

LL.B. (Hons.) IIIth Semester
Paper-VI
CONSTITUTIONAL LAW – I
UNIT-1

Syllabus	DEFINITION AND CLASSIFICATION OF CONSTITUTION, SOURCES OF CONSTITUTION, SALIENT FEATURES OF INDIAN CONSTITUTION, FEDERALISM, NATURE OF INDIAN CONSTITUTION, RULE OF LAW, SEPARATION OF POWER.
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Lecture – I	DEFINITION AND CLASSIFICATION OF CONSTITUTION
Lecture – II	SOURCES OF CONSTITUTION
Lecture – III	SALIENT FEATURES OF INDIAN CONSTITUTION
Lecture – IV	NATURE OF INDIAN CONSTITUTION & FEDERALISM
Lecture – V	RULE OF LAW
Lecture – VI	SEPARATION OF POWER

LECTURE- 1: DEFINITION & CLASSIFICATION OF CONSTITUTION

You Tube Link: - <https://youtu.be/PiKImvRE-LI>
<https://youtu.be/QKJEKiPUaTc>

Previous year Questions

1. Define the term ‘Constitution’. Discuss the sources and classification of the Constitution. (2014)
2. Write a short note on rigid constitution. (2014)
3. Write a short note on Federal Constitution. (2015) (2017)
4. Write a short note on Unwritten Constitution. (2016)
5. What do you understand by the term ‘Constitution’? Discuss the classification and kinds of the Constitution. (2016)

NOTES:

DEFINITIONS OF THE CONSTITUTION:-

- **MacIver:** A constitution is “the law which governs the state”.
- **Lord Bryce:** A constitution is “the aggregate of laws and customs under which the life of the state goes on”.
- **A.V. Dicey:** All rules which directly or indirectly effect the distribution or the exercise of the sovereign power in the state make up the Constitution of the State.
- **Aristotle:** “Constitution is the way by which all citizens or constituent parts of the state are organized in relation to each other.”

- **Austin:** “Constitution fixes the structure of supreme government.”

CLASSIFICATION OF CONSTITUTION:-

1. On the basis of Origin:

- Evolved Constitution- An evolved constitution is the result of the historical development. It is not framed at a particular time. For example, the British Constitution has neither been enacted by any special Constituent Assembly at a particular time nor has the Monarch given it to the people.
- Enacted Constitution- Enacted constitutions are framed at a particular time, like the American Constitution which was framed by a Constituent Assembly after the declaration of Independence. After Second World War, new Constitution of India was completed on November 26, 1949 and it was introduced on January 26, 1950.

2. On the basis of Convention:

- Written Constitution- Written constitution is one whose basic principles are written. It refers to the constitution codified and compiled in a structured and cohesive manner. The Constitution of the United States of America is considered as the oldest written constitution that is still in force.
- Unwritten Constitution- An unwritten constitution is one whose major portion is not written. Mostly it includes customs and the decisions of the courts. Such type of constitutions is not framed by any Constituent Assembly. Great Britain is the only country where there is an unwritten constitution.

3. On the basis of Nature:

- Rigid Constitution- A rigid constitution cannot be easily amended. It has very complex modification procedures. A rigid constitution is essentially a written constitution composed of experienced and learned people. For e.g.: – Some provisions of the Indian Constitution.
- Flexible Constitution- A flexible constitution can be amended with the same ease as the general laws. A flexible constitution can be adjusted to suit the changing needs of people and society. For e.g.: – Great Britain.

4. On the basis of Government Structure:

- Unitary Constitution- Unitary Constitution is one that sets up one Central Government and all the powers are vested in it. For e.g.: – Great Britain.
- Federal Constitution- Federal Constitution provides for the distribution of powers between the Union/Central government. For e.g.: – American Constitution.

Assignment Questions

1. What is Constitution?

Ans.

2. How many basis of classification are there in Constitution?

Ans.

3. What is rigid and flexible Constitution?

Ans.

4. Give an example of Enacted and Evolved Constitution.

Ans.

5. What is the main point of difference between Unitary and Federal Constitution?

Ans.

6. On what basis, Constitution is considered to be a written constitution or unwritten constitution?

Ans.

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LECTURE- 2: SOURCES OF CONSTITUTION

You Tube Link: - <https://youtu.be/IJ3OyUqyXlc>

Previous year Questions

6. Define the term ‘Constitution’. Discuss the sources and classification of the Constitution.
(2014) (2021)

NOTES:

S.No.	Countries	Borrowed Features
1.	Australia	<ul style="list-style-type: none">• Concurrent list• Freedom of trade, commerce and intercourse• Joint-sitting of the two Houses of Parliament
2.	Canada	<ul style="list-style-type: none">• Federation with a strong Centre• Vesting of residuary powers in the Centre• Appointment of state governors by the Centre• Advisory jurisdiction of the Supreme Court• Distribution of powers between Center and States
3.	Ireland	<ul style="list-style-type: none">• Directive Principles of State Policy• Nomination of members to Rajya Sabha• Method of election of the president
4.	Japan	<ul style="list-style-type: none">• Procedure Established by law
5.	Soviet Union (USSR) (now, Russia)	<ul style="list-style-type: none">• Fundamental duties• Ideals of justice (social, economic and political) in the Preamble

6.	UK	<ul style="list-style-type: none"> • Parliamentary form of government • Rule of Law • Legislative procedure • Single Citizenship • Cabinet system • Writs • Parliamentary privileges • Bicameralism • Office of speaker
7.	US	<ul style="list-style-type: none"> • Fundamental rights • Independence of judiciary • Judicial review • Impeachment of the president • Removal of Supreme Court and High Court judges • Post of vice-president • Preamble • Electoral College for Election of President • President as the Supreme Commander of all forces
8.	Germany (Weimar)	<ul style="list-style-type: none"> • Suspension of Fundamental Rights during emergency
9.	South Africa	<ul style="list-style-type: none"> • Procedure for amendment in the Indian Constitution • Election of members of Rajya Sabha
10.	France	<ul style="list-style-type: none"> • Republic • Ideals of liberty, equality and fraternity in the Preamble
11.	Government of India Act. 1935	<ul style="list-style-type: none"> • Emergency provisions • Public Service Commission • Office of Governor • Judiciary

Assignment Questions

1. Directive Principle of State Policies is borrowed from which constitution?

Ans.

2. Which provision has been borrowed by Weimar Constitution?

Ans.

3. From where, the ideals of justice (social, economic, political) in the Indian Preamble taken?

Ans.

4. Concept of Public Service Commission's is borrowed from which government act in the Indian Constitution?

Ans.

5. Federation with a strong centre is derived from which Constitution?

Ans.

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LECTURE- 3: SALIENT FEATURES OF INDIAN CONSTITUTION

You Tube Link: - <https://youtu.be/JU3I3yBiObY>

Previous year Questions

1. Discuss the salient features of the Indian Constitution. (2012) (2013) (2018)

NOTES:

Following are the features of the Constitution of India:-

1. **The largest Constitution:-** The Constitution originally consisted of 22 Parts, 395 Articles and 8 Schedules (Presently, 12 Schedules)
2. **Sovereign, Socialist, Secular, Democratic, Republic:** - The source of Constitution is the people of India. The words 'Socialist' and 'Secular' were added in Preamble by 42nd Constitutional Amendment, 1976.
3. **Parliamentary form of Government:** - The Constitution of India has opted for the British Parliamentary System of Government. It is based on the principle of cooperation and coordination between the legislative and executive organs.
4. **Fundamental rights:** - They have been incorporated in Part III of the Constitution. These rights are against the State.
5. **Directive principles of State Policy:** - These are contained in Part IV of the Constitution and are not enforceable.
6. **Universal Adult Suffrage:** - The Constitution (61st Amendment) Act, 1989 amended Article 326 and reduced the age limit for adult suffrage to 18 yrs from 21 years.
7. **Blend of rigidity and flexibility:** - It depends upon the amendment process. Written Constitutions are generally considered to be rigid.
8. **Federal Constitution with centralizing tendency:** - It is a federal Constitution but it acquires unitary tendency during the time of emergency.
9. **Independent Judiciary:** - The Indian Constitution establishes Independent Judiciary by enabling the Indian judiciary to be free from the influence of the executive and the legislature.

10. **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.
11. **A Secular State:** - The Constitution of India stands for a secular state. It does not uphold any particular religion as the official religion of the Indian State.
12. **Fundamental Duties:** - Fundamental Duties were added to our Constitution by the 42nd Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. It lays down a list of ten Fundamental Duties. Later, the 86th Constitutional Amendment Act of 2002 added one more fundamental duty.

Assignment Questions

1. Presently, how many Articles, Schedules and parts are there in the Indian Constitution?

Ans.

2. What do you understand by Secular State?

Ans.

3. What is Parliamentary form of Government?

Ans.

4. Which Article deals with universal adult suffrage and by which amendment it was added?

Ans.

5. How many fundamental duties are there in the Indian Constitution? On the recommendation of which committee, it was incorporated?

Ans.

6. Which part of the Indian Constitution deals with Directive Principles of State Policy? Are Directive Principles of State Policy are enforceable in Court?

Ans.

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LECTURE- 4: NATURE OF INDIAN CONSTITUTION & FEDERALISM

You Tube Link: - <https://youtu.be/jtpFqtE9GUI>

Previous year Questions

1. What are the essential elements of federalism? Is Indian Constitution truly federal in nature? Discuss in the light of leading judgments. (2021)
2. Explain the essential characteristics of a Federal Constitution with reference to the nature of the Indian Constitution. (2021)

NOTES: -

On the basis of Government Structure, Federalism can be of two types- Unitary Constitution and Federal Constitution

Concept of Federalism: - Federalism is a form of government in which sovereign authority of political power is divided between various units, center, states, municipalities etc.

Concept of Unitary: - Unitary feature is one that sets up one Central Government and all the powers are vested in it

Essential Features of Federalism: -

1. Duality of Government and distribution of powers
2. Supremacy of Constitution
3. Written Constitution
4. Rigidity of Constitution
5. Authority of Courts

Federal Features of Indian Constitution: -

1. In India, there is dual polity i.e. Central Government and State Government.
2. Indian Constitution is a supreme constitution.
3. Our Constitution is written and controlled Constitution.
4. The Constitution establishes an apex Court in the form of Supreme Court to maintain the authority of the Courts.

Related Provisions: List II and List III of the Seventh Schedule, Article 252, Article 258(1), 73rd and 74th amendments.

Unitary Features of Indian Constitution: -

Apart from federal features in Indian Constitution, there are some unitary features also:-

1. Legislative relations: - Article 246, Article 249, Article 253, Article 254 and Article 304.
2. Administrative relations: - Article 256, Article 365.
3. Financial relations: - Article 274 Article 275.
4. Parliament's power to form new states and alter boundaries of existing states (Article 3).
5. Appointment of Governor: - Article 155, Article 156 and Article 200.
6. Emergency provisions: - Article 356.
7. Single and Uniform Citizenship
8. Uniform and Integrated Judicial System
9. Inter- State Council (Article 263)

Indian Constitution: Federal or Quasi- Federal?

Views on Federalism: -

- **Prof. Wheare:** "The Constitution is quasi-federal" i.e. a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features.
- **Prof. Jennings:** "Indian Constitution is a federation with a strong centralizing tendency."

Case Laws:-

- **Ram Jawaya Kapur v. State of Punjab (1955)** - The federal principle is not incorporated in Indian Constitution in the strict and rigid form.
- **S.R. Bommai v. Union of India (1994)** - Federalism is an essential feature of our Constitution and part of its basic structure.
- **Kuldip Nayar v. Union of India (2006)** – Though the federal is dominant in our Constitution, but it is also true that federalism leans in favour of strong center or unitary power.

Assignment Questions

1. What are the views of K.C. Wheare on the nature of Indian Constitution?

Ans.

2. What are the essential features of federalism?

Ans.

3. What is Federalism?

Ans.

4. Whether Indian Constitution is federal or quasi-federal?

Ans.

5. Mention some of the unitary features of the Indian Constitution.

Ans.

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LECTURE- 5: RULE OF LAW

You Tube Link: - <https://youtu.be/Tjdxq59fOFA>

Previous Year Questions

1. “The rule of law permeates the entire fabric of the Indian Constitution and indeed forms a part of its basic features.” Discuss. (2012) (2014)
2. “Where there is discretionary power there is always room for arbitrariness.” Explain the statement with the help of decided case law. (2017)
3. What is the concept of rule of law? (2021)

NOTES: -

- The Rule of law is obtained from the French phrase- “la principe de legalite” meaning the principle of legality, which refers to government based on principle of law.
- Edward Coke is said to be the originator of this concept. He asserted that King must be under God and law.
- Prof. A.V. Dicey later developed this concept and wrote about the concept of the Rule of Law in his book “Law of the Constitution”.

Postulates given by Dicey:-

1. Absence of arbitrariness/ Supremacy of law
2. Equality before Law
3. Predominance of legal spirit

Case laws:-

- A.D.M. Jabalpur v. Shivakant Shukla (1976)
- Kesavananda Bharti v. State of Kerala (1973)
- Indira Nehru Gandhi v. Raj Narain (1975)

Exceptions to the Rule of Law:-

1. Equality before law does not mean that the “powers of private citizens are same or the powers of public officials”.

2. The rule of law does not prevent certain classes of persons being subject to special rules, eg. Members of armed forces.
3. Ministers and other executive bodies are given to carry wide discretionary powers by statute.

Assignment questions: -

1. What do you understand by Rule of law?

Ans.

2. Who is the originator of the concept “Rule of Law”?

Ans.

3. Who gave the three postulates of Rule of law?

Ans.

4. What are the three postulates of Rule of law?

Ans.

5. In which case, it was laid down that rule of law is a basic feature of the constitution?

Ans.

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LECTURE- 6: SEPARATION OF POWER

You Tube Link: - <https://youtu.be/Tjdxq59fOFA>

Previous Year Questions

1. Explain the doctrine of separation of powers. How it has plays a role of check and balance under Indian Constitution? Evaluate with the help of decided cases. (2013) (2015)
2. Explain the concept of separation of power. How far the separation of power is incorporated in Indian Constitution? Discuss with relevant provisions. (2018) (2021)

NOTES: -

- The doctrine of separation of powers is traceable to Aristotle but the writings of Locke and Montesquieu gave it a base to modern aspect.
- Locke and Montesquieu derived the contents of this doctrine from the developments in British Constitutional history of the early century.
- According to Montesquieu, doctrine of separation of powers means that one person or body of persons should not exercise all the three types of powers of government.
- The theory of separation of power signifies three formulations of structural classification of governmental powers:-
 - The same person should not form part more than one of the three organs of government.
 - One organ of government should not interfere with any other organ of the government.
 - One organ of government should not exercise the functions assigned to other organs.
- **Indian perspective of Separation of powers:** - The doctrine of separation of powers is a part of the basic structure of the Constitution, although not specifically mentioned. Indian constitution provides for division of powers. The functions of the three organs i.e. **Legislature, Executive & Judiciary** are specifically mentioned in the Constitution. Some of the articles of the Constitution which suggest separation of powers are as follows: -

- **Article 50:** This article puts an obligation over the State to separate the judiciary from the executive. But, since this falls under the Directive Principles of State Policy, it is not enforceable.
- **Article 123:** The President, being the executive head of the country, is empowered to exercise legislative powers (Promulgate ordinances) in certain conditions.
- **Articles 121 and 211:** These provide that the legislatures cannot discuss the conduct of a judge of the Supreme Court or High Court. They can do so only in case of impeachment.
- **Article 361:** The President and Governors enjoy immunity from court proceedings.
- **System of Checks and Balances:** - There is a system of checks and balances in India wherein the various organs impose checks on one another by certain provisions.
 - The judiciary has the power of judicial review over the actions of the executive and the legislature.
 - The judiciary has the power to strike down any law passed by the legislature if it is unconstitutional or arbitrary as per Article 13 (if it violates Fundamental Rights).
 - It can also declare unconstitutional executive actions as void.
 - The legislature also reviews the functioning of the executive.
 - Although the judiciary is independent, the judges are appointed by the executive.
 - The legislature can also alter the basis of the judgment while adhering to the constitutional limitation.

Checks and balances ensure that no one organ becomes all-too powerful. The Constitution guarantees that the discretionary power bestowed on any one organ is within the democratic principle.

- **Case Laws:-**

- **Ram Jawaya Kapur v. State of Punjab (1955)**
The Honourable Supreme Court in held that the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity.
- **Kesavananda Bharati v. State of Kerala (1973)**
The SC held that the amending power of the Parliament is subject to the basic features of the Constitution. So, any amendment violating the basic features will be declared unconstitutional.
- **Indira Nehru Gandhi v. Raj Narain (1975)**
It was observed that in the Indian Constitution there is a separation of powers in a broad sense only.

Assignment Questions:-

1. What is separation of power?

Ans.

2. Who gave the concept of separation of power?

Ans.

3. What is the concept given by Montesquieu?

Ans.

4. What is an Indian perspective of separation of powers?

Ans.

5. What was the pronouncement of the Kesavananda Bharati Case?

Ans.