

## Examrace

# Competitive Exams: Constitutional Provisions

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## Provisions of Constitution and Their Source

1. Independence of Judiciary-USA Constitution
2. Judicial Review-USA Constitution
3. President as the Executive head-USA Constitution
4. President as the Supreme Commander of the Armed Forces-USA Constitution
5. The Vice-President as the ex-officio Chairman of the council of states... USA Constitution
6. Fundamental Rights-USA Constitution
7. Preamble-USA Constitution
8. Removal of Supreme Court and High Court Judges-USA Constitution
9. Law making procedures-UK Constitution
10. Rule of Law-UK Constitution
11. System of single citizenship-UK Constitution
12. Parliamentary system with ministerial responsibility-UK Constitution
13. Federation with a strong Centre-Canadian Constitution
14. Distribution of powers between the Union and the States and placing residuary powers with the Centre-Canadian Constitution
15. Directive Principles-Irish Constitution
16. Method of Election of the President-Irish Constitution
17. Nomination of members of the Rajya Sabha by the President-Irish Constitution
18. Emergency and its effect on Fundamental Rights Weimar Constitution of Germany
19. The Concurrent List-Australian Constitution
20. Provision regarding trade, commerce and intercourse ... Australian Constitution
21. Constitutional Amendments-South African Constitution
22. Fundamental Duties-Japanese Constitution

### 3. Republic-French Constitution

## Nature of the Indian Constitution

- Though the members of the Drafting Committee of the Constituent Assembly called the Indian Constitution federal although nowhere mentioned in the Constitution itself, some jurists dispute this title.
- The Western scholars generally take the US Constitution as a role model of federal Constitution and exclude those Constitutions, which do not conform to it from the nomenclature of 'federation'
- But now, it is increasingly realised that any assumption of such a typology is fallacious, and it is generally agreed that the question whether a state is unitary or federal is one of degrees, and whether it is a federation or not depends upon the number of federal features it possesses.

## What is a Federation?

- It is a group of regions or States united with a Central Government or a Federal Government.
- A federation has a well-established dual polity or dual form of Government i.e.. The field of Government is divided between the Federal and the State Governments which are not subordinate to one another, but co-ordinate and are independent within their allotted spheres.
- Therefore, the existence of co-ordinate authorities independent of each other is the gist of the federal principle.

## Indian Situation

- A perusal of the provisions of the Indian Constitution reveals that the political system introduced by it, possesses all the aforesaid essentials of a federal polity.
- The Indian Constitution establishes a dual polity with the Union at the Centre and the States at the periphery, each enjoying powers clearly demarcated by the Constitution.
- The Constitution is written and supreme, with enough power to declare enactments in excess of the powers of the Union or State Legislatures as ultra vires (this has been firmly established after Keshavananda case in 1973)
- Moreover, no amendment making any change in the status or powers of the Centre and the States is possible without the participation of the States (Art. 368).
- Finally, the Supreme Court is the apex authority to interpret the Constitution of India as well as decide on disputes arising out of Centre-State relations.

- Even though all the five essential characteristics are present in the Indian Constitution, in certain circumstances, the Constitution empowers the Centre to interfere in the matters of the States, which places the States in a subordinate position.
- This violates the federal principle.
- Provisions in the Indian Constitution which are not strictly federal in character
- The question of the extent of federality is a different matter and in this regard the Constitution of India has certain distinctive features having a bias towards the Centre.
- The political system of a country is, by and large, the outcome of the circumstances, which certainly differ from one country to another.

## **Provisions That Are Not Federal**

The following are the provisions in the Indian Constitution which are not strictly federal in character:

1. In the USA and Australia, the states have their own Constitutions which are equally powerful as the federal Constitution, but in India, there are no separate Constitutions for the member States.
2. India follows the principle of uniform and single citizenship, but in the USA and Australia, double citizenship is followed.
3. In the USA, it is not possible for the Federal Government to unilaterally change the territorial extent of a State but in India, the Parliament can do so even without the consent to the State concerned (Art 3). Thus, the States in India do not enjoy the right to territorial integrity.
4. If the President declares national emergency
5. for the whole or part of India under Art. 352, the Parliament can make laws on subjects, which are otherwise, exclusively under the State List. The Parliament can give directions to the States on the manner in which to exercise their executive authority in matters within their charge. The financial provisions can also be suspended.
6. Under Art. 155, the Governor of a State is appointed by the President and the former is not responsible to the State Legislature. Thus indirectly, the Centre enjoys control over the State through the appointment of the Governor.
7. If financial emergency is declared by the President under Art. 360. On the ground that the financial stability or credibility of India or any of its units is threatened, all the Money Bills passed by the State Legislatures during the period of financial emergency are also subject to the control of the Centre.
8. Under Art. 256, the Centre can give administrative directions to the States, which are binding on the latter. Along with the directions, the Constitution also provides measures to

be adopted by the Centre to ensure such compliance.

9. Under Art. 312. All India Services officials IAS, IPS and IFS (forest). Are appointed by the Centre, but are paid and controlled by the State. However, in case of any irregularities by the officer, States cannot initiate any disciplinary action except suspending him/her.
- o. Judges of the High Courts are appointed by the President in consultation with the Governors under Art. 217 and the States do not play any role in this. Thus, apart from certain provisions which are biased towards the Union, the Constitution of India, in normal times, is framed to work as a federal system.

But in times of war and other emergencies, it is designed to work as though it were unitary. The federal Constitutions of the USA and Australia, which are placed in a tight mould of federalism, cannot change their form. They can never be unitary as per the provisions of the Constitution.

But, the Indian Constitution is a flexible form of federation a federation of its own kind. That is why Indian federation is called federation sui generis. Prof K C Wheare described the Constitution of India as 'Quasi Federal' and remarked that Indian Union is 'a unitary State with subsidiary Federal features rather than a Federal State with subsidiary unitary features'

Granville Austin described Indian Federalism as 'Co-operative federalism' Dr B R Ambedkar said that Indian Political system is both Unitary as well as federal according to the requirements of time and circumstances.

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