

Indian Constitutional Law

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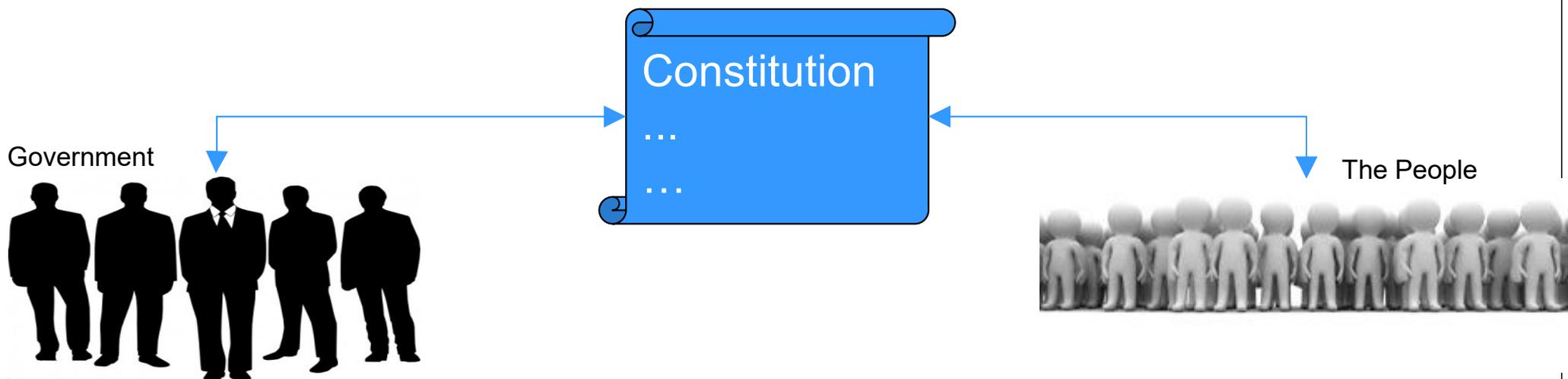
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I) In General-

The Constitution is the supreme law of the land. All other laws have to confirm 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 and
- b) Between the government and the citizens.



Role of Constitution in relationship between Government and its people:-

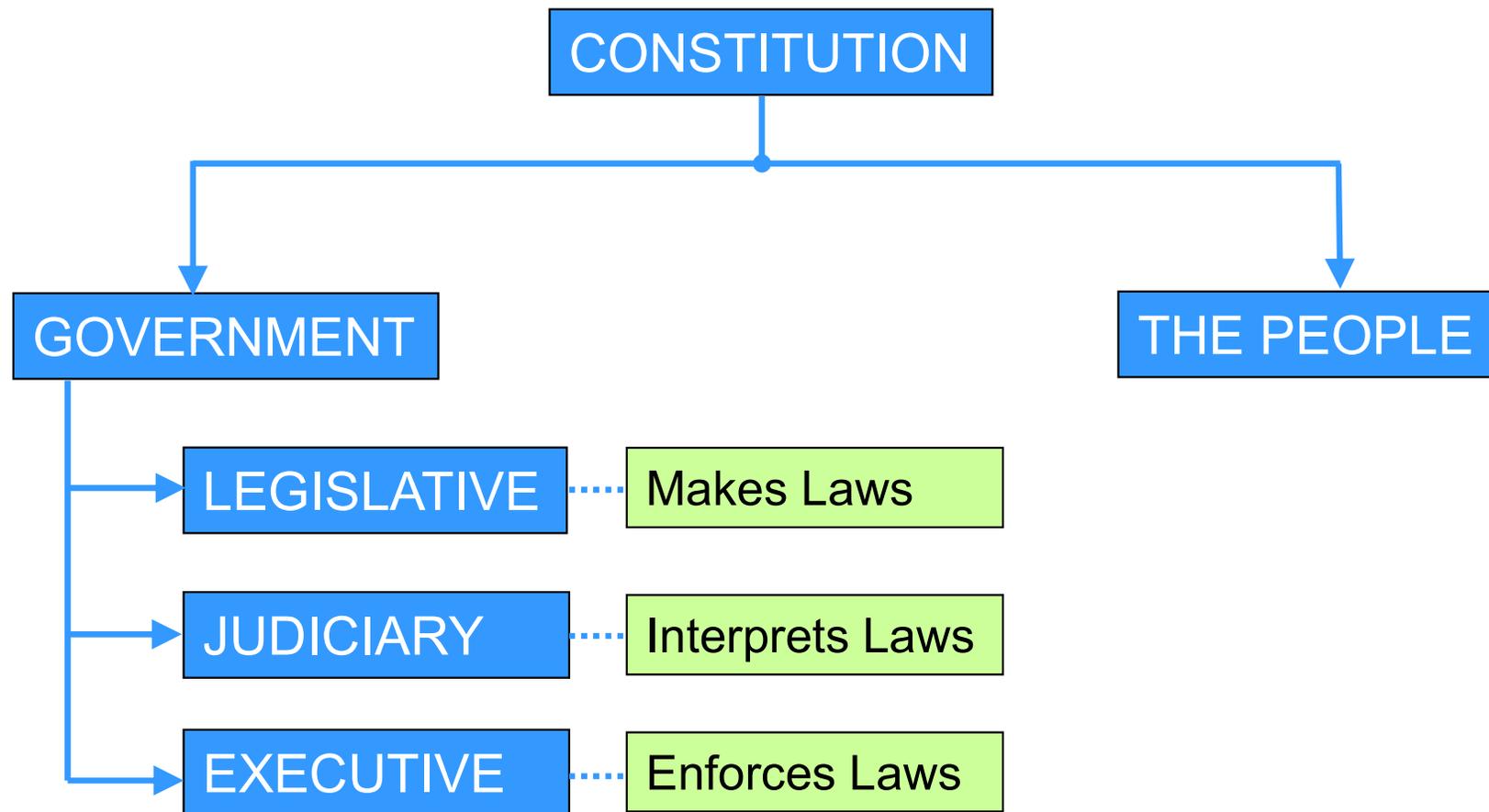


Fig.- Role of Constitution in relationship between Government and its people

What is Constitutional Law

- The legal system is divisible into ----
- Law governing the State --- Public Law
- Law by which the state governs or regulates the conduct of its members ----- Private Law
- diagram

II) Technical Definitions-

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.**

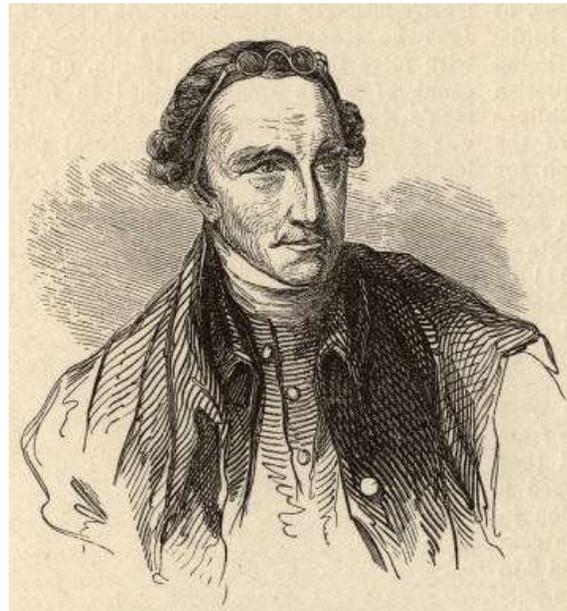
or

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.**

III) An observation-

“The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government.” --Patrick Henry

Patrick Henry (1736-1799)



Why Do We Need Constitution?

In General-

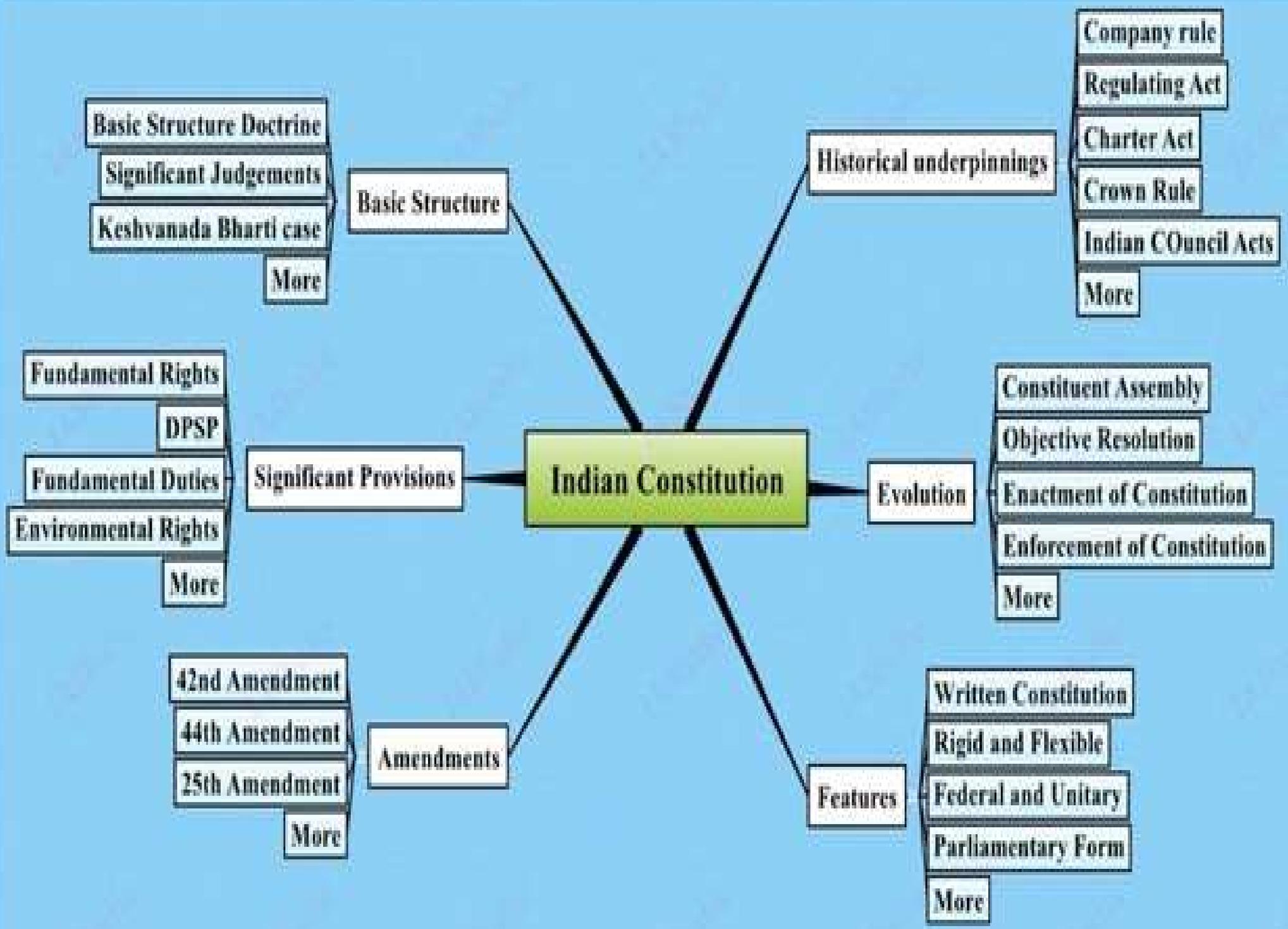
- I. We need a constitution **to govern** a country properly.
- II. The constitution defines the **nature of political system** of a country.
- III. sometimes we feel strongly about an issue that might go against our larger interests and the constitution helps us guard against this.
- IV. All the **three organs of government** (executive, legislature and judiciary) functions within the constitution. All the 3 organs of government, including ordinary citizens, derive their power and authority (i.e. Fundamental Right) from the constitution. If they act against it, it is unconstitutional and unlawful.

So constitution is required to have authoritative allocation of power and function, and also to restrict them within its limit.

To perform following Functions we need Constitution-

- I. **The first function** of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society.
- II. **The second function** of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted.
- III. **The third function** of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may ever trespass them.
- IV. **The fourth function** of a constitution is to enable the government to fulfill the separations of a society and create conditions for a just society.

- **The Constitution of India came into force on 26 January 1950. ...**
- The Constitution was adopted by the Indian Constituent Assembly on 26 November 1949 and came into effect on 26 January 1950



Indian Constitution

Basic Structure

- Basic Structure Doctrine
- Significant Judgements
- Keshvanada Bharti case
- More

Historical underpinnings

- Company rule
- Regulating Act
- Charter Act
- Crown Rule
- Indian Council Acts
- More

Evolution

- Constituent Assembly
- Objective Resolution
- Enactment of Constitution
- Enforcement of Constitution
- More

Features

- Written Constitution
- Rigid and Flexible
- Federal and Unitary
- Parliamentary Form
- More

Significant Provisions

- Fundamental Rights
- DPSP
- Fundamental Duties
- Environmental Rights
- More

Amendments

- 42nd Amendment
- 44th Amendment
- 25th Amendment
- More

Schedule	Subject Matter
First Schedule	1. Names of the States and their territorial jurisdiction.
	2. Names of the Union Territories and their extent.
Second Schedule	Provisions relating to the emoluments, allowances, privileges and so on of:
	1. The President of India
	2. The Governors of States
	3. The Speaker and the Deputy Speaker of the Lok Sabha
	4. The Chairman and the Deputy Chairman of the Rajya Sabha
	5. The Speaker and the Deputy Speaker of the Legislative Assembly in the states
	6. The Chairman and the Deputy Chairman of the Legislative Council in the states
	7. The Judges of the Supreme Court
	8. The Judges of the High Courts
	9. The Comptroller and Auditor-General of India

Third Schedule	Forms of Oaths or Affirmations for:
	1. The Union ministers
	2. The candidates for election to the Parliament
	3. The members of Parliament
	4. The judges of the Supreme Court
	5. The Comptroller and Auditor-General of India
	6. The state ministers
	7. The candidates for election to the state legislature
	8. The members of the state legislature
	9. The judges of the High Courts
Fourth Schedule	Allocation of seats in the Rajya Sabha to the states and the union territories.
Fifth Schedule	Provisions relating to the administration and control of scheduled areas and scheduled tribes .
Sixth Schedule	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura, and Mizoram.
Seventh Schedule	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (originally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).

Eighth Schedule

Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71 st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act of 2003

Ninth Schedule

Acts and Regulations (originally 13 but presently 282) 19 of the state legislatures dealing with **land reforms** and the abolition of the zamindari system and of the. Parliament dealing with other matters. This schedule was added by the 1st Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights. However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to judicial review.

Tenth Schedule

Provisions relating to the disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52nd Amendment Act of 1985, - **Anti defection**

Eleventh Schedule

Specifies the powers, authority and responsibilities of **Panchayats**. It has 29 matters. This was added by the 73rd Amendment- 1992.

Twelfth Schedule

Specifies powers, authority, and responsibilities of **Municipalities**. It has 18 matters. This was added by the 74th Amendment- 1992.

Parts of Constitution

- *Preamble* with the words "socialist", "secular" and 'integrity' added in 1976 by the 42nd amendment
- *Part I*– States and union territories – Articles 1 to 4
- *Part II*– Citizenship – Articles 5 to 11
- *Part III* – Fundamental Rights – Articles 12 to 35
- *Part IV* – Directive Principles of State Policy – Articles 36 to 51
- *Part IVA* – Fundamental Duties – Article 51A
- *Part V*– The Union – Articles 52 to 151
- *Part VI* – The States – Articles 152 to 237
- *Part VII*– States in B part of the first schedule (*repealed*) – Article 238
- *Part VIII* – Union territories – Articles 239 to 242
- *Part IX* – Panchayats – Articles 243 to 243(O)
- *Part IXA* – Municipalities – Articles 243(P) to 243(ZG)
- *Part IXB* – Co-operative societies – Articles 243(H) to 243(ZT)
- *Part X* – Scheduled and tribal areas – Articles 244 to 244A

- *Part XI* – Relations between the union and the states – Articles 245 to 263
- *Part XII* – Finance, property, contracts and suits – Articles 264 to 300A
- *Part XIII* – Trade and commerce within India – Articles 301 to 307
- *Part XIV* – Services under the union and states – Articles 308 to 323
- *Part XIVA* – Tribunals – Articles 323A to 323B
- *Part XV* – Elections – Articles 324 to 329A
- *Part XVI* – Special provisions relating to certain classes – Articles 330 to 342
- *Part XVII* – Languages – Articles 343 to 351
- *Part XVIII* – Emergency provisions – Articles 352 to 360
- *Part XIX* – Miscellaneous – Articles 361 to 367
- *Part XX* – Amending the constitution – Articles 368
- *Part XXI* – Temporary, transitional and special provisions – Articles 369 to 392
- *Part XXII* – Short title, date of commencement, authoritative text in Hindi and repeals – Articles 393 to 395

Appendices

- *Appendix I* – The Constitution (Application to Jammu and Kashmir) Order, 1954
- *Appendix II* – Re-statement, referring to the constitution's present text, of exceptions and modifications applicable to the state of Jammu and Kashmir
- *Appendix III* – Extracts from the Constitution (Forty-fourth Amendment) Act, 1978
- *Appendix IV* – The Constitution (Eighty-sixth Amendment) Act, 2002
- *Appendix V* – The Constitution (Eighty-eighth Amendment) Act, 2003
- APPENDIX I.—The Constitution (One Hundredth Amendment) Act, 2015.
- APPENDIX II.—The Constitution (Application to Jammu and Kashmir) Order, 2019.
- APPENDIX III.— Declaration under article 370(3) of the Constitution.

Latest Amendment in Indian Constitution

- **105th Amendment - Article 338B, 342A and 366**
- 10 August 2021 - To restore states' power to make their own OBC lists.

- **104th Amendment - Article 334.**
- 25 January 2020 - To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty years.
- **Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.**

Types of Constitution

- Written and unwritten
- Flexible and Rigid
- Unitary and Federal

Salient features of the Indian Constitution

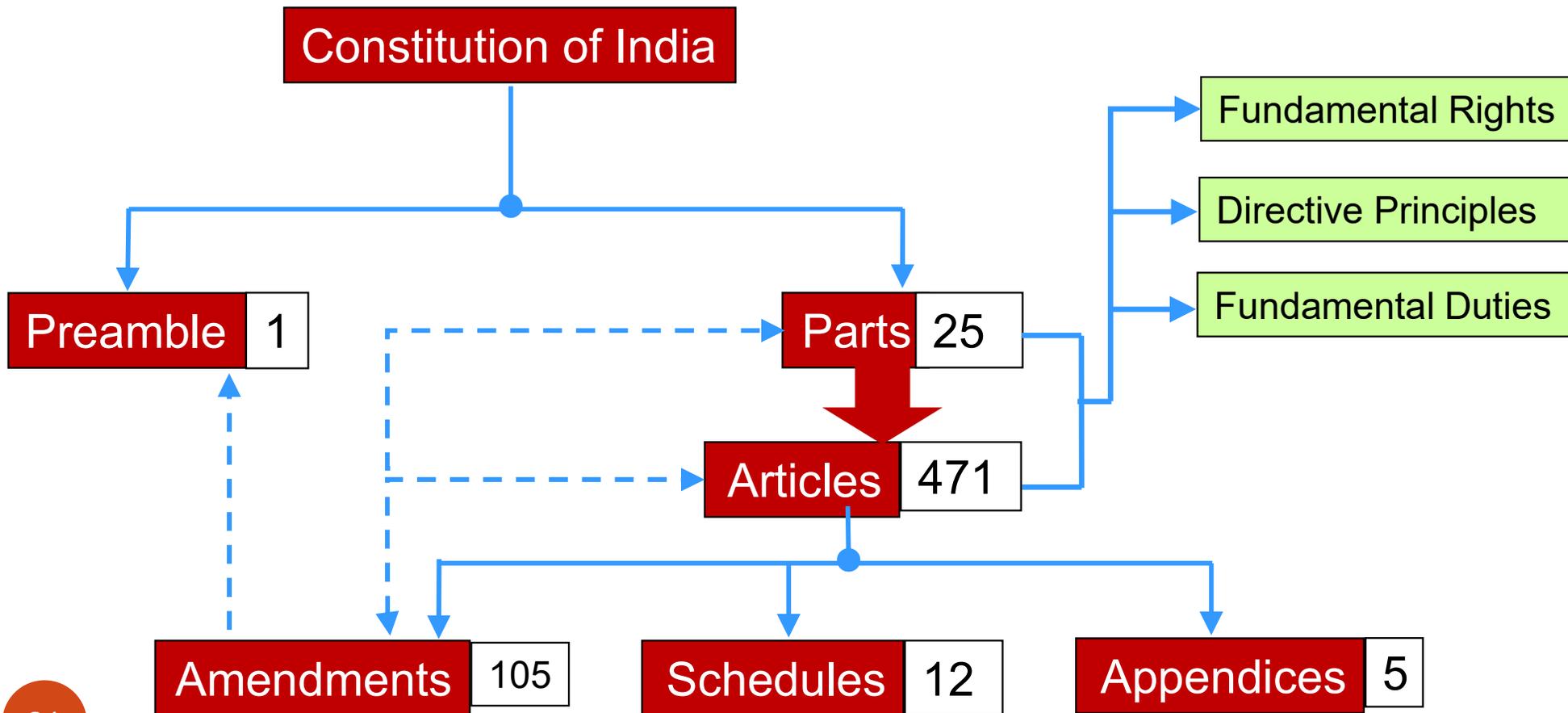
The salient features of the Constitution of India can be discussed as follows:

- The Constitution of India is a unique constitution. It is the largest written liberal democratic constitution of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity. Since its inauguration on 26th January 1950, the Constitution India has been successfully guiding the path and progress of India.
- (1) Written and Detailed Constitution: It took the Assembly 2 years, 11 months and 18 days to write and enact the Constitution.
- Indian Constitution is a very detailed constitution. It consists of 395 Articles divided into 25 Parts with 12 Schedules and 99 constitutional amendments. It is a constitution of both the Centre and states of Indian Union It are indeed much bigger than the US Constitution which has only 7 Articles and the French Constitution with its 89 Articles.

What Is The constitution of India?

(ii) Structure of Constitution of India:-

The Constitution, consists of 1 preamble, 25 parts containing 471 articles, 12 schedules, 5 appendices and 105 amendments till date. Although it is federal in nature it also has a strong unitary bias.



Sovereign, Socialist, Secular, Democratic Republic

Sovereignty

Sovereignty is one of the foremost elements of any independent State. It means absolute independence, i.e., a government which is not controlled by any other power : internal or external. A country cannot have its own constitution without being sovereign.

India is a sovereign country. It is free from external control. It can frame its policies. India is free to formulate its own foreign policy.

Socialist

The word socialist was not there in the Preamble of the Constitution in its original form. In 1976, the 42nd Amendment to the Constitution incorporated 'Socialist' and 'Secular', in the Preamble. The word 'Socialism' had been used in the context of economic planning. It signifies major role in the economy. It also means commitment to attain ideals like removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work.

When you read about the Directive Principles of the State Policy, you will see how these ideals have been incorporated as well as partly, implemented in the Constitution.

Secularism

In the context of secularism in India, it is said that ‘India is neither religious, nor irreligious nor anti-religious.’ Now what does this imply? It implies that in India there will be no ‘State’ religion – the ‘State’ will not support any particular religion out of public fund. This has two implications, a) every individual is free to believe in, and practice, any religion he/ she belongs to, and, b) State will not discriminate against any individual or group on the basis of religion.

Democratic Republic

The Preamble says that the Constitution belongs to the people of India. The last line of the Preamble says ‘.... Hereby Adopt, Enact And Give To Ourselves This Constitution’.

- In fact the Democratic principles of the country flow from this memorable last line of the Preamble. Democracy is generally known as government of the people, by the people and for the people. Effectively this means that the Government is elected by the people, it is responsible and accountable to the people. The democratic principles are highlighted with the provisions of universal adult franchise, elections, fundamental rights, and responsible government.
- **Republic** - The Preamble also declares India as a Republic. It means that the head of the State is the President who is indirectly elected and he is not a hereditary ruler as in case of the British Monarch.

Justice, Liberty and Equality

The struggle for freedom was not only against the British rule but their struggle should also usher in an era of restoring the dignity of men and women, removal of poverty and end to all types of exploitation. Such strong motivations and cherished ideals had prompted the framers to lay emphasis on the provisions of Justice, Liberty and Equality to all the citizens of India.

Justice

Justice promises to give people what they are entitled to in terms of basic rights to food, clothing, housing, participation in the decision-making and living with dignity as human beings. The Preamble covers all these dimensions of justice – social, economic and political

Liberty

The Preamble also mentions about liberty of thought and expression.

These freedoms have been guaranteed in the Constitution through the Fundamental Rights.

Equality

Equality is considered to be the essence of modern democratic ideology. The Constitution makers placed the ideals of equality in a place of pride in the Preamble. All kinds of inequality based on the concept of rulers and the ruled or on the basis of caste and gender, were to be eliminated. All citizens of India should be treated equally and extended equal protection of law without any discrimination based on caste, creed, birth, religion, sex etc. Similarly equality of opportunities implies that regardless of the socio-economic situations into which one is born, he/she will have the same chance as everybody else to develop his/ her talents and choose means of livelihood.

A Combination of Rigidity and Flexibility

The Indian Constitution is a unique example of combination of rigidity and flexibility. A constitution may be called rigid or flexible on the basis of its amending procedure. In a rigid constitution, amendment of the constitution is not easy.

Rigid – America, Switzerland, Australia

Flexible – Britain

The Constitution of India provides for three categories of amendments

simple majority - special majority – special majority with $\frac{1}{2}$ States
Ratification

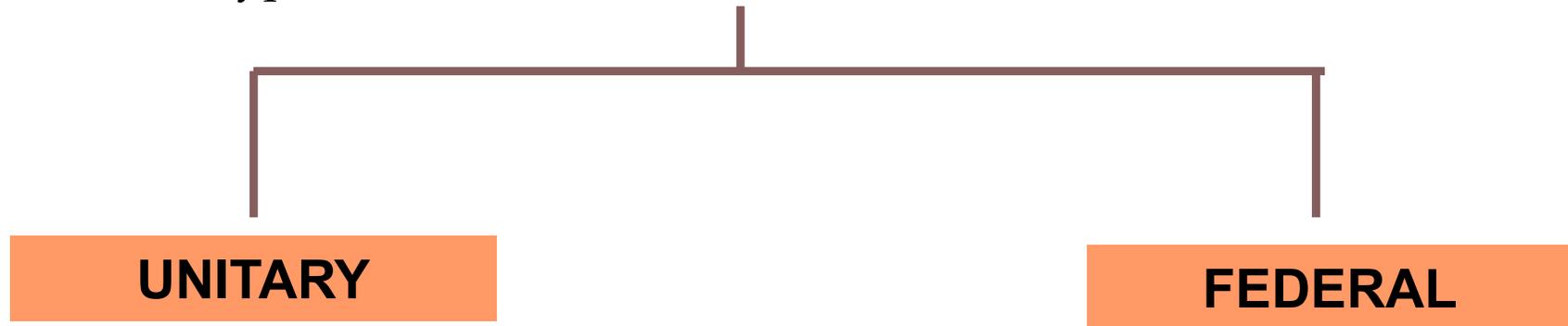
Simple majority

Special majority

Special majority with $\frac{1}{2}$
States Ratification

FEDERALISM.

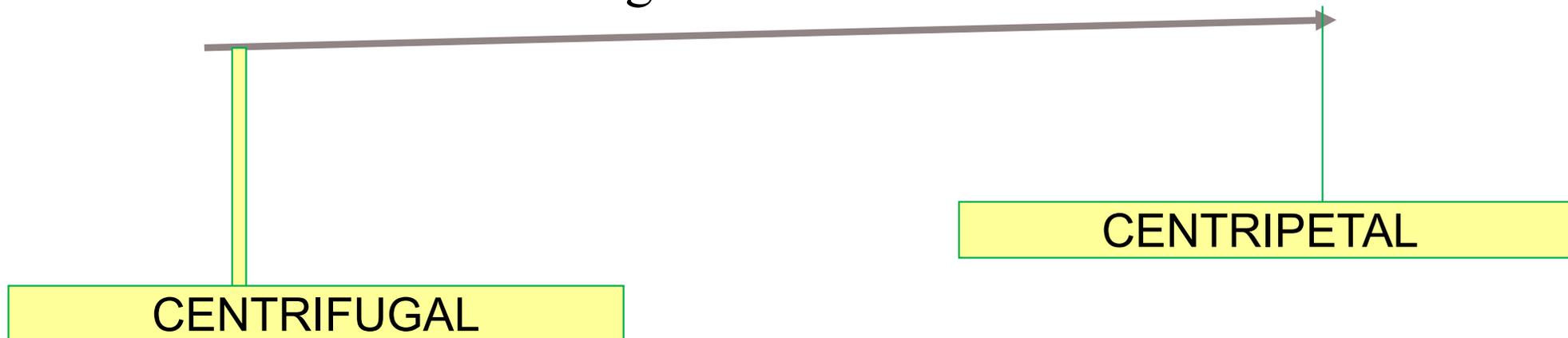
- On the basis of distribution of powers the government may be divided in to two types these are-



- Unitary -A govt. where all the powers are vested in the hands of the central or union Govt.
- Federal- A form of Govt. where all powers are distributed among the central Govt. & the units. Distribution of powers on the basis of co-operation.

TYPES OF FEDERALISM.

- Through out the world there are two kinds of federalism on the basis of its nature these are given bellow.



- **CENTRIFUGAL-**

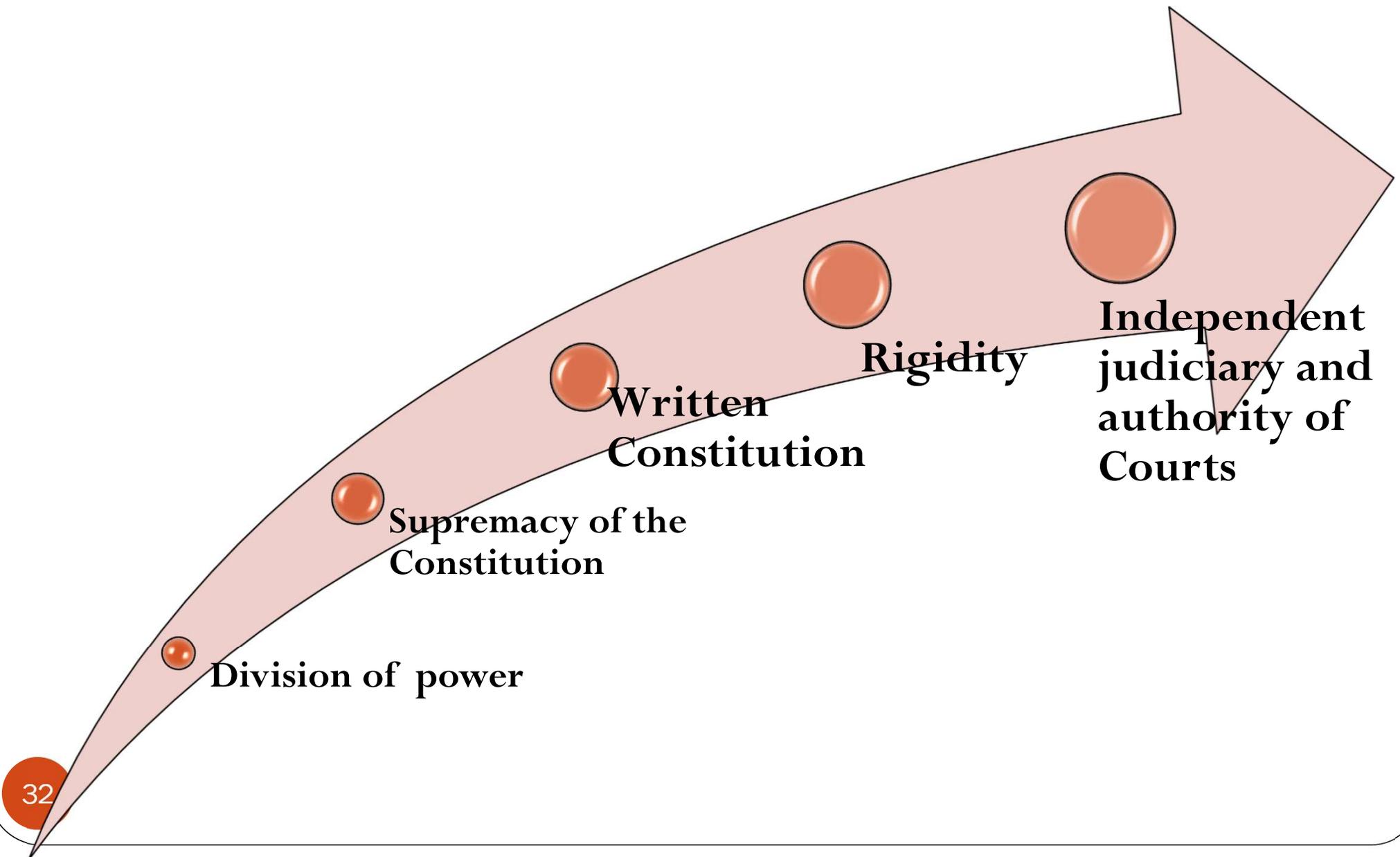
When a country is too vast & it is very difficult to administer it smoothly ,we may divide the country into number of units. The union govt. is at the centre and the state level e.g. India

Centripetal –

In centripetal form of federalism here some small states are united, joined and make a confederation. This kind of federalism is called as Centripetal federalism.

Features OF Federalism

The followings are some of the major features of federalism.



Division of powers

- 1. Union List.(99 items)
- 2. State list.(67 items)
- 3. Concurrent list.(47 items)
- 4. Residuary powers. Exercised by the Union Govt.)

Fundamental Rights and Fundamental Duties

Every human being is entitled to enjoy certain rights which ensure good living. In a democracy all citizens enjoy equal rights. The Constitution of India guarantees those rights in the form of Fundamental Rights. Fundamental Rights are one of the important features of the Indian Constitution. Fundamental Rights are justifiable 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 ten 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.

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.

Single Integrated Judicial System

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

Independence of Judiciary

Indian judiciary is independent and impartial. 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.

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.

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

Secular State

A multi-religious nation like India has to be a secular state. The word Secular was missing in our Constitution till the 42nd Amendment of the Constitution was passed. Secularism in India does not mean an irreligious or an anti-religious state.

It only means:

- (i) there is no official religion for India and the Parliament has no right of imposing a particular religion as an official religion,
- (ii) It also means that all citizens, irrespective of their religious beliefs, are to be considered and treated as equal and
- (iii) no discrimination is to be shown by the State against any person on account of his/her religion either for participation in political affairs or entry into government service or admission into educational institutions.

Rule of Law

- **“When the Rule of Law disappears, we are ruled by the whims of men.”**
- — Tiffany Madison
- Rule of law in a plain language can be defined as a situation in which the law of the land is superior than the government ruling the land.
- It is a legal regime which restraints the power of the government. It does so to ensure that the government does not resort to arbitrary power or abuse its power in order to rule over the people of the land.
- As stated by several political and legal philosophers, democracy cannot be sustain in a country without establishment of rule of law.
- Attempts have been made to define the rule of law by major philosophers, one of which is also Aristotle.
- He tried to understand the concept by equating rule of reason, whereas others related rule of law with natural justice

Some principles of Rule of Law

- **Equality before law and equal protection of law**
- **Protection against Arbitrary power exercise by state**
- **Adequate procedure for the redress of their grievances against the state in an impartial manner**
- **Impartial and independent judicial system**
- **Regulate every organ of the state with rule of law**
- **Principles of Natural justice**
- **Justice Equality and reasonability**
- **Just and Fair procedure**
- **Effective enforcement of Fundamental Rights**
- **Fair Election**

Parliamentary Form of Government

- India, a union of states, is a Sovereign, Secular, Democratic Republic with a Parliamentary system of Government both at Union and States
- Indian Politics is governed by the Constitution.
- Constitution divides governing powers between Union government and State governments which is called Federal Government.
- **The Head of the State is merely a nominal head.**
- The Council of Ministers, vested with real and effective powers is made answerable to the legislature
- The Council of Ministers consists of members of the legislature, belonging to the party in power, having support of the majority in the legislature. The Council of Ministers is a part of the legislature and is responsible to it

- The Prime Minister is the head of C-O-M –
 - occupies a dominant position,
 - having absolute discretion in appointing and dismissing the ministers and
 - allocating the government business to them
- Its tenure depends upon the will of legislature

Reasons for adopting the Parliamentary Form of Government

1. The maker of the Constitution have followed the British model in toto because we were accustomed to this type of government
2. Framers of the constitution were greatly influenced by English system. India is a nation deeply divided into several groups with conflicting interests. All these varied groups are ensured representation in the Parliament through this form of govt.
3. This System ensures harmony between Executive and Legislature. The Constitution rejected the Presidential system as in the U.S.A. on the grounds that under such a system, the Executive and the Legislature are separate and independent of each other, which is likely to cause conflicts between them, which our infant democracy could ill-afford to risk
4. It is more responsible government
5. Collective Responsibility

Judicial Review

- **Judicial review** is a process under which executive and legislative actions are subject to review by the judiciary.
- A court with judicial review power may invalidate laws and decisions that are incompatible with Constitution;
- an executive decision may be invalidated for being unlawful or repugnant to a statute, and a statute may be invalidated for violating the terms of a written constitution.
- Judicial review is one of the checks and balances in the separation of powers:
 - the power of the judiciary to supervise the legislative and executive branches when the latter exceed their authority

- **Judicial Review in India:**

- *-----Judicial Review refers to the power of the judiciary to interpret the --constitution and*

- *-----to declare any such law or order of the legislature and executive void,*

- *----- if it finds them in conflict the Constitution of India.*

- **Supreme Court's responsibility to protect Constitution**

- The Constitution of India is the supreme law of the land. The Supreme Court of India has the supreme responsibility of interpreting and protecting it. It also acts as the guardian-protector of the Fundamental Rights of the people. For this purpose, the Supreme Court exercises the power of determining the constitutional validity of all laws.

Single citizenship

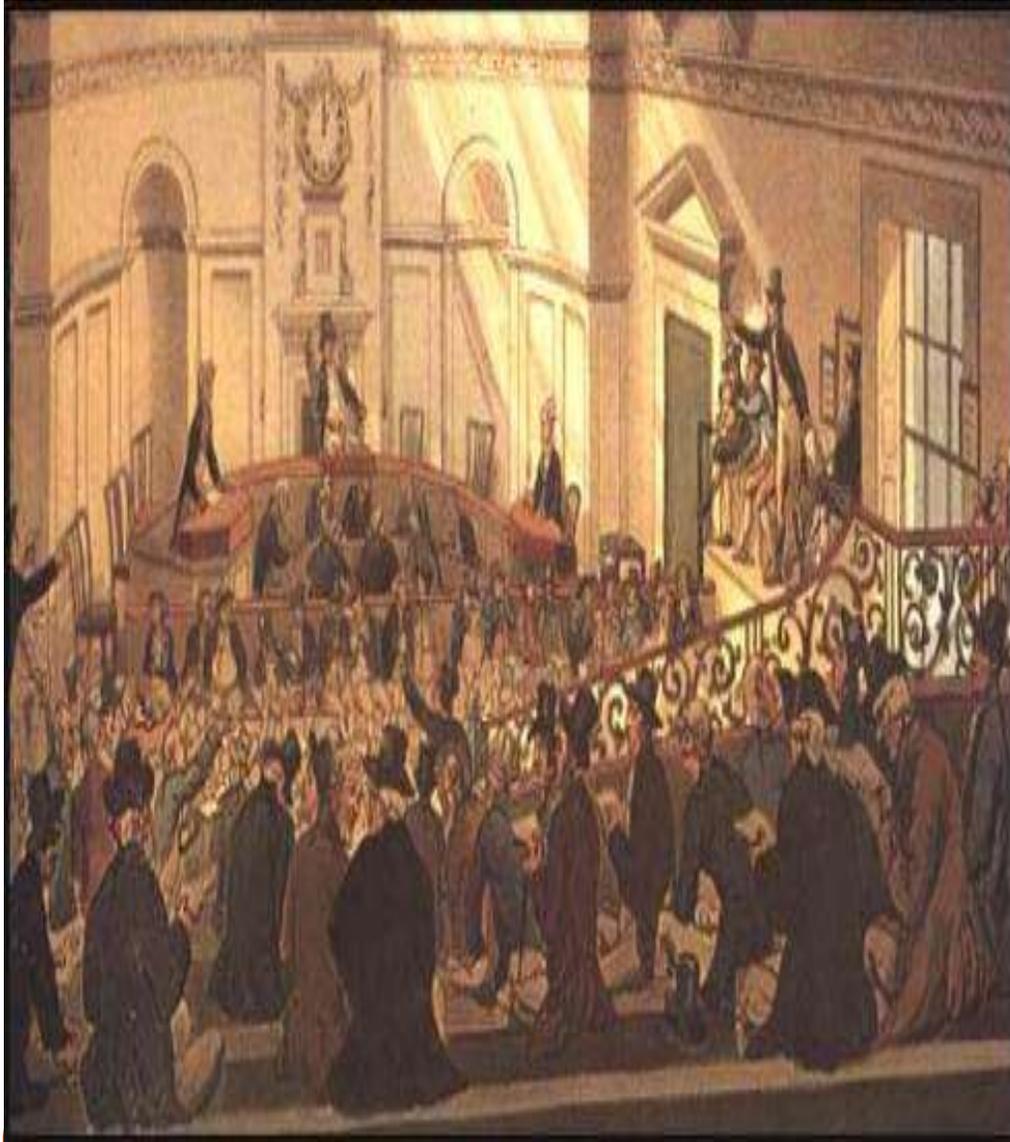
- The Indian Constitution provides single citizenship for the whole india. There is no state citizenship. Every Indian is the citizen of india and enjoys the same rights of citizenship no matter in what state he resides.though the Constitution is federal and provides dual polity but it provides single citizenship
- Citizenship is the **status of a person** recognized under the law as being a **member of a state**.
- A citizen is a **participatory member of a political community**.
- Citizenship is gained by meeting the **legal requirements** of a national, state, or local government.
- A nation grants **certain rights and privileges** to its citizens. In return, citizens are expected **to obey** their country's laws and defend it against its enemies

Fundamental rights for Citizens

- A citizen enjoys full civil and political rights with certain advantages conferred by the Constitution. Aliens do not enjoy these advantages.
- 1. **Article 15** --- Right not to be discriminated
- 2. **Article 16** --- Right to Equality of opportunity in
Public Employment
- 3. **Article 19** --- Right to Six Golden Freedoms
- 4. **Article 29 and 30** --- Cultural & Educational Right
- 5. **certain offices** to be occupied by citizens only President, Vice President, Judges of High Court and Supreme Court, Attorney General, Governor
- 6. **Right to Vote** for Loksabha and Vidhan Sabha Elections,
Membership of Loksabha and Vidhan Sabha

Historical background

1. 1600-1765 2. 1765-1858 3. 1858-1919 4. 1919-1947 5. 1947- 1950



Established in 1600 by Queen Elizabeth



View of East India House

First phase 1600-1765

- The British came to India in 1600 AD as traders in the form of East India Company.
- The East India Company was founded in the year 1600 for persuading the trade with East Indies (South Asia and South East Asia).
- The East India Company has exclusive rights to trade in India.
- to facilitate the venture some of the enterprising merchants of London form themselves into Company and secured its charter fro Queen Elizabeth
- The management of the company was vested in the hand of Governor and 24 Members
- Charter granted a monopoly of trade with the East
- Charter was granted in the first instance for 15 years and was terminable at the notice of two years
- It could be renewed if the interest of the crown and the people were not prejudicially affected

Legislative Power –

- Charter of 1601 granted power to the Governor and company, to make, ordain and constitute such and so many reasonable laws constitutions, orders and ordinance for the good governance of the company
- It was limited in its scope and character
- Not to be contrary to the laws, statutes or customs of England
- Only to regulate the business and to maintain discipline among its servants.
- Charters of 1609 and 1661 reaffirmed

The Charter of 1726

- Formerly Legislative powers were vested in the Court of Directors in England-not conversant with prevailing conditions of India
- Hence the Charter authorized the Governor and Council of the three Presidencies to make, constitute and ordain bye laws, rules and ordinances for the good governance of the company
- It should be confirmed in writing by the company's Court of Directors
- The Charter established the Mayor's Courts at Calcutta, Bombay and Madras
- Introduced English Laws into these Presidencies
- There was a period of gradual disintegration of the Moghul Empire
- Aurangzeb was dead and India became a battleground of rival contesting principalities.
- The victory of the company in the battle of Plassey in 1757 against Sirajuddaulla, Nawab of Bengal had laid the foundation of the British Empire in India.
- 1765 Shah Alam granted the Diwani----- the responsibility of the collection of revenue to the company

1765-1858 Beginning of the British Rule

- **Regulating Act of 1773**
- a landmark act in Indian History which has constitutional importance as it laid the foundations of **Central Administration in India**, direct access of the East India Company in India and recognized the political and administrative functions of the Company. The features of the act are:
- It designated the Governor of Bengal as the **Governor-General of Bengal** and created an Executive Council of four members to assist him. The first such Governor – General was **Lord Warren Hastings**.
- Governors of Bombay and Madras were made subordinate to governor-general of Bengal.
- **Establishment of Supreme Court** at Calcutta in 1774 comprising one chief justice and three other judges.
- Court of Directors were asked to report on its revenue, civil and military affairs in India.

The 1781 act of Settlement

- The 1781 act of Settlement – passed by the British parliament to rectify the defects of 1773 Act.
- Changes in Regulating Act –
 - It exempted the actions of public servants of the company done in the official capacity from the jurisdiction of Supreme Court
 - - question of jurisdiction of the Supreme Court was settled over the servants of the Company and the native inhabitants
 - - it cleared that what law should be applied by the Supreme Court
 - - the Act recognized and confirmed the appellate jurisdiction of the Governor-General-in Council from Mufassil Courts
 - - it empowered the Governor-General-in-Council to frame regulations for the Provincial courts and Council also

Pitt's India Act of 1784

- Distinguished between commercial and political functions of the company.
- Court of Directors for Commercial functions and Board of Control for political affairs.
- Reduced the strength of the Governor General's council to three members.
- Placed the Indian affairs under the direct control of the British Government.
- The companies territories in India were called "the British possession in India".
- Governor's councils were established in Madras and Bombay.

Charter Act of 1813

- The Company's monopoly over Indian trade terminated; Trade with India open to all British subjects.
- The Act renewed the Charter for a further period of 20 years
- The British Crown asserted a greater control over the powers of the councils
- They were supposed to lay all the regulations made by them before the Parliament

Charter Act of 1833

- Governor-General (of Bengal) became as the Governor-General of India.
- First Governor-General of India was Lord William Bentick.
- This was the final step towards centralization in the British India.
- Beginning of a Central legislature for India as the act also took away legislative powers of Bombay and Madras provinces.
- Governor –General-in-Council was empowered to make laws and regulations for all persons, whether British or native, foreigner or others, places and things within the territory of the Company
- The Council was enlarged for the purpose of legislation work by the addition of a fourth member----- Law Member
- The Act ended the activities of the East India Company as a commercial body and it became a pure administrative body.

- The council was known as ‘Indian Council’.
- The superintendence, direction and control of whole civil and military government of all the British territories and revenues in India was expressly vested in ‘The Governor General of India in Council’.
- The laws that were made prior to 1833 were called regulation.
- The laws that were made under 1833 charter were called Acts.
- This is the concentration of power in single authority.

Charter Act of 1853

- The legislative and executive functions of the Governor-General's Council were separated.
 - 6 members in Central legislative council. Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal and Agra.
 - It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service opened for all).
 - This was the last charter act passed by the British Parliament between 1793 and 1853.
 - This act created the Legislative council.
 - The legislative council functioned as a mini Parliament.
 - The Charter Act of 1853 introduced Open competition system of selection and recruitment of civil servants.
 - This was also open to Indians. (Indians were permitted to take part in the competitive examination).
 - Accordingly Macaulay Committee (Committee on the Indian civil services) was appointed in the year 1854.
- Satyendra Nath Tagore was the first Indian to join the civil services.

Government of India Act of 1858

- The rule of Company was replaced by the rule of the Crown in India.
- The powers of the British Crown were to be exercised by the **Secretary of State for India**
- He was assisted by the **Council of India, having 15 members**
- He was vested with complete authority and control over the Indian administration through the **Viceroy as his agent**
- The **Governor-General was made the Viceroy of India.**
- Lord Canning was the first Viceroy of India.
- Abolished Board of Control and Court of Directors.

Indian Councils Act of 1861

- It introduced for first time **Indian representation** in institutions like Viceroy's executive+legislative council (**non-official**).
- **3 Indians entered Legislative council.**
- Legislative councils were established in Center and provinces.
- It provided that the Viceroys Executive Council should have some Indians as the non-official members while transacting the legislative businesses.
- It accorded statutory recognition to the portfolio system.
- Initiated the **process of decentralization** by restoring the legislative powers to the Bombay and the Madras Provinces.
- cooperation of Indians

India Council Act of 1892

- Introduced indirect elections (nomination).
- Enlarged the size of the legislative councils.
- Enlarged the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive.

Indian Councils Act of 1909

- This Act is also known as the Morley- Minto Reforms.
- Direct elections to legislative councils; first attempt at introducing a representative and popular element.
- It changed the name of the Central Legislative Council to the Imperial Legislative Council.
- The member of Central Legislative Council was increased to 60 from 16
- Introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'.
- Indians for the first time in Viceroy's executive council. (Satyendra Prasad Sinha, as the law member)
- Council were empowered to discuss any matter, ask any question.
- Right of discussing and moving resolution on financial matters were given but no right to vote was provided

Montagu- Chelmsford Report

- Morley minto reform failed to satisfy the aspirations of the Indians as they did not establish Parliamentary system of Govt in the country
- Indian National Congress became very active during first world war and pressed reforms
- British govt. made declaration for increasing association of Indians in every branch and gradual development of self-governing institutions

Features of the 1919 Act

- 1. It promised for **responsible government** to Indians
- 2. **Dyarchy in the Provinces**- The Central subjects were demarcated and separated from those of the Provincial subjects.
- dual governance, '**Dyarchy**', was introduced in the Provincial subjects
- Under dyarchy system, the provincial subjects were divided into two parts – **transferred and reserved**. On reserved subjects Governor was not responsible to the Legislative council
- Jail, police, justice finance and irrigation comparatively more important subjects were the Reserve subjects and they were to be governed by the Governor and his executive Council without any responsibility to legislature.

- Education, Agriculture, local self government, etc., subjects of lesser importance were transfer to Indian Ministers and the Governors
- In several cases at provincial legislation the previous sanction of the Governor-General was necessary
- He had the power to stop the consideration of a bill
- he could secure legislation on reserved subject
- he had also the power of Veto bill
- the proportion of elected members was increase up to 70% in the provincial legislative councils but the separate electorate for Muslim was continued

- **3. Central Government** - Government remained **responsible to the British Parliament** through the secretary of the state
- The Act introduced, for the first time, **bicameralism at center.**
- it was now a more **representative body**
- Council of state (**Upper house**) was composed of **60 members** of (*whom 34 were elected*) and the Legislative Assembly (**lower house**) was composed of **144 members** (*of whom 104 where elected*) and the rest nominated
- Among the nominated members about 26 where officials
- The powers of both the houses were equal
- the central legislature retained the power to legislate for the whole India relating to any subject

Overriding powers of Governor- General

- 1. prior sanction of GG for introducing bill for certain matters for provincial subject was necessary
- 2. power to veto
- 3. power to certify any Bill and sign it as a permanent law despite opposition
- 4. power to make ordinances in case of emergency
- The structure remained unitary and centralized
- Validity of laws cannot be challenged
- Non-fulfillment of the responsible govt.
- Only G-G can decide whether a particular subject is central or provincial
- Finance was placed towards Executive council and not in charge of Ministers.
- Ministers were unable to implement progressive measure for want of fund
- No collective responsibility of the ministers to the provincial legislation

The Non-Cooperation Movement

- The Non-Cooperation Movement was led under leadership of Mahatma Gandhi from September 1920 to February 1922,
- It was a new awakening in the Indian Independence Movement.
- After a series of events including the Jallianwala Bagh Massacre, Gandhiji realized that there was no prospect of getting any fair treatment at the hands of British,
- so he planned to withdraw the nation's co-operation from the British Government.
- This movement was a great success as it got massive encouragement to millions of Indians. This movement almost shook the British authorities

Simon Commission

- The British Govt declared that a commission would be sent to India after ten years to examine the effects and operations of the constitutional reforms and to suggest more reforms for India
- The Simon Commission was sent to India in 1927 by the British Govt to suggest further reforms in the structure of Indian Government
- In November 1927, the British government appointed **the Simon Commission** to report on India's constitutional progress for introducing constitutional reforms, as promised. It was submitted in 1930
- The Commission was strongly opposed by many in India .
- It was opposed by Nehru, Gandhi, Jinnah, the Muslim League and Indian National Congress because it contained seven members of the British Parliament but no Indians. Indians saw it as a violation to their right of self determination and insult to their self respect.

- The Commission did not include any Indian member and the Government showed no intention of accepting the demand for Swaraj
- The report was considered at a round table conference
- A white paper was prepared as a result of conference
- it sparked a wave of protests all over the country
- the Congress as well as the Muslim League gave a call to boycott it under the leadership of Lala Lajpat Rai.
- The crowds were lathi charged and Lala Lajpat Rai, died of the blows received in an agitation
- The white paper was submitted to the select committee of the parliament
- In accordance with the recommendations the Government of India Bill was introduced and passed with certain amendments

Civil Disobedience Movement

- Mahatma Gandhi led the Civil Disobedience Movement that was launched in the Congress Session of December 1929.
- The aim of this movement was a complete disobedience of the orders of the British Government.
- it was decided that India would celebrate 26th January as Independence Day all over the country, meetings were held and the Congress tricolour was hoisted.
- The British Government tried to repress the movement and resorted to brutal firing, killing hundreds of people.

- Thousands were arrested along with Gandhiji and Jawaharlal Nehru.
- But the movement spread to all the four corners of the country
- Following this, Round Table Conferences were arranged by the British and Gandhiji attended the second Round Table Conference at London. But nothing came out of the conference and the Civil Disobedience Movement was revived.
- During this time, Bhagat Singh, Sukhdev and Rajguru were arrested on the charges of throwing a bomb in the Central Assembly Hall (which is now Lok Sabha) in Delhi, to demonstrate against the autocratic alien rule. They were hanged to death on March 23, 1931.

Government of India Act of 1935

- The Act provided for the establishment of an All-India Federation consisting of the Provinces and the Princely States as units, though the envisaged federation never came into being.
- Federal legislation -----legislation was consists of council of states and Legislative Assembly presenting the Indian states ----5 years
- Upper house – 260 members- 156 represents British India – 6 nominated by G-G rest were elected directly-
- Lower house -375 members, 250 british Indians Provinces and 125 representing the Indian States
- Provincial bills needed the assent of Governor – discretionary powers
- Three Lists : The Act divided the powers between the Centre and the units in items of three lists, namely the Federal List, the Provincial List and the Concurrent List.

- The Federal List for the Centre consisted of 59 items, the Provincial List for the provinces consisted of 54 items and the Concurrent List for both consisted of 36 items
- The residuary powers were vested with the Governor-General.
- Rule of repugnancy- emergency-
- The Act abolished the Dyarchy in the Provinces and introduced 'Provincial Autonomy'.
- It provided for the adoption of Dyarchy at the Centre.--- the executive Authority of the centre was vested in the G-G
- Federal subjects were divided into two categories – reserved-transferred
- The administration of reserved subjects like defence, external affairs, ecclesiastic affairs and tribal areas was to be made by G-G in his discretion
- The transferred subjects were to be administered G-G on the advice of council of ministers. But he could act contrary

- Provincial autonomy- advance of 1919 Act –divided legislative power between centre and province- executive authority of province was also exercised by governor on behalf of Crown not of G-G
- But central govt retained the control over provinces
- Introduced bicameralism in 6 out of 11 Provinces.
- These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Province.
- Provided for the establishment of Federal Court.
- Abolished the Council of India
- **The Federal Court**
- One Chief Justice and six other judges
- 65 retiring age – appointed by the Crown – three kind of jurisdiction- Original – Appellate – advisory – appeal could go to Privy Council from Federal Court -

- The act was criticized by all most all parties of India
- The Act came into force in regard to provinces in April 1937, but the central govt. continued to be governed with 1919 Act with minor amendments
- In 1939 the 2nd world war broke out in Europe.
- The British govt. declared India as belligerent country at war with Germany.
- This was done without consulting Indian Leaders and the Indian Legislation
- Consequently, Congress ministers resigned from office on the issue of participation of india in war

The Cripps Mission

- In the year 1942 the British govt. realized that it was difficult to remain indifferent towards the Indian Problems therefore they sent Sir Stafford Cripps to negotiate with Indian leaders to secure their cooperation for war. Hence proposal was submitted –
- (1) Immediately after the end of the war steps shall be taken to set up in India an **elected body for framing a new Constitution**
- (2) Provision shall be made for **participation of Indian States in the Constitution-making body**.
- (3) The British Govt undertakes **to accept and implement the Constitution** so framed subject only to :
 - (i) **The right of any Province**, which is not accepting the new Constitution, **to retain its present constitutional position**, provision being made for its subsequent accession if it so decides.
- His Majesty's Government will be prepared to agree upon a Constitution giving them the same full status of the Indian Union,
- (ii) The signing of a treaty which shall be negotiated between His Majesty's Government and the Constitution-making body.

- (4) The **Constitution-making body** shall be composed of persons elected by Provincial Legislatures and nominated by the **Indian Princes** unless the leaders of Indian origin of the principal communities agreed upon some other form before the end of hostilities.
(5) His Majesty's Government must bear the **responsibility for and retain the control and direction of defence of India.**
- Indians were **not satisfied** with the above proposals and, therefore, they rejected it. The Indian leaders found in it the **seed of partition** of the country. The main cause for rejection was inadequacy of the proposals and the insistence of Congress on Cabinet Government.
- The Labour Party came into power in England. The Labour Govt was more sympathetic towards India and wanted to solve the Indian problem.
- With this end in view the Cabinet Mission was sent to India.

The Cabinet Mission Plan

The Cabinet Mission came to India on 4th March, 1946. It consisted of three British Cabinet Ministers-Lord Pethic Lawrence, Sir Stafford Cripps and Mr. Alexander. The mission recommended the following proposals :-

- There should be a Union of India embodying both British India and the States and with the exception of certain reserved subjects, all subjects were to be retained by the States.
- The paramountcy of Crown was to lapse.
- For the purpose of framing new constitution a Constituent Assembly was to be elected
- An Interim Government was to be setup having the support of major political parties
- The proposals were accepted and in July 1946nelections to Constituent Assembly took place

Indian Independence Act of 1947

- The Act provided for the creation of two independent Dominions. India and Pakistan from 15th August, 1947
- Each Dominion was to have a Governor General who was appointed by the king
- The constituent Assembly of both the Dominion were empowered to frame laws for their respective territories till new constitution came into force
- After 15th August 1947 the British Govt. was not to control the dominion or the provinces
- Till the new Constitution were framed each of the dominion and provinces were to be governed by the Government of India Act, 1935
- It declared India as an Independent and Sovereign State.
- Established responsible Governments at both the Centre and the Provinces.
- Designated the Viceroy India and the provincial Governors as the Constitutional (normal heads).
- It assigned dual functions (Constituent and Legislative) to the Constituent Assembly and declared this dominion legislature as a sovereign body.

The Framing of New Constitution

- The struggle for independence was thus over by 15th August, 1947. But the attainment of independence was not an end itself. It was only the beginning of a struggle, the struggle to live as an independent nation and, at the same time, establish a democracy based on the ideas of justice, liberty, equality and fraternity.
- The need of a new Constitution forming the basic law of the land for the realisation of these ideas was paramount. Therefore, one of the first tasks undertaken by independent India was framing of a new Constitution.
- As provided in the Cabinet Mission Plan the Constituent Assembly came into being in November, 1946. Its members were elected by the Provincial Assembly by indirect election.
- Out of 296 seats for British India, the Congress captured 211 seats and Muslim League 73 seats. The rest were not filled up.

- It is to be noted that this Constituent Assembly could not be called a sovereign body. It was brought about by the British Government and could be abolished by it. Its authority was limited. It was to work within the framework of the Cabinet Mission Scheme. It could not change the outlines of the Constitution as given in the Cabinet Mission Plan.
- But on the passing of the Indian Independence Act of 1947, the above mentioned limitations were removed.
- It was not to work within the framework of the Cabinet Mission Plan. It was free to frame any Constitution it pleased
- The important members of the Constituent Assembly were Jawaharlal Nehru, Rajendra Prasad, Sardar Patel, Maulana Azad, Gopaldaswami Ayyangar, Govind Ballabh Pant, Abdul Ghaffar Khan, T.T. Krishnamachari, Alladi Krishnaswami Ayyar, H.N. Kunzru, Sir H. S. Gour, K.V. Shah, Masani, Acharya Kripalani, Dr. B.R. Ambedkar, Dr. Radha Krishnan, Dr. Jaykar, Liaquat Ali Khan, Khwaja Nazimuddin, Sir Feroze Khan Noon, Suhrawardy, Sir Zafarullah Khan, Dr. Sachchidananda Sinha.

- The first meeting of the Assembly was held on 9th December, 1946 as the sovereign Constituent Assembly for India
- On December 11, Dr. Rajendra Prasad was elected its permanent Chairman.
- It was held in an atmosphere of uncertainty, because the Muslim League boycotted the Assembly.
- In spite of this, the Assembly made a substantial progress and adopted and 'Objective Resolution' which later became the Preamble of the Constitution.
- It appointed various Committees to deal with different aspects of the Constitution. The report of the Committees formed the basis on which the first draft of the Constitution was prepared.
- On August 29, 1947, a Drafting Committee of 7 members was set up under the Chairmanship of Dr. B.R. Ambedkar.

- The Draft Constitution was published in January, 1948.
- The people of India were given 8 months to discuss the draft and propose amendments.
- As many as 7,635 amendments were proposed and 2,473 were actually discussed.
- The Constituent Assembly held 11 Sessions.
- The Draft Constitution was considered for 114 days.
- In all, the Constituent Assembly sat for 2 years, 11 months and 18 days.
- The new Constitution of India was adopted by the Constituent Assembly on 26th November, 1949 and signed by the President, Dr. Rajendra Prasad.
- Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 372, 380, 388, 391, 392 and 393 came into force at once. The remaining provisions of the Constitution came into force on 26th January, 1950, which is the date of the commencement of this Constitution.

The Preamble to Constitution of India.

The Preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document.

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Purpose of Having a Preamble:

The Preamble to our Constitution serves two purposes: -

- A) It indicates the source from which the Constitution derives its authority;
- B) It contains the enacting clause which brings into force the Constitution
- C) It declares the great rights and freedoms which people of India intended to secure to all citizens and the basic type of Government and polity which was to be established

The Preamble seeks to establish what Mahatma Gandhi described as The India of my Dreams, "...an India in which the poorest shall feel that it is their country in whose making they have an effective voice; ...an India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of unsociability or the curse of Intoxicating drinks and drugs. Woman will enjoy as the same rights as man."

How far useful for interpreting the Constitution

- It is the key to open the mind of makers
- It cannot override the express provisions
- Berubari's Case the Hon'ble Court held-----
 - It is not the part of the Constitution
 - Hence cannot be regarded as a source of substantive powers
 - It has limited application and can be resorted in case of ambiguity in the statute..... Only some assistance can be taken from objectives

Keshwanand Bharti's case rejected the above view and held

- It is the part of the Constitution
- All importance has to be attached to the preamble
- Constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble
- It imposes implied limitations on the amending power of Parliament
- It contains the basic elements which cannot be amended

Objectives enshrined in the Preamble

JUSTICE

- social, economic and political

LIBERTY

- of thought, expression, belief, faith and worship

EQUALITY

Of status and of opportunity;
and to promote among them all

FRATERNITY

- assuring the dignity of the individual and the unity and integrity of the Nation

Fundamental duties

- Introduction: Originally, the constitution of India did not contain any list of fundamental duties. In other words, enjoyment of fundamental rights was not conditional on the performance of fundamental duties.
- Democratic rights are based on the theory that rights are not created by the state. Individuals are born with right. It is on this theory that the Indians before independence raised the slogan that “freedom is our birth right.” It is in this sense again that Prof. Laski asserts that the “state does not create rights, it only recognizes rights.”
- The socialists on the other hand, make enjoyment or rights conditional on the fulfillment of duties. They claim that “he who does not work, neither shall he eat.” The constitution of the world’s first socialist country, that of Soviet Union contains a list of fundamental rights immediately followed by a list of fundamental duties. It is clearly asserted that the enjoyment of fundamental rights is conditional on the satisfactory performance of fundamental duties.
- It was on this Soviet model that fundamental duties were added to the Indian Constitution by 42nd amendment of the constitution in 1976. The fundamental duties are contained in Art. 51A.

List of Fundamental Duties: Art. 51A,

It says “it shall be the duty of every citizen of India:

- to abide by the constitution and respect its ideal and institutions;
- to cherish and follow the noble ideals which inspired our national struggle for freedom;
- to uphold and protect the sovereignty, unity and integrity of India;
- to defend the country and render national service when called upon to do so;
- to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional diversities, to renounce practices derogatory to the dignity of women;
- to value and preserve the rich heritage of our composite culture;

- to protect and improve the natural environment including forests, lakes, rivers, and wild-life and to have compassion for living creatures;
- to develop the scientific temper, humanism and the spirit of inquiry and reform;
- to safeguard public property and to abjure violence;
- to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.

Further, one more Fundamental duty has been added to the Indian Constitution by 86th Amendment of the constitution in 2002.

- who is a parent or guardian , to provide opportunities for education to his child, or as the case may be, ward between the age of six and fourteen years.

Why fundamental duties are important?

- The fundamental duties enumerated in Article 51A constitute a constant reminder to the citizens that they have duties in building up a free, egalitarian, healthy and responsible society. These are expected to act as damper to reckless and anti-social activities on the part of some individuals.
- India is a multi-racial and multi-religious country. Such a vast democratic country like India can prosper only when the citizens of this country respect its integrity and promotes cultural harmony.
- Environmental pollution has become a great cause of concern, not only for Indian, but for the entire humanity. Unless, we all take the pledge to keep our environment free from pollutants, there remains the threat of undesirable consequences.
- The inclusion of providing opportunity for education for children as a Fundamental duty is a big step forward towards safeguard of human-rights and abolition of social injustices

Nature of Fundamental Duties

- Non-enforceable and Non-justifiable: The fundamental duties however are non-enforceable and non-justifiable in character. This means that no citizen can be punished by a court for violation of a fundamental duty. In this respect the fundamental duties are like the directive principles of the constitution in part IV. The directive principles lay down some high ideals to be followed by the state. Similarly, the fundamental duties in Art 51A, lay down some high ideals to be followed by the citizens. In both cases, violation does not invite any punishment. It is significant that the fundamental duties are placed at the end of part IV rather than at the end of part III of the constitution. While part III containing fundamental rights is justifiable, part IV containing the directive principles is not.