

The Constitution of China today was adopted on December 4, 1982 by the Fifth National People's Congress of the People's Republic of China at its fifth session. It consists of five parts : Preamble; General Principles; Fundamental Rights and Duties of Citizens; Structure of the State; and National Flag, National Emblem and the Capital.

5 *Characteristics of the Constitution* (1982)

The present Constitution of China exhibits certain essential features which differ from the previous Chinese Constitutions of 1975 and 1978 as well as from the Constitutions of Western democracies and resemble the 1954 Chinese Constitution in several respects. These features are :

1 A socialist constitution. The first important characteristic of the Chinese Constitution is its socialist character. Article 1 of the Constitution describes the People's Republic of China as "a socialist State". The form of the State power is the "people's democratic dictatorship led by the working class and based on the alliance of workers and peasants". The People's Republic of China is thus not a "State of the dictatorship of the proletariat" as the 1975 and 1978 Chinese Constitutions called it.

The political foundation of the Chinese Socialist State is the "People's Congress" at different levels formed by elected representatives of the people. Its economic foundation is the socialist economic system. The principal instruments of production in the country are socialist property. Socialist property either as State property (belonging to the people) or as collective and co-operative property (belonging to the working people of collective organisations) is the foundation of the economic system.

Private enterprise is allowed to operate within limits prescribed by law and as a supplement to the socialist economy. The rights to own and inherit personal property are protected by law.

Finally, the system of distribution is based on the socialist principle : "From each according to his ability, to each according to his work."

2 Unitary multinational state. The second salient feature of the Chinese Constitution is that the People's Republic of China (PRC) is a "unitary multinational State". The PRC is peopled by 56 ethnic groups of which the Han nationality make up approximately 94 per cent of the total population. But the makers of the Constitution have not formed a federal state to solve the national problem. They have formed a unitary State but all nationalities have been guaranteed regional autonomy and equality of rights and freedoms.

3 Unicameral legislature. The National People's Congress, the Parliament of China, is a one-chambered legislature. This distinguishes the Chinese Constitution from most other Constitutions in the world which have established two-chambered legislative assemblies.

4 Electoral system. The electoral system of China is unique in several respects. The National People's Congress, the highest organ of State power, is indirectly elected by the people's congresses of the provinces, autonomous regions and municipalities directly under Central Government, and by the armed forces. These people's congresses are elected by people's congresses at the next lower level. Only members of the people's congress of cities not divided into districts, and municipal districts, and towns are directly elected. All citizens of 18 years and over—except persons legally deprived of the right to vote—have the right to elect and to be elected. Thus the electoral

system of China may be called universal but it is not direct. It combines the method of direct election with indirect election.

5 One-party rule. Though the present Chinese Constitution does not, like 1975 and 1978 Constitutions and the erstwhile Soviet Constitution, recognise the Communist Party of China as the sole governing party of the country, it is in fact the sole governing party. The United Front of all democratic parties and patriotic forces in China is led by the Communist Party. No party, no organisation and no individual can challenge the Communist Party's hegemony in the governance of the country.

6 Rights and duties of citizens. One of the essential features of the Chinese Constitution is that it embodies, like the erstwhile Soviet Constitution, the most extraordinary bill of rights known in history. Like the erstwhile Soviet Constitution, it guarantees to the Chinese citizens certain economic rights, such as the right to work and rest as well as civil freedoms such as freedom of speech, press and assembly, etc.

Since rights imply duties, the Chinese Constitution has laid down several duties of the citizens, e.g., the duty to support the socialist system, safeguard public property, perform military service, etc. Rights and duties are thus made inseparable.

7 Judicial system. The judicial system of China is also unique in several respects. The president of the Supreme People's Court, the highest Court of the country, and its other members are appointed by the Standing Committee of the National People's Congress. The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Local People's Courts at different levels are responsible to the local people's congresses and their Standing Committees which created them. All cases, except for those involving special circumstances specified by law, shall be tried in public.

Another distinctive feature of the Chinese judicial system is the Procuratorate's office which is responsible for legal supervision throughout the country.

Perhaps, the most distinctive feature of China's judicial system is that the courts cannot interpret the constitution and law of the country. That power of interpretation remains vested in the Standing Committee of NPC, which is an administrative body.

8 Standing Committee. A unique feature of China's Constitution is the creation of a Standing Committee of the National People's Congress. It combines the legislative, executive and judicial power of the State and thus marks a departure from the doctrine of separation of powers. It acts as a small working legislature, having powers of supervision over the administration and interpretation of the Constitution. The last powers is of great significance because the Standing Committee, an administrative organ of the State, has

been vested with the power to declare a governmental act illegal if it violates the Constitution—a power which all democratic countries remains vested in the Courts.

9 Army's important role. Another unique feature of the Constitution is the recognition of the role and importance of the Chinese armed forces in the political and socio-economic system of the country. According to the Constitution, the armed forces belong to the people. Their tasks are not only to defend the country against foreign aggression but also to defend the socialist system, participate in national reconstruction and serve the people.

The direction of the armed forces has been vested in a Central Military Commission which is appointed by the National People's Congress and remains responsible to it. This is an important departure from the previous Constitution which vested the command of the armed forces in the hands of the Chairman of the Communist Party.

10 Supremacy of the constitution. The supremacy of the Constitution is a salient feature of the new Constitution. The Preamble to the Constitution proclaims that the Constitution "is the fundamental law of the State and has supreme legal authority." Article 4 of the Constitution lays down: 'No law or administrative or local rules and regulations shall contravene the Constitution.' However, the power to interpret the Constitution and supervise its implementation has been vested not in the judiciary but in the Standing Committee of the National People's Congress.

11 A rigid constitution. The new Constitution is, like the Soviet Constitution, rigid because a special procedure is required to amend it. The new Constitution of China can be amended by a majority vote of more than two-thirds of all the deputies of the National People's Congress.

12 Central Military Commission. The Central Military Commission is a unique institution created by the Constitution. Whereas in other countries the chief executive commands and directs the armed forces of the State, the Chinese Constitution has given military power not to the President of China but to a Central Military Commission elected by the National People's Congress.