

# Contents

- ✓ Constitution
- ✓ Constitutional Law
- ✓ Constitutionalism
- ✓ Constituent Assembly



# What Is Constitution ?

Almost everything we do is governed by some “**Set of Rules**”. There are rules for games (like - cricket), traffic rules to be obeyed on the road, for workers in the workplace. There are also rules imposed by morality and custom that play an important role in telling us what we should and should not do.

Example 1 - In the game of cricket, an umpire has "full authority to enforce the Rules or Law of the Game on the ground", when a player do something against the Rules umpire takes actions.

Example 2 - On road , the traffic police make us to follow the rules .



# What Is Constitution ?

- ✓ Some rules that are made by the legislatures (Lok Sabha/Rajya Sabha in India), for their own country, are called “**Law**”.
- ✓ We need **Laws in Society** so that our society can regulate and work properly. Laws are designed to protect us and our property and to ensure that everyone in society behaves the way that the community expects them too.
- ✓ Laws tell us what to expect as a **consequence** of our actions. Laws have been the glue that has kept society together. Without laws there would be complete **anarchy**.



# What Is Constitution ?

**In General - The Constitution is the Supreme law of the land.**

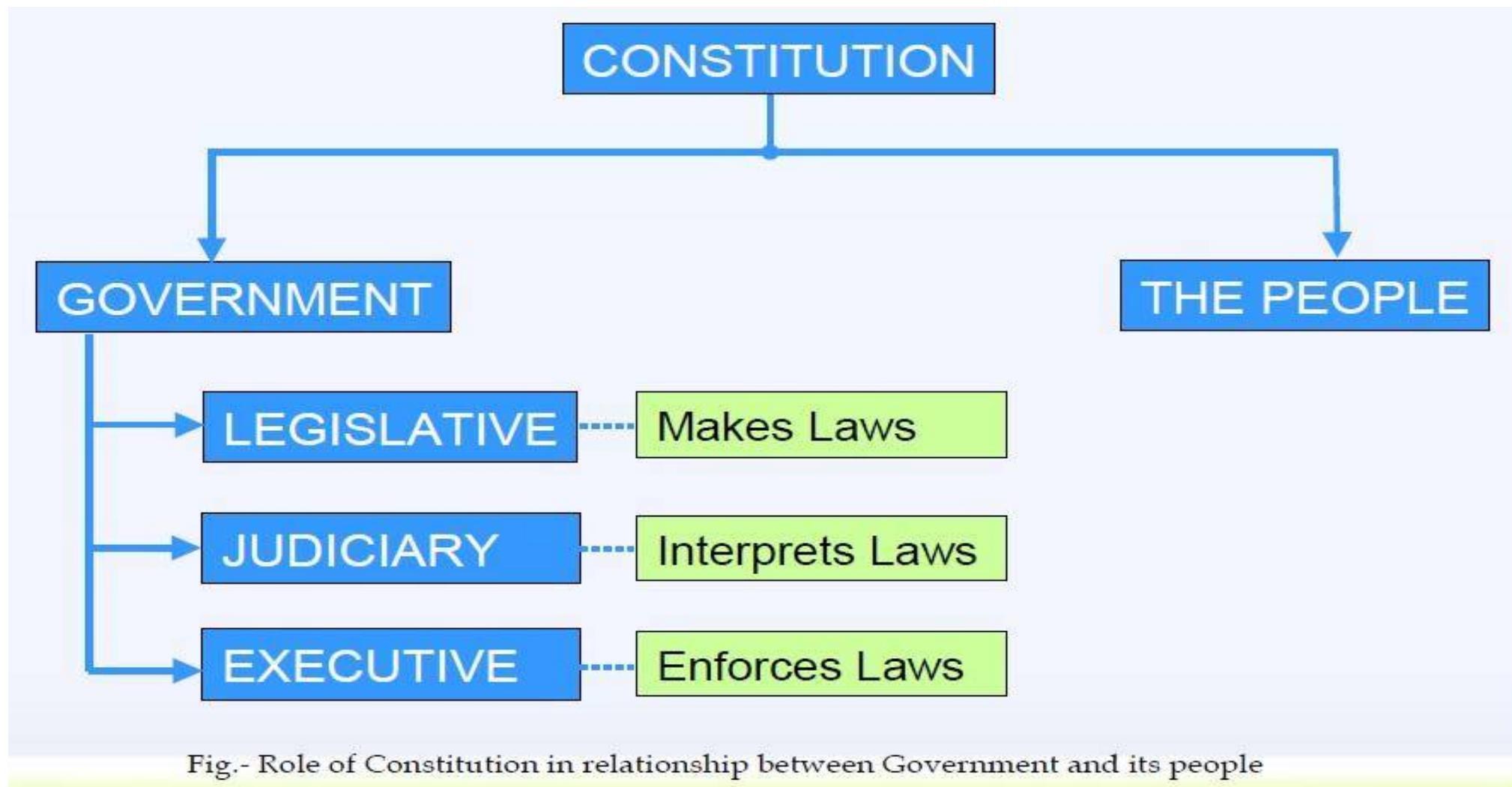
All other laws have to conform to the Constitution. The Constitution contains laws concerning the government and its relations with the people.

A Constitution is concerned with 2 main aspects:-

- a) The relation between the different levels of Government.
- b) The relation between the Government and the Citizens.



# What Is Constitution ?



# What Is Constitution ?

**Technical Definition** - A Constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. These rules together make up, i.e. constitute, what the entity is. When these principles are written down into a single collection or set of legal documents, those documents may be said to comprise a **written Constitution**.

Or

The document containing laws and rules which determine and describe the form of the government, the relationship between the citizens and the government, is called a **Constitution**.



# Constitutional Law

Constitutional Law would normally cover and connote the fundamental law of the land as contained in the provisions of the constitution. It is concerned with the basic features of the framework of the distribution of powers between the organs of the state and between the union and the units. However, modern constitutional law lays the greatest emphasis on fundamental human rights and the relationship between the individual citizens and the state.



# Constitutionalism

- ✓ A constitution is framed in every nation as a defence mechanism over and above state power.
- ✓ **The arrangement which forces the rulers to stay within their jurisdiction by means of written (in most cases) constitution is called Constitutionalism.**
- ✓ It is the trust, belief, faith that power will not be misused.
- ✓ Constitutionalism stands for the principle that the exercise of political power shall be bound by rules which lay down the procedures and determine the validity of all the government action.
- ✓ Constitutionalism means limited government or limitation on government. It is antithesis of arbitrary powers and despotism. Constitutionalism recognizes the need for government with powers but at the same time insists that limitation be placed on those powers. A government which goes beyond its limits loses its authority and legitimacy. Therefore, to preserve the basic freedoms of the individual, and to maintain his dignity and personality, the Constitution should be permeated with Constitutionalism; it should have some inbuilt restrictions on the powers conferred by it on governmental organs.



# Constituent Assembly

On the basis of the framework provided by the Cabinet Mission\*, Constituent Assembly was constituted on 9<sup>th</sup> December, 1946 to draft a Constitution for the Country. The Constitution making body was elected by the Provincial Legislative Assembly constituting of 389 members who included 93 from Princely States and 296 from British India.

The seats to the British Indian provinces and princely states were allotted in proportion of their respective population and were to be divided among Muslims, Sikhs and rest of the communities. All sections of the Indian society got representation in the Constituent Assembly in spite of limited suffrage.

The first meeting of the Constituent Assembly took place on December 9, 1946 at New Delhi with Dr. Sachidanand being elected as the interim President of the Assembly. However, on December 11, 1946, Dr. Rajendra Prasad was elected as the President and H.C. Mukherjee as the Vice-President of the Constituent Assembly.

\*Cabinet Mission was a high-powered mission sent in February 1946 to India by the Atlee Government (British Prime Minister.) The mission had three British cabinet members – Pethick Lawrence, Stafford Cripps, & A.V. Alexander. The Cabinet Mission's aim was to discuss the transfer of power from British to Indian leadership.



# Committees of the Constituent Assembly

The Constituent Assembly appointed eight major committees, which are mentioned below:

1. Constitution Making Union Powers Committee
2. Union Constitution Committee
3. Provincial Constitution Committee
4. Drafting Committee
5. Advisory Committee on Fundamental rights and Minorities
6. Rules of Procedure Committee
7. States Committee
8. Jawaharlal Nehru Steering Committee

*Among these eight major committees, the most significant was the Drafting Committee. On 29th August 1947, the Constituent Assembly set up a **Drafting Committee under the chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution for India.***



# Functions of the Constituent Assembly

1. Framing the Constitution.
2. Enacting laws and involved in the decision making process.
3. It adopted the National flag on July 22, 1947.
4. It accepted and approved India's membership of the British Commonwealth in May 1949.
5. It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.
6. It adopted the National anthem on January 24, 1950.
7. It adopted the National song on January 24, 1950.



## Some Facts

- ✓ The Assembly met in sessions open to the public, for 166 days, spread over a period of 2 years, 11 months and 18 days before adopting the Constitution. It was finally passed and accepted on November 26, 1949. The 308 members of the Assembly signed two copies (Final) of the document (one each in Hindi and English) on 24 January 1950.
  
- ✓ Same day the Assembly unanimously elected Dr. Rajendra Prasad as the President of India, which came into effect on January 26, 1950, known and celebrated as the Republic Day of India.



# Contents

- ✓ Government of India Act, 1935
- ✓ Indian Independence Act, 1947



# Government of India Act, 1935

On August 1935, the Government of India passed longest act i.e. *Government of India Act 1935* under the British Act of Parliament. This act also included the *Government of Burma Act 1935*. According to this act, India would become a federation if 50% of Indian states decided to join it. They would then have a large number of representatives in the two houses of the central legislature. However, the provisions with regards to the federation were not implemented.

## Features of the Act -

1. It provided for the establishment of an All-India Federation consisting of provinces and princely states as units. The Act divided the powers between the Centre and units in terms of three lists—Federal List (for Centre, with 59 items), Provincial List (for provinces, with 54 items) and the Concurrent List (for both, with 36 items). Residuary powers were given to the Viceroy.



## Government of India Act, 1935

contd.....

2. It abolished dyarchy in the provinces and introduced ‘provincial autonomy’ in its place. The provinces were allowed to act as autonomous units of administration in their defined spheres.
3. It provided for the adoption of dyarchy at the Centre. Consequently, the federal subjects were divided into reserved subjects and transferred subjects. However, this provision of the Act did not come into operation at all.
4. It introduced bicameralism in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.



# Government of India Act, 1935

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5. It further extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women and labour (workers).
6. It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.
7. It extended franchise. About 10 percent of the total population got the voting right.
8. It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.



# Government of India Act, 1935

contd.....

9. It provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.
10. It provided for the establishment of a Federal Court, which was set up in 1937.

Hence, the act of 1935 served some useful purposes by the experiment of provincial autonomy, thus we can say that the Government of India Act 1935 marks a point of no return in the history of constitutional development in India.



# Indian Independence Act, 1947

The Indian Independence Act, 1947 received the royal assent and entered into force on **18<sup>th</sup> July 1947**. This Act put into action the Mountbatten Plan for the independence and partition of India.

## **Indian Independence Act – Background**

- The Indian Independence Act, 1947 was an act of the British Parliament that **partitioned India into two independent dominions of India and Pakistan.**
- The legislation was drafted by the Labour government of Clement Attlee. It was based on the Mountbatten Plan or the 3rd June Plan which was formulated after the leaders of the Indian National Congress and the Muslim League agreed to the recommendations of the Viceroy Lord Mountbatten.



# Indian Independence Act, 1947

contd....

Lord Mountbatten came to India with the specific task of seeing over the handing over of the authority to Indians. But the INC and the League could not agree on the question of partition.

An initial plan proposed by Mountbatten known as the Dickie Bird Plan was opposed by Nehru. According to this plan, the provinces were to be declared independent and then allowed to join or not join the Constituent Assembly. Nehru opposed this as it would, in his opinion, lead to the country's balkanisation.

Then, Mountbatten came up with the last plan known as the 3 June Plan which was accepted by all parties. The INC, which was opposed to any partition of the country, finally accepted it as an unavoidable process.

As per this plan, India would be partitioned into India and Pakistan. The constitution framed by the Constituent Assembly would not be applicable to the areas which would go into Pakistan. These provinces would then decide on a separate constituent assembly.



# Indian Independence Act, 1947

contd.....

The Legislative Assemblies of Punjab and Bengal voted for the partition according to which these provinces were to be divided between the two dominions along religious lines.

The assembly of Sind was given the choice to join the Indian Constituent Assembly or not. It decided to join Pakistan. In the North Western Frontier Province (NWFP) and Sylhet, a referendum was to be held which would decide the country they were to join.

The complete legislative authority would be given to the Constituent Assemblies of the new countries.

The Act decided to grant independence to India and Pakistan with effect from 15<sup>th</sup> August 1947.



# Indian Independence Act, 1947

contd.....

The new boundaries of the dominions would be demarcated by the Boundary Commission.

British suzerainty over the princely states was to end. These states could decide to join either India or Pakistan or remain independent. Over 560 states decided to merge with India.

The British emperor would cease to use the title ‘Emperor of India’.

Until the new dominions’ constitutions would become effective, the heads of state would be the respective Governor-Generals who would continue to assent laws passed by the Constituent Assemblies in the name of the king.

This Act received the royal assent on 18<sup>th</sup> July 1947 and entered into force.

Pakistan became independent on 14<sup>th</sup> August and India on 15<sup>th</sup> August 1947. Muhammad Ali Jinnah was appointed Pakistan’s Governor-General and Lord Mountbatten became India’s.



# Mountbatten Plan

- ✓ On June 3, 1947, Lord Mountbatten put forward his plan which outlined the steps for the solution of India's political problem. The outlines of the plan discussed below:
  - ✓ India to be divided into India and Pakistan.
  - ✓ Bengal and Punjab will be partitioned and a referendum in NEFP (North-East Frontier Province) and Sylhet district of Assam would be held.
  - ✓ There would be a **separate constituent assembly** for Pakistan to frame its constitution.
  - ✓ The Princely states would enjoy the liberty to join either India or Pakistan or ever remain independent.
  - ✓ August 15, 1947, was date fixed for handing over power to India and Pakistan.
  - ✓ The British Government passed the Indian Independence Act of 1947 in July 1947, which contained the major provisions put forward by the Mountbatten plan.



# Contents

- ✓ Enforcement of the Constitution
- ✓ Salient Features of Indian Constitution



# Enforcement of the Constitution

- ✓ The Constitution of India came into force on **26 January, 1950**. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.
- ✓ The date of **26th January** was chosen to commemorate the historical day as on this day in 1930 that Purna Swaraj day was celebrated and the tricolour flag of Indian independence was unfurled following the resolution of the Lahore Session (December 1929) of the Indian National Congress.
- ✓ Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title contained in **Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393** came into force on November **26, 1949** itself.



# Enforcement of the Constitution

contd.....

- ✓ The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the Constitution as the ‘date of its commencement’ and celebrated as the Republic Day.
- ✓ With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed.



# **Salient Features of the Constitution of India**

The Constitution of India is a unique constitution. It is the largest written democratic constitution of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity. Since its inauguration on 26th January 1950, the Constitution India has been successfully guiding the path and progress of India.

## **The salient features of the Constitution of India are:**

- ✓ Written and Detailed Constitution.
- ✓ Self-made and Enacted Constitution.
- ✓ Preamble of the Constitution.
- ✓ India is a Democratic State.



# Salient Features of the Constitution of India

contd....

- ✓ India is a Secular State.
- ✓ India is a Socialist State.
- ✓ India is a Republic.
- ✓ India is a Union of States.
- ✓ Mixture of Federalism and Unitarianism.
- ✓ Mixture of Rigidity and Flexibility.
- ✓ Bi-Cameral Union Parliament.
- ✓ Parliamentary System.
- ✓ Adult-Suffrage.
- ✓ Fundamental Duties of the Citizens.

Article 51 A of the Constitution describes the Fundamental Duties of a citizen.



# Salient Features of the Constitution of India

contd.....

- ✓ Fundamental Rights: 6 Fundamental Rights are -
  - Right to Equality.
  - Right to Freedom: 6 Freedoms -
    - Freedom of Speech and Expression.
    - Freedom to Form Associations.
    - Freedom to Assemble Peaceably Without Arms.
    - Freedom to Move Freely in India.
    - Freedom of Residence in Any Part.
    - Freedom of Adopting Any Profession or Trade or Occupation.



- Right against Exploitation.
- Right to Freedom of Religion.
- Cultural and Educational Rights.
- Right to Constitutional Remedies.

# Salient Features of the Constitution of India

contd....

- ✓ Directive Principles of State Policy.
- ✓ Single integrated State with Single Citizenship.
- ✓ Single Integrated Judiciary.
- ✓ Independence of Judiciary.
- ✓ Emergency Provisions.
- ✓ Special Provisions relating to Scheduled Castes and Scheduled Tribes.



# Contents

- ✓ Fundamental Rights.
- ✓ Fundamental Duties.
- ✓ Directive Principles of State Policy.



# Fundamental Rights

- ✓ Fundamental Rights are the **basic human rights** protected in the Constitution of India which are guaranteed to all citizens. They are applicable without discrimination.
- ✓ 6 Fundamental Rights are -
  - Right to Equality.
  - Right to Freedom: 6 Freedoms -
    - Freedom of Speech and Expression.
    - Freedom to Form Associations.
    - Freedom to Assemble Peaceably Without Arms.
    - Freedom to Move Freely in India.
    - Freedom of Residence in Any Part.
    - Freedom of Adopting Any Profession or Trade or Occupation.



# Fundamental Rights

contd.....

- Right against Exploitation.
- Right to Freedom of Religion.
- Cultural and Educational Rights.
- Right to Constitutional Remedies.

Fundamental Rights are justiciable (enforceable by courts).

In case of a violation, a person can approach a court of law.



# Fundamental Duties

Article 51 A describes the following Fundamental Duties of a citizen.

42nd Amendment Act of 1976 added 10 Fundamental Duties to the Indian Constitution. 86th Amendment Act 2002 added 11th Fundamental Duty.

1. Respect for the Constitution, the National Flag and the National Anthem.
2. Cherish the noble ideals of the freedom struggle.
3. Uphold and protect the sovereignty, unity and integrity of India.
4. Defend the country and render national service when called.
5. Promote the common brotherhood of all the people of India and renounce any practice derogatory to the dignity of women.



# Fundamental Duties

contd...

6. Preserve the rich heritage of the nation's composite culture.
7. Project the natural environment and have compassion for living creatures.
8. Develop scientific temper, humanism and spirit of inquiry and reform.
9. Safeguard public property and abjure violence.
10. Strive for excellence in all individual and collective activity.
11. Duty of the parents to send their children to schools for getting education.

The Fundamental Duties are, however, not enforceable by the courts.



# Directive Principles of State Policy

- ✓ Articles 36-51 under Part-IV of Indian Constitution deals with Directive Principles of State Policy (DPSP).
- ✓ Borrowed from the constitution of Ireland.
- ✓ DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. They are Non-justiciable i.e. DPSPs are ideals which are not legally enforceable by the courts for their violation.
- ✓ These principles emphasise that the State shall try to promote welfare of people by providing them basic facilities like shelter, food and clothing.
- ✓ The Constitution declares that these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Hence, they impose a moral obligation on the state authorities for their implementation.



# Directive Principles of State Policy

contd.....

Article Related to DPSP	
36: Definition of State	43B: Promotion of co-operative societies
37: Application of the principles contained in this part	44: Uniform civil code for the citizens
38: State to secure a social order for the promotion of welfare of the people	45: Provision for early childhood care and education to children below the age of six years
39: Certain principles of policy to be followed by the State	46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections
39A: Equal justice and free legal aid	47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health
40: Organisation of village panchayats	48: Organisation of agriculture and animal husbandry
41: Right to work, to education and to public assistance in certain cases	48A: Protection and improvement of environment and safeguarding of forests and wildlife
42: Provision for just and humane conditions of work and maternity relief	49: Protection of monuments and places and objects of national importance
43: Living wage, etc., for workers	50: Separation of judiciary from executive
43A: Participation of workers in management of industries	51:Promotion of international peace and security



सर्वाम् व जयते

# Contents

- ✓ Parliamentary System.



सत्यमेव जयते

# Parliamentary System

- ✓ India has a parliamentary system of government.
- ✓ The Indian Parliament is a bicameral legislature consisting of two houses – the **Lok Sabha** and the **Rajya Sabha**.
- ✓ The members of the Lok Sabha (House of the People) are directly elected by the people through the voting process.
- ✓ The members of the Rajya Sabha (Council of States) are elected by the members of the state's legislative assemblies.
- ✓ The Parliament consists of the two Houses and the President of India.



# Functions of the Parliament

## Legislative Functions -

- The Parliament legislates on all matters mentioned in the **Union List** and the **Concurrent List**.
- In the case of the Concurrent List, where the State Legislatures and the Parliament have joint jurisdiction, the union law will prevail over the states unless the state law had received the earlier presidential assent. However, the Parliament can any time, enact a law adding to, amending, varying or repealing a law made by a state legislature.

The Parliament can also pass laws on items in the **State List** under the following circumstances:

- If Emergency is in operation, or any state is placed under President's Rule, the Parliament can enact laws on items in the State List as well.
- As per **Article 249**, the Parliament can make laws on items in the State List if the Rajya Sabha passes a resolution by  $\frac{2}{3}$  majority of its members present and voting, that it is necessary for the



**contd.....**

### **Executive Functions (Control over the Executive) -**

In the parliamentary form of government, the executive is responsible to the legislature. Hence, the Parliament exercises control over the executive by several measures.

- . By a **vote of no-confidence**, the Parliament can remove the Cabinet (executive) out of power. It can reject a budget proposal or any other bill brought by the Cabinet. A motion of no-confidence is passed to remove a government from office.
- . The MPs (Members of Parliament) can ask questions to the ministers on their omissions and commissions. Any lapses on the part of the government can be exposed in the Parliament.



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**Adjournment Motion** - Allowed only in the Lok Sabha, the chief objective of the adjournment motion is to draw the attention of the Parliament to any recent issue of urgent public interest. It is considered an extraordinary tool in Parliament as the normal business is affected.

The Parliament appoints a **Committee on Ministerial Assurances** that sees whether the promises made by the ministers to the Parliament are fulfilled or not.

**Censure Motion** - A censure motion is moved by the opposition party members in the House to strongly disapprove any policy of the government. It can be moved only in the Lok Sabha. Immediately after a censure motion is passed, the government has to seek the confidence of the House. Unlike in the case of the no-confidence motion, the Council of Ministers need not resign if the censure motion is passed.

**Cut Motion** - A cut motion is used to oppose any demand in the financial bill brought by the government.



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## **Financial Functions**

Parliament is the ultimate authority when it comes to finances. The Executive cannot spend a single pie without parliamentary approval.

- The **Union Budget** prepared by the Cabinet is submitted for approval by the Parliament. All proposals to impose taxes should also be approved by the Parliament.
- There are two standing committees (**Public Accounts Committee and Estimates Committee**) of the Parliament to keep a check on how the executive spends the money granted to it by the legislature.
- **Amending Powers** - The **Parliament has the power to amend the Constitution of India**. Both Houses of the Parliament have equal powers as far as amending the Constitution is concerned. Amendments will have to be passed in both the Lok Sabha and the Rajya Sabha for them to be effective.



# contd.....

## **Electoral Functions**

The Parliament takes part in the election of the President and the Vice President. The electoral college that elects the President comprises of the elected members of both Houses. The President can be removed by a resolution passed by the Rajya Sabha agreed to by the Lok Sabha.

## **Judicial Functions**

In case of breach of privilege by members of the House, the Parliament has punitive powers to punish them. A breach of privilege is when there is an infringement of any of the privileges enjoyed by the MPs.

- A privilege motion is moved by a member when he feels that a minister or any member has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts.
- Other judicial functions of the Parliament include the power to impeach the President, the Vice President, the judges of the Supreme Court, High Courts, Auditor-General etc.



# contd.....

## Other powers/functions of the Parliament

- Issues of national and international importance are discussed in the Parliament. The opposition plays an important role in this regard and ensures that the country is aware of alternate viewpoints.
- In a democracy, the Parliament plays the vital function of deliberating matters of importance before laws or resolutions are passed.
- The Parliament has the power to alter, decrease or increase the boundaries of states/UTs.
- The Parliament also functions as an organ of information. The ministers are bound to provide information in the Houses when demanded by the members.



# Contents

- ✓ Federal System
- ✓ Unitary System



सत्यम् व जयते

# Federal System

Federalism is a system of government in which powers have been divided between the centre and its constituent parts such as states or provinces. It is an institutional mechanism to accommodate two sets of politics, one at the centre or national level and second at the regional or provincial level.

There are two kinds of federations:

1. **Holding Together Federation** – Powers are shared between various constituent parts to accommodate the diversity in the whole entity. Here, powers are generally tilted towards the central authority.  
Example: India, Spain, Belgium.
  
2. **Coming Together Federation** – Independent states come together to form a larger unit. Here, states enjoy more autonomy as compared to the holding together kind of federation. Example: USA, Australia, Switzerland.



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## **Federalism in India**

- ✓ India is a federal system but with more tilt towards a unitary system of government. It is sometimes considered a **Quasi-federal system** as it has features of both a federal and a unitary system. Article 1 of the Indian Constitution states, **India, that is Bharat, shall be a Union of States**. The word federation is not mentioned in the constitution.
  
- ✓ Elements of federalism were introduced into modern India by the **Government of India Act, 1919** which separated powers between the centre and the provincial legislatures.



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## **Federal Features of the Indian Union**

Governments at **two levels** – **Centre and States.**

Division of powers between the centre and states – there are three lists given in the Seventh Schedule of the Constitution which gives the subjects each level has jurisdiction in:

- Union List
- State List
- Concurrent List

**Supremacy of the Constitution** – The basic structure of the Constitution is indestructible as laid out by the judiciary. The constitution is the supreme law in India.

**Independent judiciary** – The Constitution provides for an **independent and integrated judiciary**. The **lower and district courts** are at the bottom levels, the **high courts** are at the state levels and at the topmost position is the **Supreme Court** of India. All courts are subordinate to the Supreme Court.



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## **Unitary Features of the Indian Union**

**The flexibility of the constitution** – The Constitution is a blend of flexibility and rigidity. Certain provisions of the constitution can be easily amended. In case the amendments seek to change aspects of federalism in India, the provision to bring about such amendments is not easy.

**More power vests with the Centre** – The Constitution guarantees more powers with the Union List. On the Concurrent List, the parliament can make laws that can override the laws made by a state legislature on some matters. The parliament can also make laws regarding certain subjects in the State List.

**Unequal representation of states in the Rajya Sabha** – The representation of the states in the upper house is based on the state's populations. For example, Uttar Pradesh has 31 seats and Goa, 1 in the Rajya Sabha.

**The executive is a part of the legislature** – The executive in both the centre and the states is a part of the legislature.

**Lok Sabha is more powerful than the Rajya Sabha** – The Lok Sabha is more powerful than the upper house and unequal powers to two houses is against the principle of federalism.



## contd.....

**Emergency powers** – The centre is provided with emergency powers. When an emergency is imposed, the centre has increased control over states.

**Integrated judiciary** – The judiciary in India is integrated. There is no separate judiciary at the centre and the state levels.

**Single citizenship** – Only single Citizenship is available to citizens. They cannot be citizens of the state as well. This helps in increasing the feeling of nationality as it forges unity amidst regional and cultural differences.

**Governor's appointment** – The Governor of a state acts as the centre's representative in the state. The state government does not appoint the governor, the centre does.

**New states formation** – The parliament has the power to alter the territory of a state by increasing or reducing the area of the state. It can also change the name of a state.

**All India Services** – Through the All India Services such as the IAS, IPS, IRS, etc. the centre interferes in the executive powers of the states. These services also offer uniformity in administration throughout the nation.



## contd.....

**Integrated election machinery** – The Election Commission of India is responsible for conducting free and fair elections at both the centre and the state levels in India. The members of the EC are appointed by the president.

**Veto over states bills** – The governor of a state can reserves certain kinds of bills for the president's consideration. The president enjoys absolute veto on these bills. He can even reject the bill at the second instance that is, when the bill is sent after reconsideration by the state legislature. This provision is a departure from the principles of federalism.

**Integrated audit machinery** – The president of the country appoints the Comptroller and Auditor General (CAG) who audits accounts of both the centre and the states.

**Power to remove key officials** – The state government or state legislature does not have the authority to remove certain key government officials even at the state level like the election commissioner of a state, judges of the high courts, or the chairman of the state public service commissions.



# Contents

## ✓ EMERGENCY PROVISIONS



सत्यम् व जयते

# **EMERGENCY PROVISIONS**

- ✓ A state of emergency refers to a period of governance that can be proclaimed by the **President of India** during certain crisis situations.
- ✓ The emergency provisions are contained in **Part XVIII** of the Constitution of India, from **Article 352 to 360**. These provisions enable the Central government to meet any abnormal situation effectively.
- ✓ The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- ✓ The Constitution stipulates three types of emergencies-
  1. National Emergency
  2. Constitutional Emergency (President's Rule)
  3. Financial Emergency



## (A) **NATIONAL EMERGENCY**

- National emergency can be declared on the basis of **war, external aggression or armed rebellion.**
- **Grounds of declaration:**
  - ✓ Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
  - ✓ The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression
  - ✓ When a national emergency is declared on the grounds of '**war**' or '**external aggression**', it is known as '**External Emergency**'. When it is declared on the grounds of '**armed rebellion**', it is known as '**Internal Emergency**'.
- This term '**armed rebellion**' is inserted from the 44th amendment. Before this term it was known as internal disturbance.



## **Parliamentary approval and duration**

- The proclamation of emergency must be approved by both the houses of parliament within one month from the date of its issue.
- If the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.

## **Revocation of proclamation**

- A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require parliamentary approval.
- The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.



## **Effects of National Emergency** - 3 categories:

**(1) Effects on the Centre-State Relations** - While a proclamation of Emergency is in force, the normal fabric of the Centre-State relations undergoes a basic change.

- Executive** - Centre becomes entitled to give executive directions to a state on ‘any’ matter.
- Legislative** - The Parliament becomes empowered to make laws on any subject mentioned in the state list, the President can issue ordinances on State subjects also, if the parliament is not in session.
- Financial** - The President can modify the constitutional distribution of revenues between the centre and the states.

## **(2) Effect on the life of the Lok Sabha and State Assembly** -

While a proclamation of National Emergency is in operation, the life of the **Lok Sabha** may be extended beyond the normal term for one year at a time. Similarly, the Parliament may extend the normal tenure of a State Legislative Assembly by one year each time during a national emergency.



**(3) Effect on Fundamental Rights:** Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights. These two provisions are explained below:

**Suspension of Fundamental Rights under Article 19:** According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency. The 44<sup>th</sup> Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.

**Suspension of other Fundamental Rights:** Under Article 359, the President is authorised to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, **remedial measures are suspended and not the Fundamental Rights.**

**Declarations made so far:** National emergency has been proclaimed three times - in 1962 (Chinese aggression), 1971 (Attack by Pakistan) and 1975 (By Indira Gandhi).



## **(B) President's Rule**

- Article 355 imposes a duty on the centre to ensure that the government of every State is carried on in accordance with the provisions of the constitution. It is this duty in the performance of which the centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in a state. This is known as President's Rule.

**Grounds of imposition** - The President's rule can be proclaimed under Article 356.

- o Article 356 empowers the President to issue a proclamation if he is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the constitution.

**Parliamentary approval and duration** - A proclamation imposing President's rule must be approved by both the houses of parliament within two months from the date of its issue. However, if the proclamation of President's rule is issued at a time when the Lok Sabha has been dissolved without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime.



## **Consequences of the President's Rule -**

The President acquires the following extraordinary powers when the President's rule is imposed in a state:

- o He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
- o He can declare that the powers of the state legislature are to be exercised by the parliament.
- o He can take all other necessary steps including the suspension of the constitutional provisions relating to anybody or authority in the state.

**Scope of Judicial Review** - The 38<sup>th</sup> Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground. But this provision was subsequently deleted by the 44<sup>th</sup> Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.



## **(C) Financial Emergency**

- **Grounds of declaration** - Article 360 empowers the President to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- **Parliamentary approval and duration:** A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
  - However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
  - Once approved by both the houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.



## **Effects of Financial Emergency**

- Extension of the executive authority of the Union over the financial matters of the States.
- Reduction of salaries and allowances of all or any class of persons serving in the State.
- Reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the State.
- Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the High Courts.



## **Criticism of the Emergency Provision**

- Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the constitution on the following grounds:**
  - The federal character of the constitution will be destroyed and the union will become all-powerful.
  - The powers of the State- both the Union and the Units - will entirely be concentrated in the hands of the union executive.
  - The President will become a dictator.
  - The financial autonomy of the state will be nullified.
  - Fundamental rights will become meaningless.

# THANK YOU...

