



4. Constitutional Government

In the first section on Political Concepts you studied the concept of the nation and state. You also studied the concepts of rights, liberty, justice, etc. These are rights that all citizens of a country get. Who provides these rights? It is the constitution of that country that gives them the rights and protects the rights of the citizens.

What is a Constitution?

A Constitution is a living document. It is a document that indicates the way in which a country is governed. A Constitution has three distinct but inter-related components to it.

- (i) **Set of Rules:** It is a set of rules that sets out the structure, functions, powers, rights and duties of the three branches of the Government—the Legislature, the Executive and the Judiciary. It tries to ensure that each branch acts within the jurisdiction laid down for it by the Constitution. This is done by providing the other two branches adequate powers to check the third branch if it exceeds its jurisdiction. For instance, the American Constitution provides for the impeachment of the President and other high officials of the country's government for exceeding the authority of their offices. At the same time, this component also lays down the limitations on what the Government can do and cannot do.
- (ii) **Set of Rights:** It lists the rights of the citizens, the means for the

protection of these rights, and the duties of the citizens. It ensures that all individuals and groups are given certain rights which will enable them to live freely and with dignity and self-respect. These rights are not unlimited. They are subject to certain limitations. For instance, the Constitution of India guarantees certain Fundamental Rights to the citizens of India, but also sets out the limitations on them. Furthermore, mere possession of such rights is not enough. There should also be some means of protecting them.

The Constitution of India also provides ways by which individuals and groups can protect their rights. Generally, the responsibility of protecting the rights of groups and individuals is entrusted with the Judiciary. Thus, these two components form the framework which governs the mutual relationship between the Government, the Society and the Individual.

- (iii) **Set of Objectives and Values:** The Constitution states the objectives and values that a given Constitution seeks to follow and fulfil. The third component tells us why a given Constitution has come into existence in the first place. For instance the Constitution of the United States of America, the



oldest existing one in the world, proclaims that it has been brought into existence to “establish Justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the Blessings of Liberty to ourselves and our Posterity”. A similar set of objectives constitute the foundations of the Indian Constitution.

Most Constitutions in the world are written. This means that there is a single written document which contains all the three components listed above. Such Constitutions have generally come into existence after long and detailed debates, and have been prepared by specially convened gatherings. For instance the American Constitution was made by the Constitutional Convention, while the Indian Constitution was framed by the Constituent Assembly.

Some countries have Constitutions which are unwritten, the best example being the United Kingdom. This does not mean that nothing is laid down in writing. It means firstly, some aspects are written while others are governed by constitutional precedents or conventions. Further, the written component does not exist as a single document. For example, look at the power of the Monarch of the United Kingdom to appoint the country’s Prime Minister. There are no written rules governing this, but it is assumed that the person, who commands a majority in the House of Commons, will be appointed.

Constitutionalism

Constitutionalism is the idea that there should be limitations on the powers of the Government. Such limitations might be laid down in the Constitution, or might

have come about due to certain historical developments. The origins of Constitutionalism can be traced back to Social Contract Theory formulated by the 17th century British thinker, John Locke. He argued that the Government could not do certain wrong things and if it did, then the people had the right to change it.

However, there had been many attempts even before Locke to ensure that there were restrictions on the powers of the rulers. They include the Magna Charta in 1215 in England and the Bill of Rights passed by the Parliament in England in 1689. These attempts were primarily the efforts to restrict the powers of the Monarchs, and not the Government as such. This was because during those times, power was largely concentrated in the hands of the Monarchs. It was only when the three branches of Government, mentioned above, emerged as distinct entities that the idea of restricting the powers of the Government as a whole emerged. This can be described as the modern version of Constitutionalism.

Modern Constitutionalism found its concrete expression for the first time in the American Constitution. The first ten amendments to the American Constitution are collectively referred to as the Bill of Rights. These explicitly imposed restrictions on the Government as a whole. For instance, the First Amendment prohibits the making of any law which restricts freedom of speech or of the press. Similarly, the Indian Constitution also prohibits the Government from doing anything that violates the Fundamental Rights of the individuals. These are instances of explicit restrictions on the powers of the Government.

What happens in the case of countries

Find out!

What are the different Fundamental Rights guaranteed by the Indian Constitution?



Constituent Assembly of India.



Signing of the United States Constitution

with unwritten Constitutions? Till recently, the doctrine of Parliamentary Sovereignty prevailed in the United Kingdom. This meant that the United Kingdom's Parliament had the power to make any law of any kind. It meant that there were no restrictions on the powers of the Government. However, the scenario where the Parliament made unjust or arbitrary law was avoided by a vigilant public opinion. Today the doctrine of Parliamentary Sovereignty no longer exists in its absolute form. This is because the United Kingdom is now a member of various international organisations and a signatory to numerous international

agreements which guarantee rights to individuals. The existence of these rights ensures that there are restrictions on the powers of the Government.

A Constitution which restricts the powers of the Government also can be amended thus opening up the possibility of the removal of these restrictions. Most Constitutions do provide for making changes to themselves. What is the guarantee that a Government will not use powers to amend a Constitution so as to remove all restrictions on its actions? Such a situation did arise in India in the 1970s. Then, the Government believed that the restrictions on its powers imposed by the Constitution were blocking the way to the balanced development of the country. Hence, it sought to amend the Constitution.

However, the Supreme Court of India in the celebrated *Keshavananda Bharati* case (1973) laid down the restrictions on the power of the Government to amend the Constitution. It ruled that the Constitution of India possessed a basic structure which could not be altered in any manner, and that other than this there were no restrictions on amending the Constitution. This is known as the Basic Structure Doctrine.

Find out!

How many times has the Indian Constitution been amended? What was the latest amendment?

But, in a democracy, Constitutionalism means something more than mere restrictions on the power of the Government. It also means adherence to the spirit of the Constitution. It refers to the values which form its foundations and

the manner in which those who hold power are expected to behave. This can also be described by the term 'Constitutional Morality'.

*Dr. Babasaheb Ambedkar's speech
in the Constituent Assembly*

Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it.

Major Types of Democratic Governments

Democracy is a system of government wherein the people elect their rulers. But there is no single type of a democratic system of government. The two major types are Parliamentary and Presidential. India and the United Kingdom follow the Parliamentary system, while the United States of America follows a Presidential system. The nature of the relationship between the Executive and the Legislature is the principal distinguishing feature between the two.

Parliamentary Systems

The Parliamentary system makes a distinction between the Head of the State and the Head of the Government. The Head of the State is the President or in the case of the United Kingdom, the Monarch. The Head of the Government is the Prime Minister. The President or the Monarch, the Prime Minister and the Council of Ministers are the Executive. But the real executive power is vested in the Prime Minister and the Council of Ministers. The President or the Monarch is a nominal executive head.

Thus, in Parliamentary systems, the Executive consist of two components, the

nominal and the actual or the real. Though the administration of a given country is conducted in the name and by the orders of the nominal Executive, it is the real Executive who takes the actual decisions. The powers of the nominal Executive as the term suggests are nominal. All Parliamentary systems are classified into either (1) **Constitutional Monarchies** (2) **Republics** depending upon the nature of the nominal Executive. Systems where the office of the nominal Executive is filled on the basis of heredity are Constitutional Monarchies and the office holder is known as the Monarch. Republics are those where the nominal Executive is elected and the office holder is termed as the President. The nominal Executive is also termed as the Head of State that is the head of the country's political system.

The real Executive comprises of the Council of Ministers whose head is known as the Prime Minister. It is the President or the Monarch who appoints the Prime Minister. The ministers are also appointed by the President or the Monarch, but as per the Prime Minister's wishes. Whosoever commands a majority in the Legislature is appointed by the President or the Monarch as the Prime Minister. It is the Prime Minister who actually runs the Government with the assistance of the ministers, and hence is known as the Head of Government. In Presidential systems, the President actually runs the Government and hence, is both the Head of State and the Head of Government.

In a Parliamentary System the Prime Minister and Council of Ministers stay in power so long as they have a majority in the Parliament. In most Parliamentary Systems there are two houses of Parliament.

The Indian System of Government (Parliamentary System)

President (Head of the State)



Executive
(South Block)



Prime Minister
(Head of the Government)
And Council of Ministers

Legislature
(Parliament Building)



Parliament
Lok Sabha and
Rajya Sabha

Judiciary
(Supreme Court)



Supreme Court

System of Government: United Kingdom (Parliamentary System)

Monarch (Head of the State)



Executive



Prime Minister
(Head of the Government)
and Council of Ministers

Legislature
(Parliament Building)



Parliament
House of Commons and
House of Lords

Judiciary



Supreme Court

For example in the United Kingdom the Parliament consists of the House of Lords and House of Commons. In India, there is the Lok Sabha and Rajya Sabha. The members of House of Commons and Lok Sabha are directly elected by the people. Therefore the Executive can stay in power

only if they have a majority in their houses.

Find out!

Make a list of all the Prime Ministers of India since independence with their tenure.

The American System of Government (Presidential System)



(The three Branches of Government under Separation of Powers)

Legislature



Congress

House of Representatives
Senate

Executive



President

Vice President
Secretaries

Judiciary



Supreme Court

Other Federal
Courts

Presidential system

In a Presidential system, the head of Executive branch is directly elected by the people for a fixed period. This head of the Executive branch in most such systems is termed as the 'President' and hence the term 'Presidential system'. The President is both, the Head of the State and the Head of the Government. The President enjoys powers granted to his office by the Constitution. The most significant of these powers is that of conducting the administration of the country in accordance with the law passed by the Legislature. The President also can appoint his subordinate officials like ministers and ambassadors. Generally, in such systems, members of the executive are prohibited from being members of the Legislature. For example, the Ministers (called Secretaries in the United States) are not members of the Congress.

The Legislature, in the Presidential systems, is also elected by the people. The Constitution entrusts it with the power

of making laws. However, this power is not absolute since the laws come into effect only when the President approves them. The President has the right to reject a law passed by the Legislature. This is known as the 'Veto Power'. The President can also request the Legislature to pass laws proposed by the Executive which are deemed necessary to solve the problems of the day. The Legislature can also impeach or remove from office the President if it is proved that the Constitution has been violated. However, this is a rare occurrence in established democratic systems.

The President continues in office irrespective of the fact whether he or she enjoys the support of the majority of the members of the Legislature. The loss of the support of a majority does not automatically mean the resignation of the President. However, the lack of support might lead to a breakdown in the functioning of the Government since such a scenario might lead to a situation where

the Executive and the Legislature might constantly prevent each other from doing anything.

Find out!

Name any four American Presidents who belonged to the Republican party and four who belonged to the Democratic party.



Do you know ?

Countries with Presidential systems- the United States of America, Mexico, Brazil, Argentina, South Africa etc.

Countries with Parliamentary systems- India, the United Kingdom, Germany, Italy, Japan, Canada, Australia etc..

Federalism

Some countries are large in size and have several regions. In such a case it is difficult to have only one government that can take care of the entire country. In such cases countries have two levels of government- the first one being the national or the country-wide government, the second working at the regional level. These regional units are referred to as 'states' or 'provinces'. Political power is also divided between the two governments. In such cases, the central government is called National Government, Central Government, Union Government or Federal Government while the regional governments are called State Governments. Countries where such an arrangement exists are known as Federal systems or Federations.

Some countries that are geographically

small in size usually have a single government at the centre. Such systems of government are called Unitary Systems.

This distribution of power amongst the central (national) government and the state governments in a Federation is a formal arrangement. It is explicitly referred to in the Constitution of that country. For instance, the American Constitution explicitly states the powers possessed by the Federal Government. Similarly, the Constitution of India, in its Seventh Schedule, lists the powers of the Central or Union Government as well as that of the State Governments. In most Federations, changes to these constitutional provisions require the approval of both the national and the state governments.

The history of Federations can be traced back to the medieval period in Europe where political units came together in order to face powerful common enemies or to solve common problems. A few of these arrangements evolved over a few centuries to form a single political unit. The best instance of this process is Switzerland. In some cases, the transition to a full-fledged Federal system occurred in a relatively shorter period of time. The best instance of this is the United States of America. Thirteen British colonies, all separate political units, rebelled against the authority of the United Kingdom and won their independence in the 18th century. When they realised that they needed to establish a single political unit in order to safeguard their independence, they came together and established the country which is today known as the United States of America. Such Federal systems are known as 'Coming Together' Federations. Canada and Australia are other instances where previously separate political units

came together to form a single political system.

In case of India, at the time of independence, there were Princely States and areas under British administration. The states that we see today were created after independence on the basis of language. Thus, in case of the United States of America, the States came together to create the United States of America; while in case of India, the Union Government created the States.

In contrast, there are also countries where hitherto Unitary systems change to Federal one through the establishment of 'states' and 'provinces'. These are known as 'Holding Together' Federations. This is so because political power is distributed away from the national government in order to keep the country united. The United Kingdom has a unitary system of government. Today its regions, Scotland, Wales and Northern Ireland have been given some degree of autonomy. These regions now have their own assemblies.

In India, the division of powers favours the national government. Hence, India is described as a 'quasi-federation' or as a federation with a unitary bias. The journey of Indian federalism has been mixed. After independence, the states have been granted additional powers, however, later economic and technological changes have led to the enhancement of the powers of the Central government.

In this chapter, we have studied the basic aspects of government. We have



Do you know ?

The Seventh Schedule of the Constitution of India

The Seventh Schedule consists of three lists, the Union List, the State List and the Concurrent List. Centre can make laws on the subjects from Union List; State on the Subjects from State list and both can make laws on the subjects from the Concurrent List. In cases where both the Central and the State governments have made laws about subjects falling in the Concurrent List, then the former prevails. Furthermore, the State Governments can also ask the Central Government to make laws on subjects included in the State List, if such a need arises.

Do this.

Look at the following subjects (Seventh Schedule of the Indian Constitution) : (i) Law and Order, (ii) Atomic Energy, (iii) Banking, (iv) Agriculture, (v) Police, (vi) Electricity, (vii) Education.

Find out which of these subjects is in the Union, State or Concurrent list.

seen the importance of the constitution and how the government works within the framework of the constitution. We have also seen various forms and types of government. Now in the next chapter we shall focus on how governments are formed in democratic systems.

Please see the following websites for further information:

- (1) **Constituent Assembly of India Debates** (Proceedings) - Volume XI, 25th Nov. 1949
The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair. Reply to the Debate: Dr. B.R. Ambedkar
http://cadindia.clpr.org.in/constitution_assembly_debates/volume/11/1949-11-25
- (2) **Former Presidents of India**
<https://presidentofindia.nic.in/former-presidents.htm>



Exercise

1. (A) Choose the correct alternative and complete the following statements.

- Unwritten Constitution exists in
(United Kingdom, India, South Africa, United States)
- In a parliamentary system there is a of legislative and executive powers.
(separation, coordination, merger, centralisation)
- The first ten amendments to the American Constitution are collectively referred to as
(Bill of Rights, Magna Carta, Basic Structure Doctrine, Fundamental Rights)

(B) Identify the incorrect pair in every set, correct it and rewrite.

- Magna Carta - England
- Veto - United Kingdom
- Keshvanand Bharati Case - Basic structure doctrine

(C) Find the odd word in the given set.

- England, Scotland, Wales, Republic of Ireland
- India, Australia, Canada, Argentina

2. State whether the following statements are true or false with reasons.

- Indian Federation can be described as a 'quasi-federation'.
- Parliamentary system exists in the

United States.

3. Explain co-relation between the following.

- Legislature and Executive in parliamentary system.
- President and Legislature in presidential system.

4. Answer the following.

- Explain Constitutionalism and constitutional morality.
- Explain the nature of Indian Federation.

5. Answer the following in detail with reference to the given points.

Explain Constitution and its three distinct inter related components.

- what is a Constitution?
- set of rules
- set of rights
- set of objectives and values

Activity:

What are the rights mentioned in the Bill of Rights of the American Constitution.

