

UNIT 15 – UPSC - Salient Features of the Constitution of India-

The Preamble, Fundamental Rights and Duties, Directive Principles; Parliamentary System and Amendment Procedures; Judicial Review and Basic Structure doctrine

The Constitution of India is considered as a distinctive constitution around the globe. It is the largest written liberal democratic constitution of the world. It offers for a mixture of federalism and Unitarianism, and flexibility and with rigidity.

The Constitution of India was outlined by a Constituent Assembly. This Assembly was an indirectly chosen body. It had laid down certain ideals to be included in the Constitution. These ideals included commitment to democracy, guarantee to all the people of India, Justice, equality and freedom. It had also proclaimed that India will be a Democratic Republic.

Reports suggested that the Constituent Assembly held its first sitting on the 9th December, 1946. It reassembled on the 14th August, 1947, as the sovereign Constituent Assembly for the Dominion of India. Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishing the structure, procedures, powers and duties, of the government and spells out the fundamental rights, directive principles and duties of citizens. Passed by the Constituent Assembly on 26 November 1949, it came into effect on 26 January 1950. The date 26 January was chosen to commemorate the declaration of independence of 1930. Since its inauguration on 26th January 1950, the Constitution India has been efficaciously guiding the path and development of India.



With the help of Article 368, Parliament can amend the constitution. Every part of constitution can be modified by the Parliament except “basic structure” of the constitution as held by the

Supreme Court. Any law which violates the basic structure of the constitution is declared unconstitutional & invalid by the court.

Indian Constitution can be said as the hugely written constitution in the world because of its contents. In its innovative form, it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. At present, it contains 395 Articles and 12 Schedules, and more than 80 amendments. There are many factors responsible for the long size of the constitution. One major factors was that the framers of the constitution copied provisions form 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. It was needed to make provisions for a typical problems of India like scheduled castes, Scheduled Tribes and backward regions. In Indian constitution, provisions were made for elaborate centre-state relations in all aspects of their administrative and other activities. The size of the constitution became large, as provisions regarding the state administration were also included. Additionally, a detail list of individual rights, directive principles of state policy and the details of administration procedure were laid down to make the Constitution clear and unambiguous for the ordinary citizen. Therefore, the Constitution of India became an exhaustive and lengthy one.

India has implemented the Parliamentary system as established 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 jointly 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.

The Constitution of India identifies only single citizenship. In the United States, there is provision of dual citizenship. In India, people are citizens of India only, not of the respective states to which they belong. This provision would help to promote harmony and integrity of the nation.

India is a secular state, because it does not discriminate between individuals on the basis of religion. Neither it encourages nor discourages any religion. In contrast, right to freedom of religion is ensured in the Constitution and people belonging to any religious group have the right to acknowledge, practice or propagate any religion they like.

The salient features of the Constitution of India are as under:

1. Preamble of the Constitution: The Constitution of India initiates with a Preamble. The Preamble consists of the ideals, objectives and basic principles of the Constitution. The salient features of the Constitution have developed directly and indirectly from these objectives which flow from the Preamble. The Preamble is described as an introduction or preface of a book. As an overview, it is not a part of the contents but it explains the purposes and objectives with which the document has been written. So is the case with the 'Preamble' to the Indian Constitution. As such the 'Preamble' provides the guide lines of the Constitution. Basically, it is a brief introductory

statement that sets out the guiding purpose and principles of the document, and it indicates the source from which derives its authority, meaning, and the people.

The Preamble describes the objectives of the Constitution in two ways: one, is about the structure of the governance and secondly, it explains the ideals to be achieved in independent India. It is because of this, the Preamble is considered to be the major element of the Constitution.

The objectives, which are laid down in the Preamble, are:

1. Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic. (Socialist, Secular added by 42nd Amendment, 1976).
2. Provision to all the citizens of India i.e.
 - a. Justice social, economic and political.
 - b. Liberty of thought, expression, belief, faith and worship.
 - c. Equality of status and opportunity.
 - d. Fraternity assuring dignity of the individual and unity and integrity of the nation.

The Preamble to the Constitution of India is a well drafted document which signifies the values of the constitution. It asserts India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation. The Preamble is the nature of Indian state and the objectives it is committed to secure for the people.

2. Fundamental Rights and duties:

The Constitution of India grants and guarantees Fundamental Rights to its citizens. It is called the Indian Bill of Rights. Initially, seven Fundamental Rights were granted but after the deletion of the Right to Property from the list of Fundamental Rights (44th Amendment Act 1979) their number came down to six.

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

The Six Fundamental Rights are under:

1. Right to Equality:

It provides for Equality before Law, End of Discrimination, Equality of Opportunity, Abolition of untouchability and Abolition of Titles.

2. Right to Freedom:

It incorporates six fundamental freedoms that include freedoms of speech and expression, freedom to form associations, freedom to assemble peaceably without arms, freedom to move freely in India, freedom of residence in any part, and freedom of adopting any profession or trade or occupation. It safeguards personal freedom and protection in respect of conviction for certain offences.

The Constitution lays down that the freedom of life and liberty cannot be limited or denied except in accordance with the procedure established by law. Now under Art 21A Right to Education for the children between the ages of 6-14 years has been granted. Art. 22 guarantees protection against arbitrary arrest and detention.

3. Right against Exploitation:

This Fundamental Right forbids sale and purchase of human beings, forced labour (begaar) and employment of children in hazardous jobs and factories.

4. Right to Freedom of Religion:

The objectives of this right include the freedom of conscience, religion and worship. Any person can follow any religion. It gives to all religions freedom to establish and maintain their religious institutions. Citizens cannot be compelled to pay any tax for the propagation of any religion. The state cannot levy a tax for any religion and constitution prohibits the imparting of religious instructions in schools and colleges.

5. Cultural and Educational Rights:

In this right, the Constitution guarantees the rights of the minorities to maintain and develop their languages and cultures. It also confers upon them the right to establish, maintain and administer their educational institutions.

6. Right to Constitutional Remedies (Art. 32):

This fundamental right is the key of the entire Bill of Rights. It provides for the enforcement and protection of Fundamental Rights by the courts. It empowers the Supreme Court and High Courts to issue writs for the enforcement of these rights.

It is stated that these fundamental rights are justiciable and the individual can move to the higher judiciary that is the Supreme Court or the High Courts, if there is an encroachment on any of these rights. The right to move to the Supreme Court straight for the enforcement of fundamental rights has been guaranteed under Article 32 (Right to Constitutional Remedies). However, fundamental rights in India are not absolute. Reasonable constraints can be imposed keeping in view the security-requirements of the state.

It is further added by political scientist that fundamental rights for Indians have also been intended to overturn the inequalities of pre-independence social practices. Precisely, they have also been used to abolish untouchability and thus prohibit discrimination on the basis of religion, race, caste, sex, or place of birth. They also prohibit trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions. They are covered under articles 14 to 32 of the Indian constitution.

Fundamental Duties of constitution are as under:

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

1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
2. To apprise and follow the noble ideals, which inspired our national struggle for freedom.
3. To sustain and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.

5. To promote coordination and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of woman.
6. To value and preserve the rich heritage of our composite culture.
7. To protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures.
8. To develop scientific temper, humanism and the spirit of inquiry and reform.
9. To defend public property and to abjure violence.
10. To endeavour towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement.

The main aim of integrating these duties in the Constitution is to remind the people that while enjoying their right as citizens, should also perform their duties as rights and duties are correlative.

Directive Principles:

Directive Principles of State Policy. A unique aspect of the Constitution is that it comprises of a chapter in the Directive Principles of State Policy. These principles are in the nature of directives to the government to implement them to maintain social and economic democracy in the country.

It exemplifies important philosophies such as adequate means to livelihood, equal pay for both men and women, distribution of wealth so as to serve the common good, free and compulsory primary education, right to work, public assistance in case of old age, unemployment, sickness and disablement, the organisation of village Panchayats, special care to the economically disadvantaged group in country. Most of these principles could help in making India welfare state. These principles have been stated as; "fundamental in the governance of the country".

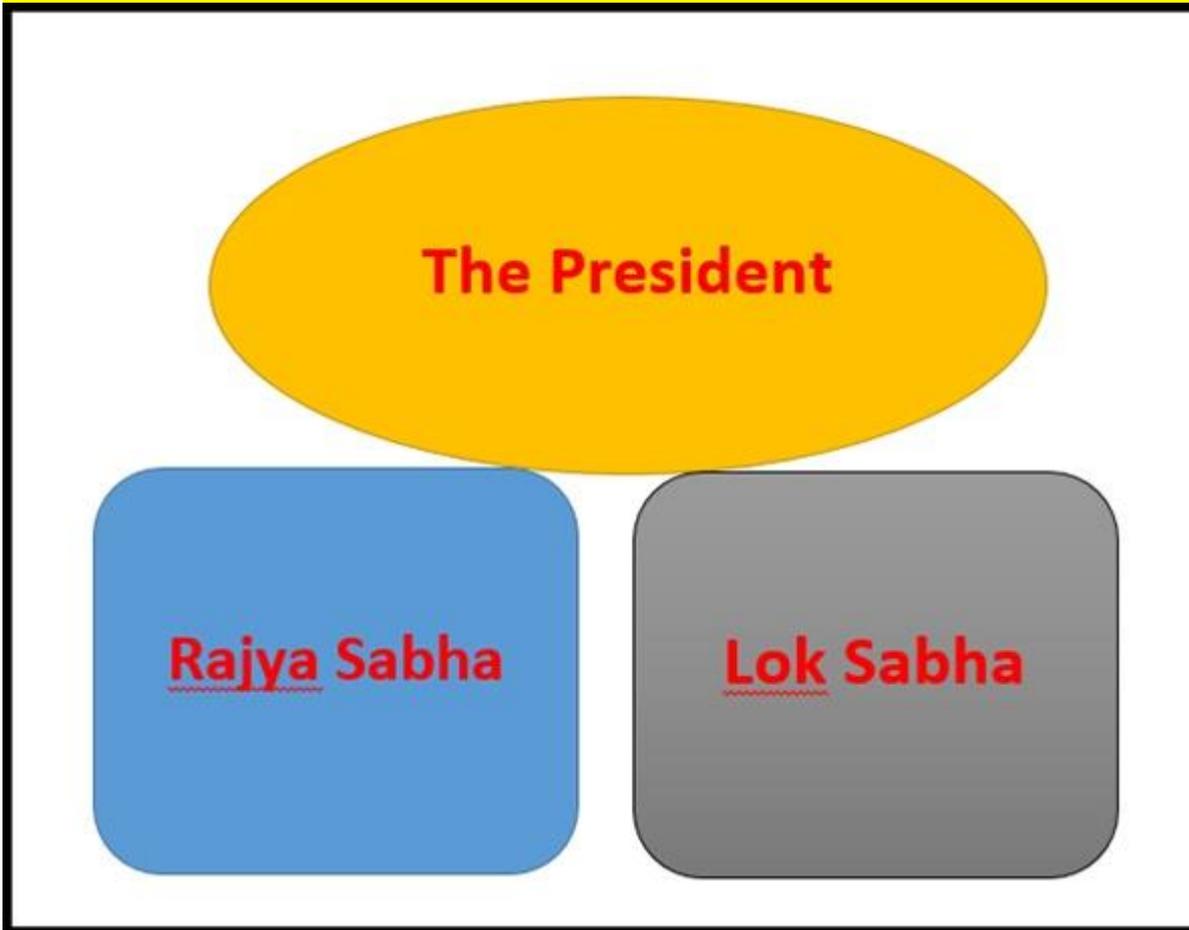
Parliamentary System and Amendment Procedures:

Parliamentary System:

The Constituent Assembly decided to espouse Parliamentary form of government both for the Centre and the states. A parliamentary system is a system of democratic governance of a state where the executive branch derives its democratic legitimacy from the legislature and is also held responsible to that legislature. In a parliamentary system, the head of state is normally a different person from the head of government.

In Indian parliamentary system, distinction is made between nominal and real executive head. The Council of Ministers is responsible before the Lok Sabha, The lower house of union parliament. There are close relations between executive and legislature. The tenure of the Council of Ministers is not fixed as it stays in office till it enjoys the confidence (Shashishekhar Gopal Deogaonkar, 1997).

Figure: Structure of Indian parliament



There are limited powers of parliament in Indian constitution:

It can pass laws on those subjects which have been entrusted to it by the constitution.

The bills passed by the Parliament need the approval of the President.

The Supreme Court can exercise the powers of judicial review over the laws passed by the parliament and can declare unconstitutional the laws which it considers are against the constitution.

Amending the Constitution of India: Amending the Constitution of India is the procedure of making modifications to the nation's fundamental law or supreme law. The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India. This procedure guarantees the sanctity of the Constitution of India and keeps a check on uninformed power of the Parliament of India.

Though, there is limitation imposed on the amending power of the constitution of India, which developed during conflicts between the Supreme Court and Parliament, where Parliament wants to exercise discretionary use of power to amend the constitution while the Supreme Court wants to restrict that power. This has led to the laying down of various principles or rules in regard to checking the validity/legality of an amendment. The most famous among them is the Basic structure doctrine as laid down by the Supreme Court in the case of *Kesavananda Bharati v. State of Kerala*.

The Constitution of India offers a distinctive amending process when comparing with the Constitutions of other nations. It can be defined as partly flexible and partly rigid. The Constitution provides for a variety in the amending process. This feature has been commended by Australian

academic Sir Kenneth Wheare who realized that uniformity in the amending process imposed “quite unnecessary restrictions” upon the amendment of parts of a Constitution. An amendment of the Constitution can be initiated only by the introduction of a Bill in either House of Parliament. The Bill must then be approved in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. There is no provision for a joint sitting in case of disagreement between the two Houses. The Bill, passed by the required majority, is then presented to the President who shall give his assent to the Bill. If the amendment seeks to make any change in any of the provisions mentioned in the proviso to article 368, it must be approved by the Legislatures of not less than one-half of the States. Although, there is no set time limit for ratification, it must be completed before the amending Bill is presented to the President for his assent.

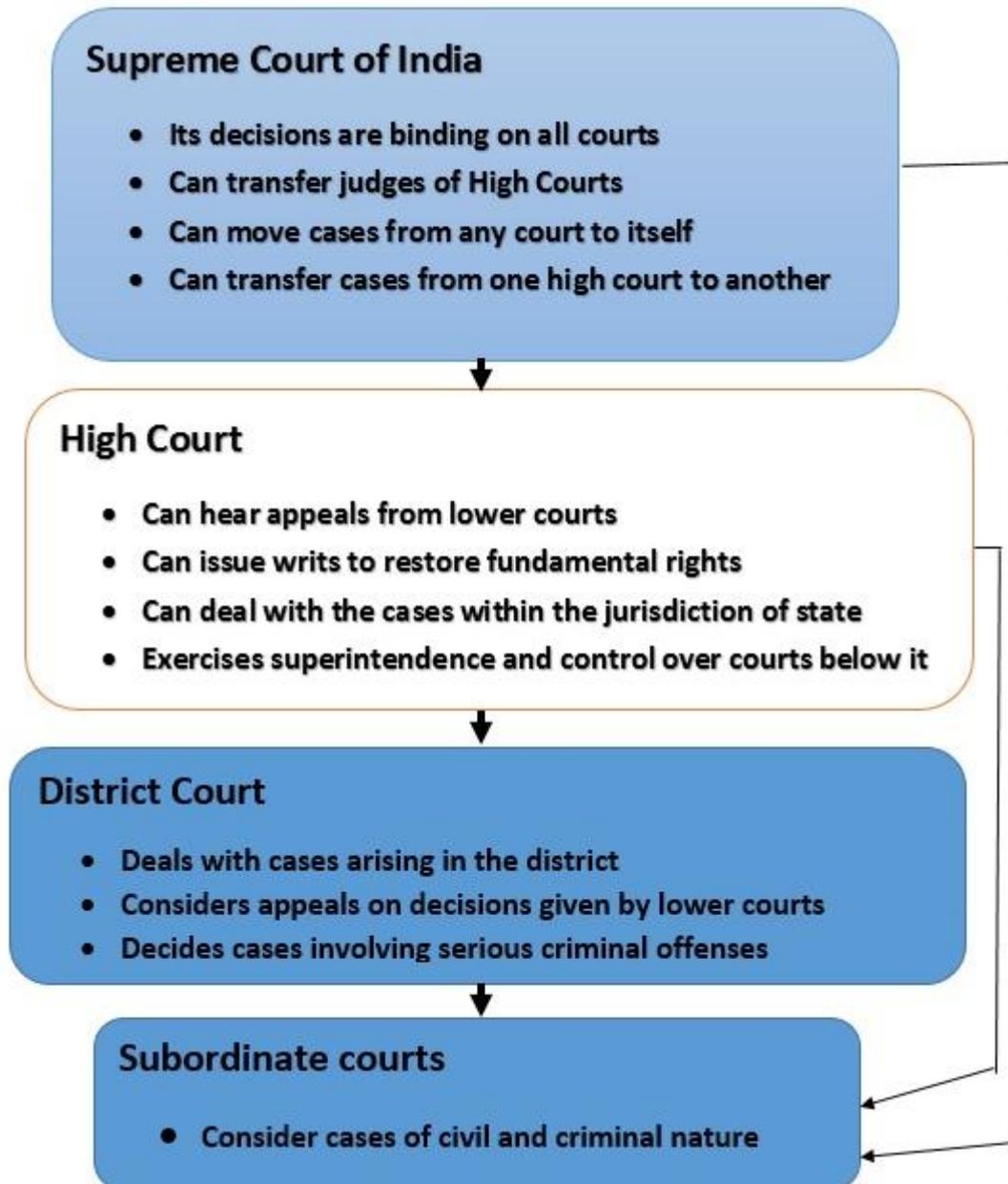
Every constitutional amendment is articulated as a statute. The first amendment is called the "Constitution (First Amendment) Act", the second, the "Constitution (Second Amendment) Act". Each amendment has the long title "An Act further to amend the Constitution of India".

Judicial Review:

The judiciary has significant position in Indian Constitution and it is also made independent of the legislature and the executive. The Supreme Court of India stands at the peak of single integrated judicial system. It operates as defender of fundamental rights of Indian citizens and guardian of the Constitution.

The entire judicial system of India is systematized into a hierarchical order. Supreme Court is at the highest position of judicial administration below that there are high courts at the state level and there are district courts at the district level. All the courts of India are bound to accept the decisions of the Supreme Court.

Figure: structure of the judiciary



The constitution of India makes provisions for the independence of judiciary because only independent judiciary can protect the rights and authorities of the people, can protect the supremacy of the constitution:

In judiciary:

1. - An impartial method has been implemented for the appointment of the judges.
2. - High qualifications have been fixed for the judges.
3. - The judges of the Supreme Court stay in office till 65 years of age and of High courts till 62 years of age.
4. - Difficult method has been espoused for the elimination of the judges as they can be removed only through impeachment by the union parliament.
5. - There is prohibition of practice after the retirement of the judges.

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. Therefore, it has the power of judicial review. Judicial Review denotes to the power of the judiciary to interpret the

constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict to the Constitution of India.

In Indian constitution, the judiciary is provided with the power of judicial review through the constitution which means that all the laws passed by the parliament and State Legislatures, constitutional amendments, ordinances and executive orders issued by the executive are reviewed by the judiciary and in case judiciary finds that any one of these is against the constitution, the judiciary has the power to declare it unconstitutional.

After independence, the inclusion of explicit provisions for judicial review were compulsory in order to give effect to the individual and group rights guaranteed in the text of the Constitution. Dr. B.R. Ambedkar, who headed the drafting committee of Indian Constituent Assembly, had described the provision related to the same as the 'heart of the Constitution'. Article 13(2) of the Constitution of India prescribes that the Union or the States shall not make any law that takes away or abridges any of the fundamental rights, and any law made in contravention of the aforementioned mandate shall, to the extent of the contravention, be void.

While judicial review over administrative action has grown on the lines of common law principles such as 'proportionality', 'legitimate expectation', 'reasonableness' and principles of natural justice, the Supreme Court of India and the various High Courts were given the power to rule on the constitutionality of legislative as well as administrative actions to protect and enforce the fundamental rights guaranteed in Part III of the Constitution. The higher courts are also approached to rule on questions of legislative competence, mostly in the context of Centre-State relations since Article 246 of the Constitution read with the 7th schedule, contemplates a clear demarcation as well as a zone of intersection between the law-making powers of the Union Parliament and the various State Legislatures.

Judicial Review is the power of the Judiciary by which:

The court reviews the laws and rules of the legislature and executive in cases that come before them; in litigation cases.

The court determines the constitutional validity of the laws and rules of the government.

The court rejects that law or any of its part which is found to be unconstitutional or against the Constitution.

But judicial review in India constitutes a middle path between the American judicial supremacy in one hand and British Parliamentary supremacy in the other.

Basic Structure doctrine:

The basic structure doctrine is an Indian judicial norm that the Constitution of India has certain basic features that cannot be changed or destroyed through amendments by the parliament.

The "basic features" principle was first explained in 1964, by Justice J.R. Mudholkar in his disagreement, in the case of *Sajjan Singh v. State of Rajasthan*. He wrote, "It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded

merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368 ?"

The basic features of the Constitution have not been openly defined by the Judiciary. At least, 20 features have been described as "basic" or "essential" by the Courts in numerous cases, and have been incorporated in the basic structure. In *Indira Nehru Gandhi v. Raj Narayan* and also in the *Minerva Mills* case, it was witnessed that the claim of any particular feature of the Constitution to be a "basic" feature would be determined by the Court in each case that comes before it.

Several aspects of the Constitution termed as "basic" are mentioned below:

1. Supremacy of the Constitution
2. Rule of law
3. The principle of Separation of Powers
4. The objectives specified in the Preamble to the Constitution
5. Judicial Review
6. Articles 32 and 226
7. Federalism (including financial liberty of states under Articles 282 and 293)
8. Secularism
9. The Sovereign, Democratic, Republican structure
10. Freedom and dignity of the individual
11. Unity and integrity of the Nation
12. The principle of equality, not every feature of equality, but the quintessence of equal justice
13. The "essence" of other Fundamental Rights in Part III
14. The concept of social and economic justice - to build a Welfare State: Part IV in toto
15. The balance between Fundamental Rights and Directive Principles
16. The Parliamentary system of government
17. The principle of free and fair elections
18. Limitations upon the amending power conferred by Article 368
19. Independence of the Judiciary
20. Effective access to justice
21. Powers of the Supreme Court under Articles 32, 136, 141, 142
22. Legislation seeking to nullify the awards made in exercise of the judicial power of the State by Arbitration Tribunals constituted under an Act

Important elements among these "basic features", are the fundamental rights granted to individuals by the constitution. The policy forms the basis of a limited power of the Supreme Court to review and strike down constitutional amendments passed by the Parliament which conflict with or seek to alter this "basic structure" of the Constitution. The basic structure doctrine applies only to constitutional amendments. The basic structure doctrine does not apply to ordinary Acts of Parliament, which must itself be in conformity with the Constitution.

Initial position of the Supreme Court on constitutional amendments was that no part of the Constitution was unamendable and that the Parliament might, by passing a Constitution Amendment Act in compliance with the requirements of article 368, amend any provision of the Constitution, including the Fundamental Rights and article 368.

In 1967, the Supreme Court reversed its earlier decisions in *Golaknath v. State of Punjab*. It held that Fundamental Rights included in Part III of the Constitution are given a "transcendental position" and are beyond the reach of Parliament. It also declared any amendment that "takes away or abridges" a Fundamental Right conferred by Part III as unconstitutional. By 1973, the basic structure doctrine succeeded in Justice Hans Raj Khanna's judgment in the landmark decision of *Kesavananda Bharati v. State of Kerala*. Previously, the Supreme Court had held that the power of Parliament to amend the Constitution was unfettered. However, in this breakthrough ruling, the Court referred that while Parliament has "wide" powers, it did not have the power to destroy or weaken the basic elements or fundamental features of the constitution.

Although *Kesavananda* was decided by a narrow margin of 7-6, the basic structure doctrine has since gained widespread approval and legality due to subsequent cases and judgments. Primary among these was the imposition of a state of emergency by Indira Gandhi in 1975, and her subsequent attempt to suppress her trial through the 39th Amendment. When the *Kesavananda* case was decided, the underlying apprehension of the majority bench that elected representatives could not be trusted to act responsibly and was perceived as unparalleled. However, the passage of the 39th Amendment by the Indian National Congress' majority in central and state legislatures, proved that in fact such apprehension was well-founded. In *Indira Nehru Gandhi v. Raj Narain* and *Minerva Mills v. Union of India*, Constitutional Benches of the Supreme Court used the basic structure doctrine to knock down the 39th Amendment and parts of the 42nd Amendment respectively, and paved the way for restoration of Indian democracy. The Supreme Court's position on constitutional amendments laid out in its judgements is that Parliament can amend the Constitution but cannot destroy its "basic structure".

To summarize, all these features of the Indian Constitution is a constitution suitable to the Indian environment. The Constitution assist India to organise and operate government and administration in an effective way both in the times of peace and war. The basic structure of the Constitution and its most fundamental features are Preamble, Fundamental Rights, and Directive Principles.