closely following the British pattern. As in the Parliamentary form of government our President is merely ornamental head of the state without any real or effective powers. The parliament is sovereign body which has ultimate executive, legislative and judicial powers. The Council of ministers is ultimately responsible to the Lower House and can remain in power only as long as the House of the people expresses its confidence in it. The Constitution says that "There shall be a council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions (Article 74(1). The relations between the President and the Prime Minister and other ministers are practically the same as those between the Monarch and the Cabinet in Britain.

SINGLE CITIZENSHIP:

In India there is single citizenship and the citizens belong to the Indian Union and not to any State. In the words of Dr. Ambedkar "There is only one citizenship for the whole of India. It is Indian citizenship. There is no state citizenship. Every Indian has the same right of citizenship, no matter in what state he resides. The state does not deny any person equality before law or equal protection of laws within the territory of India. Single citizenship has
undoubtedly forged a sense of unity among the people of India and the image of united India is reflected by this provision.

PARTLY RIGID AND PARTLY FLEXIBLE CONSTITUTION:

The framers of the Constitution were judicious enough to avoid making a Constitution so flexible as to become a tool in the hands of the ruling party or so rigid, as to be incapable of adopting itself to changing conditions. The Indian Constitution in fact, is less flexible than that of Britain and less rigid than that of the United States. There are certain parts of the Constitution which can be amended like ordinary law of the land and no special procedure is required for amending these provisions. For example changing the boundaries of the States, increase or decrease of any state, changes in the number of Judges of the Supreme Court. Then there are provisions which can't be amended so easily and for amending these clauses consent of the states is very essential. For instance election of President of the Republic of India. Still there are clauses which can be amended only when 2/3 majority of each house of Parliament approved the amendment.

SECULAR STATE:

The framers of the Indian Constitution were aware of the nasty role played by religious fanaticism and orthodoxy in the past in their motherland. They did not like to wreck the national unity by allowing a particular religion to play a dominant role. In the words of Venkataraman the secular state is "neither religious, nor anti-religious, but is wholly detached from religious dogmas and activities and thus neutral in religious matters". A secular state maintains complete religious
neutrality and refuses to recognise man-made barriers such as those of race, colour, creed. Dr. B.R. Ambedkar says "It (Secular state) does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular state means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people." 14

UNIVERSAL ADULT FRANCHISE:

The introduction of Universal Adult suffrage (Article-326) without qualifications of any kind (sex, property or educational qualifications) was the boldest step taken by the Constitution makers. Nehru and other freedom fighters believed that the system of adult suffrage with direct election was the pillar of social revolution. It is undisputable fact that adult suffrage is the acceptance of the fullest implication of democracy and it is the most striking feature of India's Constitution. In the words of Prof. Srinivasan "The introduction of adult suffrage without any qualification of any kind is the boldest step taken by the Constituent Assembly and is an Act of Faith". 15

INDEPENDENCE OF JUDICIARY:

Constitution of India provides that the Supreme Court is the highest court of the land and it has been declared as the custodian of the Constitution and also of Fundamental rights of the people. The powers of the Supreme Court are original, appellate and advisory and functions of the Court bear close similarity to those of the Supreme Court of the U.S.A. It has the power of judicial review and can declare any law passed by the legislature as ultra-vires of the Constitution.
The legislature has no hand in the appointment of Judges and the executive head of the state can't remove them on his own.

FUNDAMENTAL DUTIES:

A Chapter on Fundamental Duties was incorporated into the Constitution by the addition of a new Article 51-A by 42nd Constitutional amendment (1976). The article provides that every citizen of India shall have the following fundamental duties to perform.

(a) to abide by the Constitution and respect its ideas and institutions and national flag and national anthem.

(b) to cherish and follow the noble ideas which inspired our national struggle for freedom.

(c) to uphold sovereignty, dignity and integrity of India.

(d) to defend the country and render national service when called upon to do so.

(e) to promote harmony and spirit of common brother-hood among all the people of India.

(f) to value and preserve the rich heritage of our composite culture.

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

(h) to develop the scientific temper, humanism and spirit of reform.
(i) to safeguard public property and adjure violence.

(j) 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.

CONCLUSION: The British government set its Iron foot on the holy Indian soil when Moghul Empire was at the height of their power and glory. Due to lack of able political leadership which could unite and face any calamity, they ruled our country for more than two hundred years in an inhuman way and proclaimed that the "Sun will not set in British Empire". Though Indian people extended all possible help and co-operation to the British government both during the periods of peace and emergency as per the instructions of our national leaders, they bluntly refused our demand of giving self-rule to India. A real and organised attempt to end the British unfair rule in our country started from 1857, which our historians rightly named as "The First War of Indian Independence". Independence to our mother India was the result of continuous, restless sacrifice, sweat and toil of top - ranking freedom fighters, as well as the masses all over the country for about 9 decades (i.e. 1857 - 1947). After the attainment of independence, a Constitution was prepared to run the administration so as to cherish the desires and ambitions of our national leaders. The Constitution is a holy document which gives directions and guidelines to all the wings of the government and finally attempts to provide human welfare through
the establishment of welfare state. The fathers of our Constitution were endowed with rich administrative capacity, political sagacity and high ethical values. They undertook this gigantic task of framing the best possible document to India after borrowing certain good and suitable features from other famous Constitutions of the world; after careful and thorough observation. They resolved to constitute India into a sovereign, democratic, secular, socialistic, republic with an aim to achieve liberty, equality, fraternity and justice to all the citizens of India. As every bit of the administration is included in the Constitution itself in a detailed manner, our Constitution became the biggest written document in the world in consonance with our emblem (elephant) of our Constituent Assembly. Our constitution is not too rigid like the American Constitution nor too flexible like the British Constitution; but our Constitution is in between regidity and flexibility which can be amended in three methods in response to the changing conditions and circumstances that a nation may face in future. It is beyond doubt that our Constitution is federal in form, though the word "Federal" is not used anywhere in the Constitution; because it contains the main features of federal state i.e. written, rigid Constitution, division of powers, Independent Judiciary. No author of the Indian Constitution was dare enough to proclaim India as federal or unitary state with strong, supporting reasons because India is a mixture of unitary and federal features.
REFERENCES:


