

This essay throws light upon the eighteen salient features of the Constitution of China of 1982. The features are: 1. Continued Faith in Marxism-Leninism-Maoism but with a New Approach 2. Preamble of 1982 Constitution 3. A Socialist Constitution 4. Faith in Panchsheel and Opposition to Imperialism 5. Written and Enacted Constitution and Others.

Feature # 1. Continued Faith in Marxism-Leninism-Maoism but with a New Approach:

The 1982 Constitution expresses full faith in Marxism-Leninism and Maoism. But at the same time it indirectly admits some past mistakes when it seeks to right the wrongs that resulted from the Cultural Revolution of the 1960s.

It advocates the need to maintain the process of streamlining and strengthening the institutional framework that had been initiated in the post- Mao years. Retreat from the Cultural Revolution was presented in a soft way and new political norms and principles were incorporated.

A new faith in decentralisation and liberalisation of the economy has been expressed. Provision for the inclusion of a private sector in the socialist economy has also been incorporated. All this was done for the modernisation of the system in the new environment. In his report to the National People's Congress at the time of the deliberations held on the draft of the new constitution, the Vice-Chairman of the Constitutional Revision Committee observed that the new constitution

“sums up the historical experience of China’s socialist development, reflects the common will and fundamental interests of all nationalities in the country, conforms to the situation in China and meets the needs of socialist modernisation.”

Now China stands for Three Represents: Marxism-Leninism, Mao Zedong and Deng Xiaoping.

Feature # 2. Preamble of 1982 Constitution:

The Preamble of the 1982 Constitution, gives an account of the past achievements and sets forth the task ahead.

It affirms that in the past, **“the transition of Chinese society from a new democratic to a socialist society was effected step by step. The socialist transformation of the private ownership of the means of production was completed, the system of exploitation of man by man was eliminated and the socialist system established.”**

Laying down the basic task before the nation in the times to come, the Preamble of the Constitution declares: **“Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Tse-Tung’s thought, the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship and follow the socialist road.”**

Stating the need for social modernisation, the Preamble says:

“In the years to come, China will concentrate its efforts on social modernisation through hard work and self-reliance.”

Feature # 3. A Socialist Constitution:

The 1982 Constitution continues to be a constitution of the socialist state. It aims at further development of the socialist system.

Article 1 of the Constitution declares:

“China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants.” However, socialism is now being defined as Market Socialism.

Feature # 4. Faith in Panchsheel and Opposition to Imperialism:

The Preamble stresses that China stands for an independent foreign policy based on mutual respect for territorial integrity, mutual non-aggression, non-interference in each other’s internal affairs, equality and mutual benefit, and peaceful coexistence through developing diplomatic relations and economic and cultural exchanges.

“China consistently opposes imperialism, hegemonism and colonialism, works to strengthen the unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve their national independence, and develop their national economies and strives to safeguard world peace and promotes the cause of human progress.”

Feature # 5. Written and Enacted Constitution:

The 1982 Constitution is a written and enacted constitution. It was drafted by the National Constitution Revision Committee, discussed by the Standing

Committee and the people at large and passed by the National People's Congress on 4th December, 1982. Unlike its predecessors, the 1982 Constitution is quite comprehensive and contains 138 Articles. The Constitutions of 1954, 1975 and 1978 had respectively 106, 30 and 60 Articles only.

138 Articles of the 1982 Constitution stand divided into four chapters. The first chapter has 32 Articles (Article 1 to 32) and it describes the general principles of the Constitution. The second chapter has 23 Articles from Article 33 to 55 and it enumerates the rights and duties of the citizens.

The third chapter has 79 Articles (56 to 135) and it lays down the organisation and powers of the organs of government, and finally the fourth chapter has only three Articles (136 to 138) and it describes the national flag, the national anthem and the capital of the country.

Feature # 6. A Difficult Method of Amendment:

The Chinese constitution is theoretically a rigid constitution. It provides for a special method of amendment. The National People's Congress has the power to amend it by a majority of 2/3rd votes. However in practice, it works as a flexible constitution.

First, because China is a unitary state and all legislative and constitutional powers are in the hands of the National People's Congress. Secondly, because of the domination of the entire system by a single party-the Communist Party of China. The unitary character, lack of

opposition and domination of politics by one party-one leadership together make the constitution flexible.

Feature # 7. Constitution as the Supreme Law:

The Constitution of the Peoples Republic of China is the fundamental law of the state and has supreme legal authority. It binds all, including the Communist Party. It can be amended only by a 2/3rd majority of votes in the National People's Congress.

Feature # 8. Separation between the Government and the Party:

The Constitution incorporates a separation between the government and the party. No Article of the constitution either gives recognition to or explains the role of the Communist Party. Article 1 simply describes China as a people's democratic dictatorship led by the working class and based on the alliance of workers and peasants. It makes no mention of the Communist Party. The state is now headed by the President of the Republic. The command of the army is no longer in the hands of the Chairman of the Central Committee of the Party. The armed forces belong to the people. The Premier (PM) is no longer the choice of the Central Committee.

He is chosen by the National People's Congress on the nomination made by the President of the Republic. The 1982 Constitution separates the government from the party. It states – "The Constitution of the Communist Party should be in accordance with the constitution and law."

However, this separation is only on papers. In reality, the leadership of the Communist Party continues to hold full and firm control over all the offices of the government.

Feature # 9. Restoration of the Republican Character of the State:

The 1975 constitution abolished the office of the President of the Republic who used to work as the head of the state under the 1954 constitution. The duties of the head of the state were carried out by the Chairman of the Standing Committee of the National People's Congress.

The 1982 Constitution restores the office of the President of People's Republic of China and provides for his election by the National People's Congress for a term of 5 years. However, while restoring this office, the 1982 Constitution has not restored all the powers which belonged to him under the 1954 constitution.

Feature # 10. Faith in the Sovereignty of the Popular Will:

Article 2 categorically states that all power in China belongs to the people. The people administer state affairs and manage economic, cultural and social affairs in accordance with the law. The Constitution represents the sovereign will of the people.

Article 5 states "All state organs, the armed forces, all political parties and public organisations and all enterprises and undertakings must abide by the Constitution and the law."

Feature # 11. Fundamental Rights and Duties of the People of China:

The 1982 Constitution places added emphasis on the rights, freedoms and duties of the people of China. In its Chapter 2, it incorporates an impressive Bill of Rights. Every citizen now enjoys the rights enshrined in the Constitution.

The Chinese Bill of Rights now includes Right to Equality, Political Rights, Right to Basic Freedoms, Freedom of Religious Belief, and Right to Work, Right to Material Assistance, Equality of women and several other rights. Along with these rights, the Constitution enumerates the Fundamental Duties of all citizens.

These include the duty to preserve and protect the unity of the country, to abide by the Constitution, to defend the motherland, to pay taxes, and to safeguard the honour of China. The Right to Personal Property and inheritance has also been recognised by the Constitution.

Article 13 states:

“The state protects the right of the citizens to own lawfully earned income, savings, houses and other lawful property. The state protects by law the right of the citizens to inherit private property.”

Feature # 12. A Unitary State:

Despite being a big and multi-cultural society, the Chinese have decided to keep the state a unitary state. Despite accepting the need for democratisation and decentralisation, the 1982 Constitution, maintains the unitary character of the state.

However, it seeks to effect a balance in relations between the central and local authorities. The local

authorities entry the right to take initiative under the unified leadership of the central authorities.

Feature # 13. National People's Congress-A Unicameral Legislature Working as the Highest Organ of State Power:

The 1982 Constitution, like the constitutions of 1954, 1975 and 1978, maintains the unicameral character of the national legislature-the National People's Congress. It represents the nation and consists of some 3000 (2974 in 1998) deputies elected by the people. The Constitution declares it to be the highest organ of state power with sole legislative authority of the country.

It alone can amend the constitution. It elects the President and Vice-President of the Republic, decides the choice of the Premier (PM), Vice-Premiers, State Councillors, Ministers, Auditor General and all other high ranking officers of the state.

It elects its Standing Committee which exercises all its powers during its absence. The government is responsible to the National People's Congress for all its activities. At the regional and local levels, the directly elected Congresses, work under the overall leadership, guidance and control of the National People's Congress.

Feature # 14. A Sort of Parliamentary System:

The 1982 Constitution lays down a system of government which resembles the parliamentary form of government. The Cabinet is called the State Council and the Prime Minister is called the Premier. It is the real executive of the State. The Premier is chosen by the

National People's Congress upon the nomination made by the President of the Republic.

All other members of the State Council are appointed by the National People's Congress upon the nominations recommended by the Premier. Since the State Council is the most powerful organ of the government, the top leaders of the Communist Party are usually its members.

Feature # 15. Provision for the Institutions of Local Government:

The administration of China, which is a unitary state, stands divided into several provinces and municipalities, cities, units, districts, sub-divisions etc. to all local levels, local people's congresses have been established.

Further, Autonomous Regions, Autonomous Prefectures and Autonomous Counties have also been established. These have been created on the basis of the location of different nationalities within China. These act as the instruments of local government. Some of these have been created by the Constitution, while others are directly under the central government.

Feature # 16. General Principles of Governance:

Another vitally important salient feature of the 1982 Constitution is the incorporation of the General Principles of the Constitution. In its first chapter, Article 1 describes China as a socialist state under people's democratic dictatorship led by the working class and based on the alliance of workers and peasants.

Further, it states that the socialist system is the basic system and sabotage of this system by any organisation

or individual is prohibited. No mention of the leadership of the Communist Party has now been made. In the 1978 Constitution Article 2 described the Communist Party as the core of leadership but the 1982 Constitution has dropped this reference altogether.

Article 3 of the 1982 Constitution provides for a direct election of the National People's Congress and all Congresses at different levels. It also defines the relation between the people and their representatives. Further, it provides guidelines for the relations between central and local organs. The local organs are to have the initiative under the unified leadership of the central organs.

Article 31 of the Constitution provides that "the State may establish special administrative regions when necessary." The system thus instituted in the special administrative regions is to be prescribed by law enacted by the National People's Congress." The Constitution further describes it as the duty of the Chinese people, including the compatriots of Taiwan, to accomplish the great task of unifying the motherland.

Feature # 17. Provisions Regarding Economic Policies:

The Constitution reaffirms faith in socialist economy but tacitly accepts the emergence of a private sector working within the socialist system. Public ownership of the means of production continues to be the basis of China's socialist economic system but the constitution calls for the development of Chinese economic forms i.e. state, collective and individual forms.

Upholding the authority of the state sector continues to be a priority.

The stress is on socialist ownership. Nevertheless, the Constitution allows for the coordinated growth of the national economy through a comprehensive balancing of a planned economy with the supplementary role played by market supply and demand.

It seeks to dilute the rigid and excessive state control over the economic system by providing for a role in decision-making to the state and collectively owned enterprises. The “Open Door” policy involving limited and gradual economic liberalisation continues to be the official policy.

These provisions have helped the Chinese to assimilate some sort of private sector within the socialist system. Collaborations with foreign private enterprises have been permitted. China now stands for Market Socialism. These policy changes have been designed to accelerate the production of goods and commodities.

In 2002, the 16th Party Congress, announced that now rich business people were welcome to apply for party membership, China has been slowly but definitely adopting limited and planned privatisation. Now the party, the government and private business are expected to join hands to secure the goal of rapid development in the 21st century.

Feature # 18. China as a Multi-National State:

The Constitution declares that the People’s Republic of China is a single multi-national state. There are 56 nationalities who have integrated to form the modern

Chinese nation. Article 4 declares that all nationalities are equal.

Discrimination against and oppression of any nationality stand prohibited. All acts that undermine the unity of the nationalities or instigate their secession are legally banned. The Constitution grants and protects the right of all nationalities to protect and develop their languages and customs.