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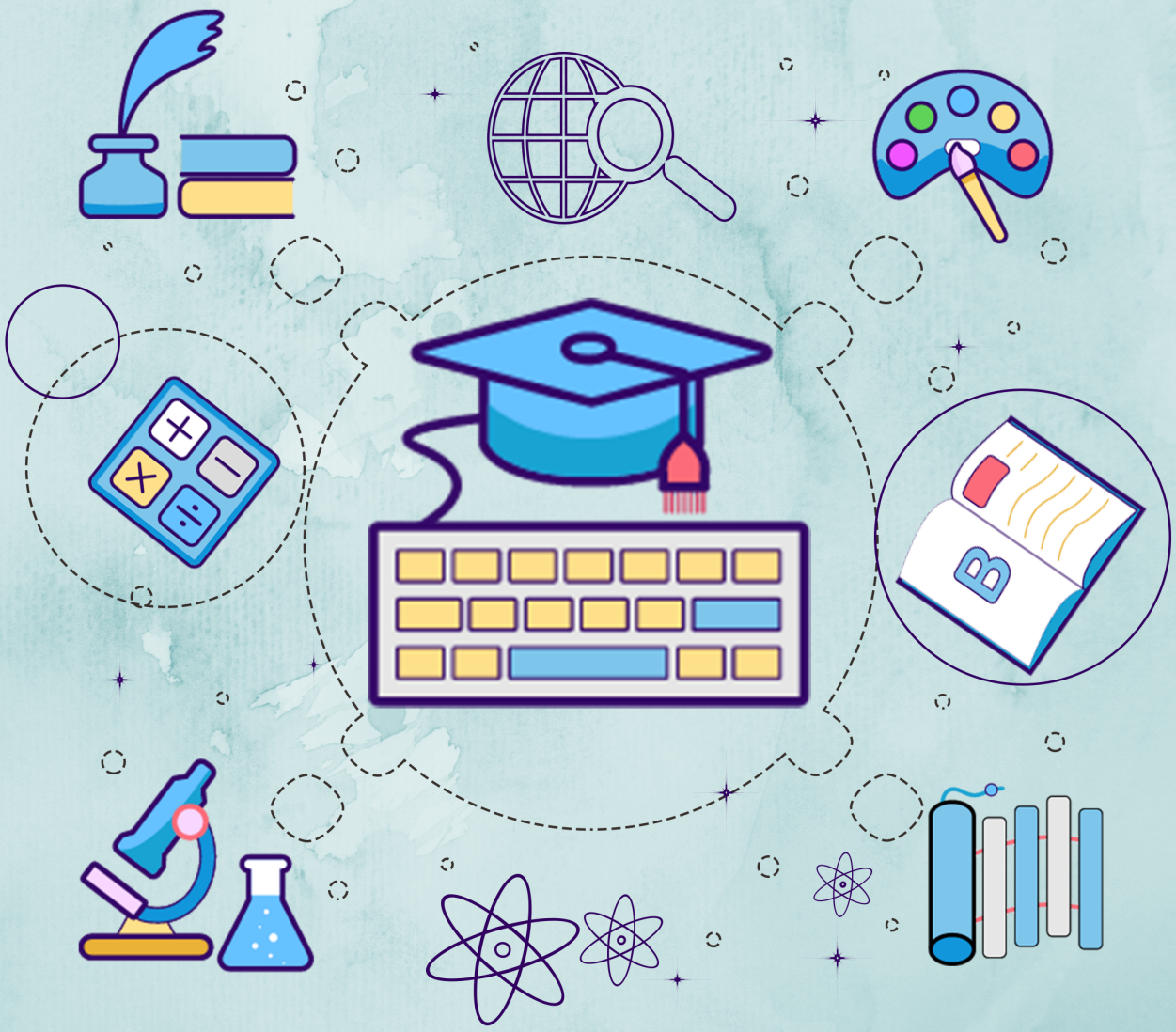

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MODULE 1

Definition of constitution, historical back ground, salient features of the constitution.

Preamble of the constitution, union and its territory.

Meaning of citizenship, types, termination of citizenship.

1. Definition of constitution

A Constitution is a set of laws and rules, setting up the machinery of the government of a State which defines and determines the relations between the different institutions and areas of the government, the executive, the legislature and the judiciary, the central, the regional and the local governments. Every Constitution aims to build up a governmental structure based upon certain basic and well established principles. Although some of these principles are common to most of the Constitutions, there are others which vary from Constitution to Constitution. The Constitution of India is the supreme law of the land. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government and spells out the fundamental rights, directive principles and duties of the citizens.

2. What is a Preamble?

The Preamble to a Constitution is expected to embody the fundamental values and the philosophy on which the Constitution is based and the aims and objectives the founding fathers enjoined to strive to achieve. In other words Preamble is a preliminary or introductory statement in speech or writing. It has been rightly stated that 'Preamble' is like an introduction or preface of a book. It explains the purposes and objectives with which the document has been written. As such the 'Preamble' provides the guidelines of the Constitution.

3. Write the Preamble of the Indian constitution.

We, the people of India, having solemnly resolved to Constitute India into a 'Sovereign, Socialist, Secular, Democratic Republic' and to secure to all its citizens : Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation; in our Constituent Assembly this twenty – sixth day of November, 1949 do hereby adopt, enact and give to ourselves this Constitution.

4. Explain the need and importance of Preamble.

The Preamble contains the philosophy on which the entire Constitution has been built. It provides a standard to examine and evaluate any law and action of government to find out whether it is good or bad. Hence, it is the soul of the Constitution. The Preamble shows the way the government ought to run. It seeks to give the citizens all types of freedoms—freedom of thought and expression, freedom of religion, cultural and educational rights etc. The Preamble mentions people as the source of the Constitution. It seeks to provide equality of status and opportunity to all individuals and thus promotes a sense of brotherhood among all citizens

The Preamble, in brief, explains the objectives of the Constitution in two ways:

- About the structure of the governance
- About the ideals to be achieved in independent India.

It is because of this, the Preamble is considered to be the key of the Constitution. The objectives, which are laid down in the Preamble, are:

- Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic. (Socialist, Secular added by 42nd Amendment, 1976).
- 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.

5. Define citizenship

Citizenship signifies the relationship between individual and state. Citizenship is the status of a person recognized under law as being a legal member of a sovereign state or belonging to a nation. Indian Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Citizens expect certain rights from their state as well as help and protection wherever they may travel. The importance of full membership of a state can be appreciated if we think of the condition of the thousands of people in the world who have the bad fortune to be forced to live as refugees or illegal migrants because no state is willing to grant them membership. Citizenship is an idea of exclusion as it excludes non-citizens.

6. What is the difference between a state and a union territory?

India is one of the largest countries in the world and the administrative powers and responsibilities of the country are divided among central government and various units in the form of states and union territories. When it comes to administrative divisions of the country, after the inclusion of Jammu and Kashmir, and Ladakh there are 28 states and 9 Union Territories.

A state is a division under Indian constituency, which has a separate government. States are explained as the administrative unit that has its elected government,

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which has the right to frame its laws. It has its own Legislative Assembly and the Chief Minister, for administration. The Governor acts as the representative of the President, in states. There is a distribution of sovereign legislative and executive powers between the Centre and state, regarding the territory of that state. Different states vary in size, demography, history, dressing style, culture, language, tradition and so on. Prior to independence, there were two kinds of states in India, i.e. Provinces and Princely states, wherein provinces are under the control of British Government while the Princely states are ruled by the hereditary rulers.

Union Territories are ruled directly by the Central Government has a Lieutenant Governor as an administrator, who is the representative of the President of India and appointed by the Central government. Union Territories have no representation in the Rajya Sabha except Delhi and Puducherry. Union Territory is a small administrative unit that is ruled by the Union. The Union Territories are controlled and administered directly by the Central Government.

ESSAY QUESTIONS

7. Explain the salient features of the Indian constitution.

A rule is an established principle, a standard or a guide for action. Rules are essential for efficient and proper governance of a country. These rules and principles are laid down in the constitution. A constitution is an important document laying down the fundamental principles of a country. The country is governed by these principles. Laws are also formulated according to them. Thus, the constitution is also regarded as the fundamental law of a country.

Each and every institution functions according to certain basic rules. The basic rules of the state are called constitution. It makes the learners enlightened citizen of this country. Since its inauguration on 26th January 1950, the Constitution of India has been successfully guiding the path and progress of India.

The Constitution of India is a unique constitution. It is the largest written liberal democratic constitution of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity. Salient Features of the constitution are as follows:

1. A Written and lengthiest Constitution
2. Rigid and Flexible
3. Quasi Federal
4. Parliamentary Democracy
5. Fundamental Rights and Fundamental Duties
6. Directive Principles of State Policy
7. Single Integrated Judicial System
8. Independence of Judiciary
9. Single Citizenship
10. Universal Adult Franchise
11. Emergency Provisions

A Written and lengthiest Constitution:

A written constitution is framed at a given time and comes into force on a fixed date as a document. Our constitution was framed in 2 years, 11 months and 18 days; it was adopted on 26th November, 1949 and enforced on January 26, 1950.

Indian constitution originally contained 395 Articles, divided into 22 parts and 9 schedules. It is described as 'elephant size' constitution. It has been a model, for many developing countries.

1. It incorporates the experience of all leading constitution.
2. It prescribes constitution for the union as well as for the states.
3. It incorporates detailed provisions regarding centre – state relations.

Rigid and Flexible:

The Indian Constitution is a unique example of combination of rigidity and flexibility. A constitution is called rigid or flexible on the basis of its amending procedure. In a rigid constitution, amendment of the constitution is not easy like the constitutions of USA, Switzerland and Australia are rigid constitutions. Whereas, the British Constitution is considered flexible because its amendment procedure is easy and simple. The Constitution of India has three categories of amendments ranging from simple to most difficult procedure depending on the nature of the amendment.

Quasi Federal:

It means a federal set up where despite having two clear sets of government – central and the states, more powers are given to the Central Government, supremacy of the judiciary is an essential feature of a federation so that the constitution could be interpreted impartially.

Parliamentary Democracy:

India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the latter. In this form of democracy, the Head of the State is nominal so in India, the President is the Head of the State. Constitutionally the President has numerous powers but in practice the Council of Ministers headed by the PM, exercises these powers. The President has to act on the advice of the Prime Minister and the Council of Ministers.

Fundamental Rights and Fundamental Duties:

The Constitution of India guarantees Fundamental rights. The Constitution provides for six Fundamental Rights which are justifiable and hence are protected by the judiciary. Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India.

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While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.

Directive Principles of State Policy:

These have been adopted from the Irish Constitution, included in our Constitution to ensure social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.

Single Integrated Judicial System:

India has a single integrated judicial system. The Supreme Court is the apex court of the judicial system. Below it are the High Courts which control and supervise the lower courts. The Indian judiciary is like a pyramid with the lower courts as the base, High Courts in the middle and the Supreme Court at the top.

Independence of Judiciary:

Indian judiciary is independent and impartial. It is free from the influence of the executive as well as the legislature. Its judges are appointed on the basis of their qualifications and cannot be removed easily neither can their terms of office be altered to their disadvantage.

Single Citizenship:

Usually in a federal state the citizens enjoys double citizenship like in the USA. But in India there is only single citizenship which means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Rajasthan, Tamilnadu or Chattisgarh to which he/she may belong to. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of the nation.

Universal Adult Franchise:

Indian democracy functions on the basis of 'one person one vote'. The Indian Constitution establishes political equality in India through the method of universal adult franchise. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status.

Emergency Provisions:

The Constitution makers expected that there could be situations when the government could not be run in usual manner due to difficult circumstances. To cope with such situations, the Constitution elaborated on emergency provisions. There are three types of emergency; A) emergency caused by war, external aggression or armed rebellion; B) emergency arising out of the failure of constitutional machinery in states; and C) financial emergency.

8. Explain in detail about Preamble

The Preamble explains the objectives of the Constitution in two ways:

- About the structure of the governance
- About the ideals to be achieved in independent India. The Preamble is considered to be the key of the Constitution.

The opening and closing words of the Preamble, "We the people of India, adopt, enact and give to ourselves this Constitution" convey that the Constitution emanated from the people and the sovereignty under the Constitution was in the people.

The type of government assured to the people of India by the Constitution was described in the Preamble as Sovereign, Socialist, Secular, Democratic and Republic.

Sovereign: The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.

Socialist: The term means the achievement of socialist ends through democratic means. It holds faith in a mixed economy where both private and public sectors co-exist side by side. It was added in the Preamble by 42nd Amendment, 1976.

Secular: The term means that all the religions in India get equal respect, protection and support from the state. It was incorporated in the Preamble by 42nd Constitutional Amendment, 1976.

Democratic: The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election.

Republic: The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.

The other objective of the constitution is to maintain integrity in the society and to promote unity among the citizens to build a great nation. The ideals which help in achieving this objective are:

Justice: It is necessary to maintain order in society that is promised through various provisions of Fundamental Rights and Directive Principles of State Policy provided by the Constitution of India. It comprises three elements, which is social, economic, and political.

Social Justice – Social justice means that the Constitution wants to create a society without discrimination on any grounds like caste, creed, gender, religion, etc.

Economic Justice – Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living.

Political Justice – Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities.

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Equality: The term 'Equality' means no section of society has any special privileges and all the people have given equal opportunities for everything without any discrimination. Everyone is equal before the law.

Liberty: The term 'Liberty' means freedom for the people to choose their way of life, have political views and behaviour in society. Liberty does not mean freedom to do anything; a person can do anything but in the limit set by the law.

Fraternity: The term 'Fraternity' means a feeling of brotherhood and an emotional attachment with the country and all the people. Fraternity helps to promote dignity and unity in the nation.

9. Discuss the various methods of acquiring Indian citizenship.

The provisions governing citizenship of India are enshrined in the Citizenship Act, 1955. The Constitution of India in Article 5 to 11, only talks about as to who was citizen till 26 January 1950.

The Indian Constitution provides the power to the parliament under Article 11 to make laws and regulations about citizenship. This is the reason parliament passed the Citizenship Act in 1955. Citizenship Act, 1955, has been amended from time to time, like in 1986, 1987, 1992, 2003, 2005, 2015, 2016, and most recently in 2019.

There are methods prescribed in the Citizenship Act, 1955, for becoming a citizen of India. They are as follows.

The 5 ways of acquiring Indian citizenship are:

1. By Birth
2. By Acquisition or Incorporation of Territory
3. By Descent
4. By Registration
5. By Naturalization

1. By Birth

1. If a person is born in the territory of India, he shall be a citizen of India.
2. A person born on or after 26 January 1950 but before 1 July 1987, irrespective of the citizenship of parents. It is called jus soli (right of soil).
3. A person born on or after 1 July 1987 but before 3 December 2004. Either of the parents of the person born should be a citizen of India at the time of birth. It is called jus sanguins (right of blood or descent). Citizenship is granted to a person on the basis of the Indian nationality of any of the parents, immaterial of the fact that at which place the child took birth.
4. A person born on or after 3 December 2004. Both the parents of the child born should be a citizen of India at the time of birth.
5. A person shall not acquire citizenship of India if any of his parents is envoy (foreign diplomat) or enemy alien or an illegal immigrant.

Note: Illegal immigrant is defined in the Citizenship Amendment Act, 2016, as any person who enters the territory of India without a valid passport, fake passport, or stays beyond Visa permit.

2. By Acquisition or Incorporation of Territory

1. If any territory or state becomes part of India, then the central government shall declare it as part of the Union of India by issuing official Gazette.
2. Many territories such as Goa, Sikkim, Puducherry, Daman and Diu became part of India, and their population became citizens of India.

3. By Descent

1. If a person is born outside India on or after 26 January 1950, but before 10 December 1992 will be considered as a citizen of India. But subject to the fact that his father must be a citizen of India at the time of birth.
2. If a person born on or after 10 December 1992 but before 3 December 2004, either of the parent (mother or father) must be having citizenship of India.

After the Citizenship Amendment Act, 2003, the government passed an order stating that a child born shall not be Indian merely because of his descent. The government mandated compulsory registration within one year of birth. Its time can be extended by the government as per requirement.

4. By Registration

1. If a person is of Indian origin, who was ordinarily a resident of India for seven years before making an application for registration.
2. If a person is married to a person of Indian citizenship and is ordinarily residing in India for seven years before making the application for registration.
3. If a person is minor and parents are a citizen of India.
4. A person who or his parents were earlier citizens of India after independence and is residing in India for a year before making the application for registration.
5. If a person is registered as an overseas citizen of India (a foreigner of Indian origin who is given a status to work and live in the territory of India) and is residing for one year before making the application for registration.

5. By Naturalization

1. Citizenship is acquired by making an application to the central government.
2. For granting citizenship to a person, the criteria of the third schedule of this act must be satisfied.
3. The person to whom citizenship certificate is to be granted must be of good character, must have knowledge of any language given in the eighth schedule of the Indian Constitution, must not be an illegal migrant, and must have renounced the previous citizenship.
4. The person must have resided (lived) in India for 11 years in the previous 14 years and one year immediately before the time of making the application.

Note: After the Citizenship Amendment Act 2019, the number of years from eleven has been decreased to

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five years and one year immediately before making the application. This makes a total of 6 years.
5. If the person has made a significant contribution or rendered service to the fields like science, arts, literature, human progress, the government may waive off the conditions given in the third schedule of this act.

10. Explain in details about union and its territory in Indian constitution

Articles 1 to 4 under Part — I of the Constitution deal with the Union and its territory.

Article 1 - Name and territory of the Union

Article 1 of the Constitution describes India, that is, Bharat as a 'Union of States'. The reasons behind this were made clear by Dr. B.R. Ambedkar in the Constituent Assembly. Ambedkar said that the Indian federation was a "Union" because it was Indissoluble, and no State had a right to secede from the Indian Union.

The territory of India shall comprise— (a) the territories of the States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired.The Union of India includes only the States which enjoy the status of being members of the federal system and share a distribution of powers with the Union. The Union Territories are not included in the "Union of States" whereas the expression "Territory of India" includes not only the States, but also the Union Territories and such other territories as may be acquired by India.

Article 2 - Admission or establishment of new States

Article 2 states that the power lies with the parliament for the admission or establishment of new States. By using this power Parliament has admitted, for example, the French settlements of Pondicherry, Karaikal, Mahe and Yanam, the Portuguese settlements of Goa, and Daman and Sikkim, etc., into India. Article 2 relates to admission or establishment of new states that were/are not part of the India.

Article 3. Formation of new States and alteration of areas, boundaries or names of existing States

Under Article 3, the Constitution empowers Parliament to form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State. The Constitution further states that Parliament has the power to increase or diminish the area of any State or to alter the boundaries or names of any State. However, Parliament has to follow certain procedures in this regard. A Bill giving effect to any or all the changes stated above can be introduced in either House of the Parliament, only on the recommendation of the President. Article 3, thus demonstrates the vulnerability and dependence of the States' territorial integrity on the Union whereas in federations like the USA or Australia, the boundaries or names of States cannot be altered by the federation without the consent of the States.

Article 4 - Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

Article 4 allows for consequential changes in the First Schedule (names of the States in the Union of India) and Fourth Schedule (number of seats each State is allotted in the Rajya Sabha). It also says that no law altering existing States or creating a new State will be considered a constitutional amendment. It is in line with the earlier provisions of requirement of only simple majority in the Parliament and suggests the complete control of Union over territories of individual States of the Union.

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