

MODULE 1

LEGALFOXES CERTIFICATE COURSE AN INTRODUCTION TO CONSTITUTION OF INDIA

INTRODUCTION

The Constitution of India is the paramount law of India. It is the source of all powers of, and limitations on, the three organs of State, viz. the executive, legislature and judiciary. It describes the duties of government institutions. It also sets out fundamental rights, directive principles, and the duties of citizens. No action of the state would be valid unless it is permissible under the Constitution. Therefore, it is imperative to have a clear understanding of the nature and working of the Constitution.

The Indian constitution is the world's longest written constitution for a sovereign nation. At its enactment, it had 395 articles in 22 parts and 8 schedules. Now the Constitution has a preamble and 448 articles, which are grouped into 25 parts and 12 schedules. With 12 schedules and five appendices, it has been amended 103 times. However, the last article is 395.

The Constituent Assembly came into existence in November, 1946. Its members were elected by the Provincial Assembly in indirect election for entire undivided India. The important members of the Assembly were Jawaharlal Nehru, Dr. Rajendra Prasad, Sardar Patel, Maulana Azad, Dr. Ambedkar etc.¹ The First Meeting was held on 9-12-1946. It was boycotted by the Muslim League. The Independence of India Act 1947 was enacted by the British Government, which caused the separation of India and Pakistan. The Constituent Assembly was also divided.

On 29-8-1947, a "Drafting Committee" consisting of seven members was set up under the Chairmanship of Dr. Ambedkar to draft the Constitution of India. The Constituent Assembly held 11 Sessions and took 2 years 11 months and 18 days for framing the Constitution. The Constitution of

¹Dr. Rajendra Prasad, Dr. B. R. Ambedkar, Sanjay Phakey, Jawaharlal Nehru, C. Rajagopalachari, Sardar Vallabhbhai Patel, Kanaïyalal Maneklal Munshi, Ganesh Vasudev Mavalankar, Sandip Kumar Patel, Abul Kalam Azad, Shyama Prasad Mukherjee, Nalini Ranjan Ghosh, and Balwantrao Mehta were key figures in the assembly, which had over 30 representatives of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H. P. Modi.

Harendra Kumar Mookerjee, a Christian assembly vice-president, chaired the minorities committee and represented non-Anglo-Indian Christians. Ari Bahadur Gurung represented the Gorkha community. Judges, such as Alladi Krishnaswamy Iyer, Benegal Narsing Rau, K. M. Munshi and Ganesh Mavalankar were members of the assembly. Female members included Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh, Amrit Kaur and Vijaya Lakshmi Pandit. The first, two-day president of the assembly was Sachchidananda Sinha; Rajendra Prasad was later elected president.

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India was adopted on 26th November 1949², and signed by the then President Dr. Rajendra Prasad, and it came into force with effect from 26th January, 1950.³

INFLUENCE OF OTHER CONSTITUTIONS (COUNTRIES AND ADOPTED FEATURE)

UNITED KINGDOM- Parliamentary government, Concept of single citizenship, Rule of law, Legislative speaker and their role and Legislative procedure

United States- Bill of rights, Federal structure of government, Electoral college, Independent judiciary and Separation of powers, Judicial review, President as commander-in-chief of the armed forces and Equal protection under law,

IRELAND- Directive principles of state policy

AUSTRALIA- Freedom of trade between states, National legislative power to implement treaties, even on matters outside normal federal jurisdiction, Concurrent List and Preamble terminology

FRANCE- Ideals of liberty, equality and fraternity

CANADA- Quasi-federal government — a federal system with a strong central government, Distribution of powers between the central and state governments and residual powers, retained by the central government.

SOVIET UNION- Fundamental Duties, Mandated planning commission to oversee economic development.

JAPAN- Due process

²So that day is celebrated as National Law Day.

³Signatories: 284 members of the Constituent Assembly

Date of effect: 26 January 1950

Last amended: 1 July 2017 (101st)

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INDIAN CONSTITUTION – A BUNCH OF BORROWINGS

(ADOPTED FEATURE AND COUNTRIES)

Preamble to the Constitution - USA, Government of India Act, 1935 and the Constitutions of U.K, & Canada and also based on the Model of American Declaration of Independence and United Nations Declaration on Human Rights.



Single Citizenship	-	Britain
Fundamental Rights	-	U. S. A
Directive Principles of State Policy	-	Ireland
Fundamental Duties	-	Russia (U.S.S.R)
Powers of the President, Position and		
Duties of Vice – President	-	U.S. A
Election of President	-	Ireland
Electoral College in Election of President	-	Ireland
Nomination of Persons having experience		
in Science or Fine Arts to Rajya Sabha	-	Ireland
Advisory opinion of Supreme Court	-	Canada
Organization and Independence of Supreme		
Court including Judicial Review	-	U.S. A
Parliamentary form of Government	-	U. K
Federal Structure	-	Canada

Trade and Commerce - Australia

Amendment to the Constitution - South Africa

Formation of Alternative Government - Italy

Concurrent List - Australia

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A Constitution means a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government of a State and the principles governing the operation of those organs.

Is the constitution of India Federal?

According to the traditional classification followed by the political scientists, constitutions are either unitary or federal. In a unitary constitution the powers of the Government are centralized in one Government, viz., the Central Government. In a federal constitution, on the other hand, there is a division of power between the center and state government and both are independent in their own spheres.

The view of the framers of the Indian Constitution is that the Indian Constitution is a federal constitution. But some constitutional jurists do not agree with this view. It is, therefore, necessary to ascertain whether our constitution is a federal one or not. For this we have to examine the important characteristics of a federal constitution.

Essential characteristics of a federal Constitution: -

1. Distribution of power

Federalism means the distribution of powers of the state among a number of co-ordinate bodies.

2. Supremacy of Constitution

3. Written Constitution

A federal constitution must almost necessarily be a written constitution.

4. Rigidity

A natural corollary of a written constitution is its rigidity. In a rigid constitution the procedure of amendment is very complicated and difficult. However, it does not mean that a rigid constitution is legally unalterable.

5. In a federal policy the final power to interpret the constitution and guard the provisions of Constitution is entrusted in an independent and impartial authority, called judiciary.

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The Indian Constitution possesses all the essential characteristics of a federal constitution as mentioned above. But some scholars hesitate to characterize the Indian Constitution as truly Federal.

In *State of West Bengal v. Union of India*⁴, the Supreme Court held by a majority that it is not truly federal.

Let us now examine what are those provisions of the constitution which are produced in support of the above argument.

1. Appointment of Governors:

The Governors of the States are appointed by the president (Art 155 and 165) and are answerable to him.

2. Parliament's power to legislate in the national interest under Art. 249, those matters enumerated in the State list.

3. Parliament's power to form new states and alter boundaries of existing state under Art.

4. Emergency provisions under Arts. 352, 356 and 360 enable the union parliament to convert the Union into a unitary state which vitally affects the federal character of the Indian constitution.

In short, it may be concluded that the Constitution of India is neither purely federal nor purely unitary, but it is a combination of both.

Salient Features of the Indian Constitution

The main features of the Indian Constitution are the following:

1. **A written Constitution:** The Indian Constitution is mainly a written constitution. A written constitution is framed at a given time and comes into force or is adopted on a fixed date as a document. As you have already read that our constitution was framed over a period of 2 years, 11 months and 18 days, it was adopted on 26th November, 1949 and enforced on January 26, 1950. Certain conventions have gradually evolved over a period of time which have proved useful in the working of the constitution.
2. **Federal Policy:** The Constitution of India does not use the term 'federal state'. It says that India is a 'Union of States'. There is a distribution of powers between the Union/Central Government

⁴AIR 1963 S.C. 2141.

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and the State Governments. Since India is a federation, such distribution of functions becomes necessary. There are three lists of powers such as Union List, State List and the Concurrent List.

3. **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 fact, the Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the State is nominal. In India, the President is the Head of the State. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers.
4. **Fundamental Rights and Duties:** Fundamental Rights are one of the important features of the Indian Constitution. The Constitution provides for six Fundamental Rights about which you will read in the following lessons. Fundamental Rights are justiciable and are protected by the judiciary. In case of violation of any of these rights one can move to the court of law for their protection. Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of eleven Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.
5. **Directive Principles of State Policy:** The Directive Principles of State Policy which have been adopted from the Irish Constitution, is another unique feature of the Constitution of India. The Directive Principles were included in our Constitution in order to provide 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.
6. **Partly rigid and Partly flexible:** A constitution may be called rigid or flexible on the basis of its amending procedure. The Constitution of India provides for three categories of amendments. In the first category, amendment can be done by the two houses of Parliament by simple majority of the members present and voting before sending it for the President's assent. In the second category, amendments require a special majority. Such an amendment can be passed by each House of Parliament by a majority of the total members of that House as well as by the 2/3rd majority of the members present and voting in each house of Parliament and send to the President for his assent which cannot be denied. In the third category besides the special majority mentioned in the second category, the same has to be approved also by at least 50% of the State legislatures.

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7. **Language Policy:** India is a country where different languages are spoken in various parts of the country. Hindi and English have been made official languages of the Central Government. A state can adopt the language spoken by its people in that state also as its official language.
8. **Special Provisions for Scheduled Castes and Scheduled Tribes:** The Constitution provides for giving certain special concessions and privileges to the members of these castes. Seats have been reserved for them in Parliament, State legislature and local bodies, all government services and in all professional colleges.
9. **A Constitution Derived from Many Sources:** The framers of our constitution borrowed many things from the constitutions of various other countries and included them in our constitution. That is why; some writers call Indian Constitution a 'bag of borrowings'.
10. **Independent Judiciary:** Indian judiciary is independent and impartial. The Indian judiciary is free from the influence of the executive and the legislature. The judges are appointed on the basis of their qualifications and cannot be removed easily.
11. **Single Citizenship:** In India there is only single citizenship. It 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 Jharkhand, Uttaranchal or Chhattisgarh to which he/she may belong to but remains a citizen of India. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.
12. **Universal Adult Franchise:** Indian democracy functions on the basis of 'one person one vote'. 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. The Indian Constitution establishes political equality in India through the method of universal adult franchise.
13. **Emergency Provisions:** The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times. To cope with such situations, the Constitution elaborates 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.

The Constitution consists of the following:

1. The Preamble

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2. Parts I to XXII covering Articles 1 to 395⁵
3. Schedules 1 to 12 and
4. An Appendix.

PARTS OF THE CONSTITUTION

<u>PART I</u>	<u>THE UNION AND ITS TERRITORY</u>	<u>Art. (1-4)</u>
<u>PART II</u>	<u>CITIZENSHIP</u>	<u>Art. (5-11)</u>
<u>PART III</u>	<u>FUNDAMENTAL RIGHTS</u>	<u>Art. (12-35)</u>
<u>PART IV</u>	<u>DIRECTIVE PRINCIPLES OF STATE POLICY</u>	<u>Art. (36-51)</u>
<u>PART IVA</u>	<u>FUNDAMENTAL DUTIES</u>	<u>Art. (51A)</u>
<u>PART V</u>	<u>THE UNION</u>	<u>Art. (52-151)</u>
<u>PART VI</u>	<u>THE STATES</u>	<u>Art. (152-237)</u>
<u>PART VII</u>	<u>THE STATES IN PART B OF THE FIRST SCHEDULE</u>	<u>Art. (238)</u>
<u>PART VIII</u>	<u>THE UNION TERRITORIES</u>	<u>Art. (239-243)</u>
<u>PART IX</u>	<u>PANCHAYATS</u>	<u>Art. (243-243zg)</u>
<u>PART IXA</u>	<u>MUNICIPALITIES</u>	<u>Art. (243-243zg)</u>
<u>PART X</u>	<u>THE SCHEDULED AND TRIBAL AREAS</u>	<u>Art. (244-244A)</u>
<u>PART XI</u>	<u>RELATIONS BETWEEN THE UNION AND THE STATES</u>	<u>Art. (245-263)</u>
<u>PART XII</u>	<u>FINANCE, PROPERTY, CONTRACTS AND SUITS</u>	<u>Art. (264-300A)</u>
<u>PART XIII</u>	<u>TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA</u>	<u>Art. (301-307)</u>

⁵Part IX-The Panchayats and Schedule XI (Article 243-G) have been newly incorporated under 73rd Constitution Amendment Act, 1992.

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<u>PART XIV</u>	<u>SERVICES UNDER THE UNION AND THE STATES</u>	<u>Art. (308-323)</u>
<u>PART XIVA</u>	<u>TRIBUNALS</u>	<u>Art. (323A-323B)</u>
<u>PART XV</u>	<u>ELECTIONS</u>	<u>Art. (324-329A)</u>
<u>PART XVI</u>	<u>SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES</u>	<u>Art. (330-342)</u>
<u>PART XVII</u>	<u>OFFICIAL LANGUAGE</u>	<u>Art. (343-351)</u>
<u>PART XVIII</u>	<u>EMERGENCY PROVISIONS</u>	<u>Art. (352-360)</u>
<u>PART XIX</u>	<u>MISCELLANEOUS</u>	<u>Art. (361-367)</u>
<u>PART XX</u>	<u>AMENDMENT OF THE CONSTITUTION</u>	<u>Art. (368)</u>
<u>PART XXI</u>	<u>TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS</u>	<u>Art. (369-392)</u>
<u>PART XXII</u>	<u>SHORT TITLE, COMMENCEMENT, AUTHORITATIVE TEXT IN HINDI AND REPEALS</u>	<u>Art. (393-395)</u>

