



Presentation 2

On

Government of India Act 1935

For B.Tech (Vth Semester)



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“All constitutions are the heirs of the past as well as the testators of the future.....”

- Jennings

On 26th January, 1950, the present Constitution of India was brought into force which announced to world the birth of a new republic.

The constitution of the Indian Republic is the product not of a political revolution, but of the research & deliberations of a body of eminent representatives of the people.

These people improve the existing system of administration, thus making constitutional development for a proper understanding.



WHAT IS A CONSTITUTION ?

It is said by

- *Wade & Philips,*

“A Constitution means a document, having a special legal sanctity which sets out the frame work and the principle functions of the organs of the Government of a State and declares the principles governing the operations of those organs.”



INTRODUCTION

- A politically organized society is called a State/nation.
- Every State has a **legal document** in place called “**The Constitution**” which sets out the **functionaries** of the State and governs the **relationship** between the State and the People.
- The Constitution of India derives its authority from the ***People of India (the People adopt the Constitution onto themselves)***
- The Constitution of India is a document having special sanctity and it sets out :

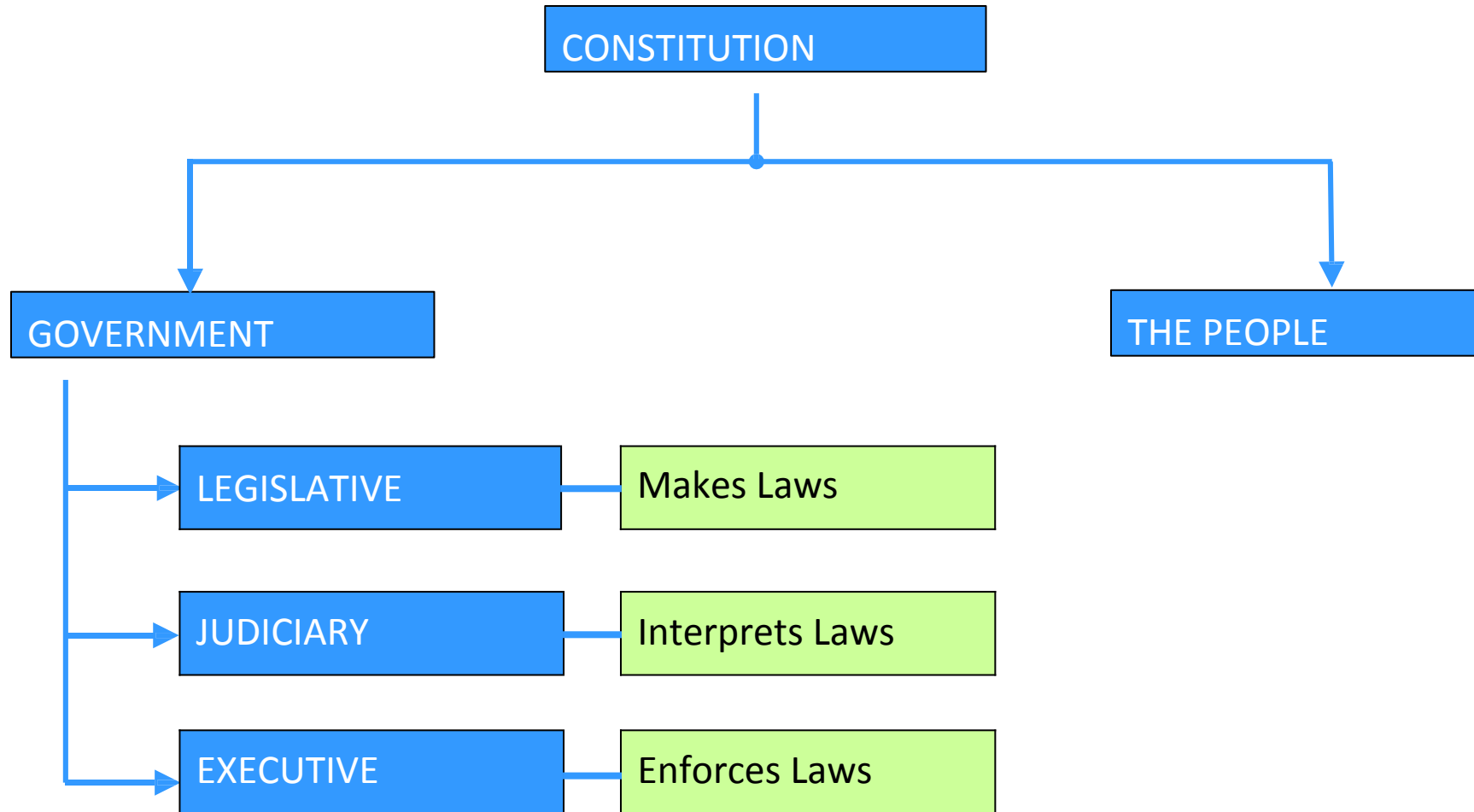
The powers and functions of the organs of the Government of a State.

The relationship between various organs of the Government.

The relationship between the People and the State



Role of Constitution In relationship between Government and its people:-





Borrowed features of constitution of India



- **1.From U.K.** - Nominal Head – President, Cabinet System of Ministers, Post of PM, Parliamentary Type of Govt., Bicameral Parliament, Lower House more powerful, Council of Ministers responsible to Lower House, Provision of Speaker in Lok Sabha.
- **2.From U.S.A-** Written constitution, Appointment of Vice President, Fundamental Rights, Supreme court, Head of the state known as president, Provision of states, Judicial review.
- **3.From Australia-** Concurrent List, Centre-State relationship, Language of the Preamble
- **4.From USSR-** Fundamental Duties, Five year plan
- **5.From Germany-** Emergency provisions
- **6.From Japan-** Law on which the Supreme Court functions
- **7.From Canada-** Federal System and Residuary powers
- **8.From South Africa-** Procedure of constitutional amendment
- **9.From Ireland-** Concept of Directive Principles of state policy



HISTORICAL ERA'S

We can broadly divide the period as follows :-

- ❖ *1600 – 1765 :- The Coming of the British*
- ❖ *1765 – 1858 :- Beginning of the British Rule*
- ❖ *1858 – 1919 :- End of Company's Rule*
- ❖ *1919 – 1947 :- Introduction of Self Government*
- ❖ *1947 – 1950 :- The Framing of the New Constitution*



END OF COMPANY'S RULE 1858 - 1919

❖ *The Government of India Act, 1858 :-*

- *The Act of 1858 transferred Government of India from the East India Company to the British Crown.*
- *India henceforth to be governed by and in the name of “Her Majesty”.*
- *All the powers where in hands of Her Majesty’s Secretary of State.*
- *The powers of the Crown were transferred or to exercised by the secretary of state for India assisted by a council of 15 members.*

□ *The Essentials Features of the System introduced by Act of 1858 :-*

- *The administration of the country was not only unitary but rigidly centralized. The provincial Governments were mere agents of the government of India and had to function under the superintendence, direction and control of the Governor – General .*
- *There was no Separation of functions. All the Authority for governance of India - civil & military , executive & legislative was vested in the hands of Governor – General in Council.*
- *The control of the Secretary of State over the Indian administration was absolute. The secretary has superintendence, direction and controls of all*



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The Indian Council's Act, 1861 :-

The Indian Councils Act, 1861 was of basic importance .

- The Act enlarged the council of the Governor- General for the purpose of making laws and regulations by the additions of not less than 6 and not more than 12 ' Additional Members ' : half of these were to be non- officials members.*
- This Act suffered from many defects. It gave unlimited power to the governor – general rather than people.*

❖ The Indian Council 's Act, 1892 :-

This Act achieved three things : -

- It increased the number of members in the Central and Provincial Council*
- Introduced the election systems partially, and*
- Enlarged the functions of the Council.*

It is true that the Act laid down the foundation of the representative Government but it also suffered from many defects. 1st defect- that the system of election was defective.

2nd defect – the power of Legislative Councils were very limited.



The Morley – Minto Reform & The Indian Council Act, 1909 :-

The first attempt at introducing a representative and popular element was made by Morley – Minto Reforms known by names of the Secretary of State (Lord Morley) & Viceroy Lord Minto which implemented by the Indians Council Act, 1909.

By this Act the size of Legislative Councils , Central as well as Provincial was considerably increased. The powers were also enlarged.

The council had also the right of discussing & moving a resolution on the financial statement but they were not given the power of voting.



INTRODUCTION OF SELF GOVERNMENT

1919 – 1947

❑ **Montagu – Chelmsford Report :-** *The landmark report in constitutional development which led to enactment of the Government of India Act, 1919.*

❖ **Main Features of Act, 1919 :-**

1. **The Declaration** – *promised for responsible government to India.*
2. **Dyarchy in the Provinces** – *Double Rule. Its objects was to train the natives in the act of Self-Government.*
3. **Central Government** – *It was responsible to British parliament through the Secretary of State. It has bicameral legislative.*
4. **Structure of Government to remain unitary** – *Central Legislative had power to legislative on any matter. Government of India remained unitary and centralized government with the Governor General-in-Council as the key stone of constitution.*
5. **Shortcoming of Act, 1919** – *Reforms of 1919, **failed to fulfill aspirations** of the people of India. Its **reasons** where -*



1 Simon Commission :-

- British Government appointed a Statutory Commission known as Simon Commission.*
- This commission was constituted for 10 yrs. The commission was headed by Sir John Simon.*
- After 10 yrs completion Simon submitted his report in 1930. The commission was strongly opposed by Indians. It contained all the seven members of British parliament and no Indians. The people of India were outraged and felt insulted because the Simon Commission, which was to determine the future of India, did not include any single Indian member.*

□ The Government of India Act, 1935 (in detail)

This Act regarded as the full milestone on the highway leading to full responsible government. The basic features of the Act were –

- federation & provincial autonomy*
- Dyarchy at the Centre*
- A bicameral central legislature created*



- The Act provided for **an All India Federation**. All the provinces were to join the Indian Federation automatically.
- In case of States they were given to the option to join the same or not.
- The federal Legislation was to be bicameral consisting of the **Federal Assembly and the Council of State**.



| Federal Assembly (Lower House) | Council of State (Upper House) |
|---|---|
| 5 years | Permanent |
| 125 from Indian States (Nomination) | 104 from states (Nomination) |
| 250 from Provinces (Indirect election on communal line) | 156 from Provinces (Direct election on communal line) |
| | 1/3 was to retire every three years |



Federal Assembly duration was 5 years from the date of its first meeting, on the expiry of that period, it was to be dissolved automatically.

- Council of State given to be a permanent body of which one third members were to retire after every three years.
- The Indian State were to send 125 members to the Federal Assembly and 104 member to the Council of State.
- The Provinces were to sent 250 members to the Federal Assembly and 156 members to the Council of State.



Powers of the legislature

- The powers of the **Indian Legislature were severely restricted**. There were some subjects on which neither the Federal legislature or provincial legislature could legislate.
- **They could make any law** depending on the provisions of the Government of India Act, 1935 for the benefit of British India.
- They did not have any **right to amend or abolish** the provision of the 1935 Act.
- Governor General was **empowered to summon a joint sitting of the two House** of the federal legislation on any **dispute occur** between two Houses



- The functions of the Crown with regard to the Indian States were to be performed in India by his representative who was the Viceroy himself.
- There was no simple division of powers between in centre and the units.

Provision was made for three lists.

Federal List : Provincial List: Concurrent List:

Federal Government was authorized to pass law on the subjects given in their list.



The subjects given in the **Provincial list** was within the exclusive jurisdiction of the Provincial legislation.

- As regards the Concurrent list, **both the Federal Legislation and Provincial Legislation could pass laws on the subjects given in the list.**
- If a law was passed by the Federal Legislation on any subject given in the concurrent list, the Provincial legislation **could not make any law on the same subject afterwards.**
- The Act of 1935 provided for **diarchy at Center**. Diarchy which was **abolished in the Provinces**, was introduced at the center.



- Certain Federal subjects were reserved in the hands of the Governor General to be administered by him with assistance of not more than three Councilors.
- The reserved subjects were Defense, External Affairs, Ecclesiastical affairs and the administration of Tribal areas.
- In the administration of other Federal subjects the Governor General was to be aided and advised by a council of ministers whose member was not to extend 10.
- The Federal Ministry was to administer all the Federal departments except the reserved subjects.



- In spite of composite nature of the **ministry their responsibility was to be collective**. The ministry was to be responsible to the Federal Legislation.
- According to procedure Governor General had to work based on the advises of the Ministers.
- However, Governor General, he did not always act on the advice of ministers. **In certain cases he was to act in the individual judgment and he was responsible for his own decisions.**
- The Act provided for the establishment of a **Federal Court of India** with jurisdiction on Indian States and Provinces. One chief justice and two judges were appointed.



- The Act abolished the **supremacy of Secretary of State of Indian Affairs**. Indian officials they may or may not approach Secretary of State for advises in the administration.
- **There was no control from London** when the Governor and the Governor General acted according to the consent of their ministers.



Cripps Mission :-

Cripps Mission came in 1942 & recognized the demand that..

- a constitution to be framed by an elected constituent assembly.*
- Indian to be given a dominion status.*

Cripps proposal were rejected by both congress and muslim league because it did not grant responsible Cabinet government at the centre.

❑ Cabinet Mission, 1946 – Formation of Constituent Assembly :-

The cabinet Mission came into India on 4th March 1946. It consisted of 3 British members – Lord Pethic Lawrence, Sir Stafford Cripps, Mr. Alexander.

- ❑ The Cabinet Mission provided for an indirectly elected constituent assembly.*
- ❑ The Assembly consisted of total 389 members. From which – 292 to be elected from Provinces, 93 to be nominated from*



Joint Constituent Assembly for India & Pakistan :-

- *The 1st meeting of the constituent assembly was held on Dec 9, 1946.*
- *But it was boycotted by Muslim League.*
- *Muslim League demanded a separate assembly for Pakistan.*
- *On 26th July 1947 – Governor General Lord Mountbatten announced the setting of a separate constituent assembly for Pakistan.*

Indian Independence Act, 1947 (Mountbatten Plan):-

- ❖ *Creation of 2 Independent Dominions i.e. India & Pakistan from 15th August 1947.*
- ❖ *Dominions to Have Governor – General appointed by King.*
- ❖ *Constituent Assemblies were empowered to frame laws.*
- ❖ *After 15th August 1947 – No control of British Government on Dominion of the provinces.*
- ❖ *Till New Constitutions came into existence - Dominions & the provinces were governed by Government of India Act, 1935.*
- ❖ *Post of Secretary – abolished – taken over by Secretary of Commonwealth of Nation.*

So, Indian Independence Act, 1947 came into force on 15th August 1947.