

# **TO THE POINT**

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# **NCERT PLUS**

# **INDIAN POLITY**

**Useful for UPSC, State PSCs & Other Competitive Examinations**



**1**

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## UNIT 1

# THE CONSTITUTION

### *What is a Constitution?*

*The Constitution provides a set of basic rules that allow for minimum coordination among the members of a society. It may be defined as a fundamental body of rules and regulations under which the government of the state is organized. It is a set of fundamental principles, basic rules and established precedents.*

*It identifies, defines and regulates various aspects of the State and the structure, powers and functions of the major institutions under the three organs of the Government – the executive, the legislature and the judiciary. It also provides for rights and freedoms of citizens and spells out the relationships between individual citizen and the State and government.*

### *Functions of a Constitution*

- ❑ *It provides a set of basic rules that allow for a minimum level of coordination amongst the members of the society. It is a vital function in societies which are diverse in terms of social groups, religion, caste, class, age etc. A set of enforceable basic rules allows for cooperation amongst various groups.*
- ❑ *It specifies the manner in which the government is to be constituted and the specifications of powers of various organs of the government such as Legislature, Executive and the Judiciary. For example, in India, the Parliament has the power to make laws, and the judiciary has the power to decide disputes between the Union and States.*
- ❑ *It sets limits on the powers of the government. These limits curtail the exercise of arbitrary powers by the government upon the rights and liberties of citizens. These limits are generally in the form of Fundamental Rights given to the citizens. These rights are fundamental in the sense that they should not be violated by the government.*
- ❑ *It provides an enabling framework to fulfill the aspirations of a society and create conditions for the establishment of a just society. For example, the Indian Constitution enables the government to take positive measures for the welfare of the citizens, such as providing free education, affirmative action policies, etc.*
- ❑ *It expresses the fundamental identity of a people. Before the enactment of the Constitution, the people have different identities. By agreeing to certain basic principles in the Constitution, the people create their common political identity.*

*The Constitution also gives a moral identity to a people as it provides a set of values within which a citizen pursues individual goals and aspirations. For example, 'Social Justice' and 'Secularism' are two basic values enshrined in the Constitution.*

## Constitutionalism

The concept of 'constitutionalism' is broader than the concept of a Constitution.

Constitutionalism is a modern concept that is generally defined as a political order which is governed by fair laws and regulations.

It incorporates the supremacy of law and dismissed the supremacy of the individuals. The main principles that constitutionalism entails are limitations on the arbitrary action of the government, guarantee of rights of those who are governed, and demarcation of powers of institutions that exercise sovereign power (a system of checks and balances).

It requires that the conduct of government should be legitimate in addition to being legally correct, i.e. the government should be a responsible and accountable one.

### **Some Characteristics of Constitutionalism**

- ◆ **Popular Sovereignty:** People are the source of power of the government.
- ◆ **Separation of Powers (checks and balances):** Power is not concentrated in only one organ of the state but it is divided among the legislature, executive and judiciary.
- ◆ **Responsible and Accountable Government:** The government acts in the name of the citizens and it is responsible and accountable to the citizens in exercise of its powers.
- ◆ **Rule of Law:** A government run by laws. No one is above the law.
- ◆ **An Independent Judiciary:** Judiciary is independent of any executive and legislative interference and protects the rights of individual.
- ◆ **Respect for Individual Rights:** No discrimination on the basis of caste, race, sex, language, religion, etc.
- ◆ **Respect to Self-determination:** Right of people to determine their political, economic, and social development.
- ◆ **Civilian Control of the Military:** Democratically elected officials governs the military.
- ◆ **Police governed by Law and Judicial Control:** The police should act as the protector of rights of citizens and the powers of Police must be checked by the Judiciary.

## Constitution vs Constitutionalism

The main difference between Constitution and Constitutionalism is that the Constitution is a document serving as supreme law of the land while constitutionalism is principles that sets the limitation to power and authorities of the law making body. The latter is indeed the law that allows people and the government to follow the rules and principles set by the constitution.

- ◆ A constitution, in general, is a document that is written which has the fundamental laws of the nation. A constitution sets the entire framework of how a government structure must be and also vividly discusses the functionality of every element.
- ◆ As such, the principles of society is set from the root level. It gives the exact norms and principles for the government to follow.
- ◆ Constitutionalism, on the other hand, is the governance system by itself that controls and limits the powers of the government. This is the one that sets the freedom and limitations of every individual of the nation.

Parameters of Comparison	Constitution	Constitutionalism
Definition	Fundamental Laws of the Nation	Fundamental Principles to govern a country
Major Emphasis	Constitution emphasizes 'How' the government works.	Constitutionalism emphasizes the Limitation of the government.
Doctrine	Rules and regulations to be followed	Limitations to be adhered to by the government
Format	The constitution is a written document.	It is not necessary to have a document. It is not written too.
Existence	The constitution cannot exist without Constitutionalism.	It can very well survive in a country without any written document in place.

# Constitutional Development

The discourse on the Indian Constitution is set within a historical context in this chapter. It reflects on the major influences that the anti-colonial freedom struggle of India had on Indian democracy. The Constituent Assembly and process of framing of the Constitution has been dealt in detail along with some important facts.

The Indian Constitution is “sui-generis” in its substances and essence. Nonetheless, borrowed from almost every Constitution in the world, our Constitution has numerous relevant features that differentiate it from the rest.

- ❑ The Constitution of India was adopted by the Constituent Assembly on 26th November, 1949, which is framed and given to themselves by the people of India. It came in full operation with effect from 26th January, 1950.
- ❑ Indian Constitution is a “Written” form of Constitution, which is drafted after a prolonged process of discussion by the Constituent Assembly (1946-49).
- ❑ A Written Constitution imparts supremacy on the Constitution itself. Originally, our Constitution had 22 parts, 395 articles and 8 schedules.
- ❑ As of October 2021, there have been 105 Amendments to the Constitution since its adoption in 1950. In its present form, it contains 448 Articles in 25 parts and 12 schedules.
- ❑ The 42nd Amendment Act (1976) is also known as ‘Mini-Constitution’ due its number of changes that were made by it in various parts of our Constitution.

## Historical Background

The present Constitution received its modern shape after the deliberate discussions in the Constituent Assembly after the Independence of India.

- ❑ But the development and evolution of the Constitution and the values of constitutionalism began during the colonial phase itself. In 1858, the powers to govern India were transferred from the British Company to the British Crown. For the governance of India, the British Government introduced various features of the Constitution till 1935.
- ❑ British Laws and Regulations which started from the Regulating Acts slowly developed into a complete framework of rules which came in existence gradually.

### Regulating Act (1773)

- ❑ It was enacted to regulate the affairs of English Company.
- ❑ The main provisions of this Act were -
- ❑ The Governor of Bengal was made the Governor General. The first man to be appointed to this post was Warren Hastings.
- ❑ The Governors of Madras and Bombay were subordinate to him.
- ❑ For the assistance of the Governor General an **executive Council of four members** was created.
- ❑ A **Supreme Court** was set up **at Calcutta**, with a Chief Justice and three assistant judges. However the jurisdiction of Supreme Court was not clearly defined. The Jurisdiction was later defined by an amendment in 1781.

### Pitts India Act (1784)

- ❑ It allowed the Company to manage commercial affairs.
- ❑ For the supervision of civil, military and revenue matters, a **Board of Control** consisting of six members was set up in England.
- ❑ These members consisted of the chancellor of exchequer, a secretary of state and four members of the Privy Council (to be appointed by the Crown).
- ❑ The Company’s territories were called British Possessions for the first time.
- ❑ The members of the Governor-General’s council were increased to four from three.
- ❑ The Governors of Bombay and Madras were completely subordinated to the Governor General.

### The Charter Act of 1793

- ❑ The East India Company was given a new Charter in 1793.
- ❑ The revenue administration was separated from judicial functions of the Company.

## Features of Indian Constitution

The Constitution of India provides basic rules to prevent the state from being tyrannical. It provides peaceful and democratic tools to bring about social transformation; break the shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice. It has been framed in unique circumstances and it exhibits various unique features. This chapter details these features and discusses about the sources from which it has intelligently incorporated these features.

Indian Constitution is “**longest and bulkiest Constitution**” that has been ever given to any nation. Indian Constitution has around 145000 words, 25 parts, 448 articles, 12 schedules, 5 appendices and 105 Amendments. Apart from its proportions, numerous explicit features distinguish our Constitution from other constitutions.

### Salient Features of Indian Constitution

- **Longest Written Constitution:** The Indian Constitution is considered to be the longest written constitution in the world. The framers of the Constitution have borrowed provisions from several sources and several other constitutions of the world. The Indian Constitution contains the detailed list of individual rights as fundamental rights, directive principles of state policy and details of administrative procedures. It contains different provisions for states and centre and their interrelationship.
- **Living Document:** The Indian Constitution is described as ‘a living’ document as it is a unique blend of rigidity and flexibility. It strikes the right balance between certain values, norms and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances.
- **Parliamentary System of Government:** Parliament controls the functioning of the Council of Ministers, and hence it is called the Parliamentary system. In a parliamentary system of government, (i.e.) the executive is responsible to the legislature and remains in power only when it enjoys the confidence of the majority legislators. The President of India, remaining in office for five-year duration, is the nominal, titular or constitutional head, and the executive head. However, the Prime Minister in India is the real executive and head of the Council of Ministers who are collectively responsible to the Lok Sabha.
- **Preamble:** It contains the preface or essence or summary of the Constitution. It can also be called as Successor of Jawaharlal Nehru’s Objectives Resolution.
- **Fundamental Rights:** Fundamental Rights, incorporated in Part III of the Constitution, is composed of inalienable and inviolable rights of the individual against the State. The Constitution also lays down the machinery and mechanism for the enforcement of the Fundamental Rights. Fundamental Rights also acts as ‘Negative Obligations’ for the states as they prohibit the state from doing certain things. However, Fundamental Rights in India can be suspended during emergencies and can be amended by extra ordinary means.
- **Directive Principles:** The Directive Principles of the State Policy are a unique feature incorporated in the Part IV of our Constitution. Most of the Socio-economic rights of the people have been included in it. Even though these are not enforceable in the Courts of Law, these principles are expected to guide the governance of the country. DPSP is also called as ‘Positive Obligations’ of the state which direct the state to include certain principles in governance.
- **Single Citizenship:** Indian Constitution has the provision for single citizenship provided by the union and recognized by all the states across India.
- **Fundamental Duties:** Fundamental duties are provided in part IVA-Article 51A of Indian Constitution. Fundamental Duties were included in the constitution by the 42nd Amendment, 1976 of our Constitution. It lays down a code of eleven duties for all the citizens of India.
- **Independent and Integrated Judiciary:** In India, the judicial system is an autonomous and independent organ kept free from the influence and intervention of the executive and the legislature in exercising its functions. The integrated Indian judicial system has

The term ‘preamble’ refers to the introduction or preface to the Constitution. The values that inspired and guided our freedom struggle are imbibed in our Preamble. This chapter describes the text, essence, significance and elements of ‘Preamble’ to our Constitution vividly.

The Preamble of the Constitution reads like a poem on democracy. It contains the philosophy on which the entire Constitution has been built. It provides a standard to examine and evaluate any law and action of government. It is the soul of the Indian Constitution.

- ❑ The preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose, principles and philosophy of the Constitution.
- ❑ It is inspired by Jawaharlal Nehru’s ‘Objectives Resolution’.
- ❑ It is the spirit of Constitution. It contains the summary or essence of the Constitution.
- ❑ The American Constitution was the first to define the preamble of a Constitution.
- ❑ The Constitution of India has an elaborate preamble unlike Constitution of Australia, the US or Canada, the purpose of the preamble is to clarify for whom the Constitution has been made for, the sanction, the course, nature of polity and goals and objective of the Constitution.
- ❑ Preamble is neither enforceable nor justiciable.

### Text of the Preamble

**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.

- ❑ The 42nd Constitutional Amendment Act of 1976 added the words ‘Socialist’, ‘Secular’ & ‘Unity of the Nation’ was amended to read ‘unity and integrity of

the Nation’ to the Preamble. The 42nd Amendment was also considered as the Mini-Constitutional Amendment.

### Significance of Preamble

- ❑ The Preamble contains the essence of the Constitution - its values and goals. It is a microcosm of the Constitution. **It has the following significance:**
- ❑ It states objectives which the Constitution and polity aims to set up, achieve and promote.
- ❑ The Preamble to the written Constitution promotes and aids the legal interpretation especially in case of ambiguous language.
- ❑ Preamble puts sovereignty in the people of the country.
- ❑ Preamble also indicates the source from which the Constitution’s authority is derived (Rousseu’s social contract theory).

### Points of Contention Related to Preamble

- ❑ There were two major contentions that arose in case of preamble - one, whether Preamble is a part of Constitution or not and second, can amendments be made to preamble. Both these issues were resolved by subsequent Supreme Court judgements.

### Is Preamble a Part of Constitution?

- ❑ The Supreme Court of India in **Berubari Case, 1960** ruled that preamble is not a part of the Constitution.
- ❑ However, later in **Keshavananda Bharti Case, 1973** it reversed its earlier verdict and ruled that Preamble is a part of the Constitution.
- ❑ Also in the **LIC of India v/s Consumer Education Research Centre, 1995**, the Supreme Court held Preamble is an integral part of the Constitution.
- ❑ But, Preamble is neither enforceable nor justiciable in the Court of Law.

### Can Preamble be amended?

- ❑ According to the SC, in the Keshvananda Bharti Case (1973), Preamble can be amended.

## Amendment To The Constitution

A constitution must contain provisions to tackle the current problems facing a society, as well as provide a framework to the future governments to tackle problems that may arise in the future. This is only possible when a constitution has adequate provisions that enable its revision, changes and re-examination according to changes in social, economic and political circumstances.

**Though the Constitution is a sacred document but it is not unalterable.** The Indian Constitution is a living document that can be changed or altered in response to changed circumstances, or to meet the changing needs of the society or even to accommodate new social, economic and political demands. **All the amendments to the Constitution are initiated only in the Parliament and State Legislatures are not allowed to initiate any amendment to the Constitution.**

### A Blend of Rigidity and Flexibility

- ❑ The Constitution makers wanted that the Constitution should be a balance between ‘rigidity’ and ‘flexibility.’
- ❑ **Flexibility:** There are many articles in the Constitution, which mention that these articles can be amended by a simple law of the Parliament. No special procedure for amendment is required in such cases and there is no difference at all between an amendment and an ordinary law. These parts of the Constitution are very flexible.
  - ◆ **Article 2:** Parliament may by law admit into the union ..... new states....
  - ◆ **Article 3:** Parliament may by law... increase the area of any state....
  - ◆ In both these articles, the wording ‘by law’ indicates that these articles can be modified by the Parliament by passing an ordinary law.
- ❑ **Rigidity:** But many of the Articles such as those related to the federal structure of India cannot be amended by a simple majority. These Amendments require a **special majority** by the procedure mentioned under **Article 368**.

### Provisions that can be amended by a Simple Majority

- ❑ There are certain provisions of the Constitution that can be amended like an ordinary law. These amendments

require a Simple Majority of the Parliament, i.e. a majority of total members present and voting at that time in the house.

### The following provisions can be amended by a simple majority –

- ❑ Admission or establishment of new States, formation of new States, and alteration of areas, boundaries or names of existing States.
- ❑ Creation or abolition of Legislative Councils in the States.
- ❑ Certain provisions related to Union Territories such as creation of a Legislature or a Council of Ministers for the Union Territory of Puducherry.
- ❑ Creation of All-India Judicial Service (Article 312).
- ❑ Administration and control of Scheduled Areas and Scheduled Tribes (Fifth Schedule) and administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram (Sixth Schedule).
- ❑ Second Schedule—emoluments, allowances, privileges, etc. of the president, the governors, the Speakers, judges, etc.
- ❑ Citizenship –its acquisition and termination.
- ❑ Privileges of Members of Parliament, salaries and allowances of the Members of Parliament and Quorum in Parliament.
- ❑ Elections to Parliament and state legislatures and delimitation of constituencies.
- ❑ Number of puisne (junior) judges in the Supreme Court.
- ❑ Increasing the jurisdiction of Supreme Court.
- ❑ Provisions related to official language.

These Bills are not deemed as Constitution Amendment Bills. They are outside the scope of Article 368 of the Constitution and, therefore, these are not called by the title ‘Constitution Amendment Bills’.

### Provisions that can be amended by Special Majority (Article 368)

While acting under Article 368, the Parliament exercises its authority under its constituent capacity. It consists of two methods of Amendment of the Constitution that apply to two different sets of provisions of the Constitution. First is by a special majority of the Parliament and second, by a special majority plus ratification of more than half of the states.

#### (I) Amendment by a Special Majority of the Parliament

- ❑ Under the first method an amendment can be made by special majority of the two houses of the Parliament (majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting).
- ❑ The procedure to be followed for such bills is given under Article 368 of the Constitution.
- ❑ These bills are called by the title 'Constitution Amendment Bills'.

**Provisions such as Fundamental Rights and Directive Principles of State Policy can be amended under this procedure.**

#### 'Present and Voting' & Total Membership

- ◆ The expression "present and voting", means members who vote for "ayes" or for "noes."
- ◆ Members who are present in the House and mark "abstention" are not included under "present and voting."
- ◆ The expression "total membership" means the total number of members comprising the House irrespective of whether there are vacancies or absentees.
- ◆ It means that in the first place, those voting in favour of the amendment bill should constitute at least half of the total strength of that House.
- ◆ Secondly, the supporters of the amendment bill must also constitute two-thirds of those who actually take part in voting.

A debate was raised on the matter that persons who mark "abstention" should also be included under the meaning of the expression "present and voting" but it was settled that a person voting "abstention" will not be included under the meaning of "present and voting."

#### (II) Amendment by a Special Majority + Ratification by More than Half of the States

- ❑ For some articles of the Constitution, special majority is not sufficient. When an amendment aims to modify an article related to the federal distribution of powers between the States and the central government, or articles related to representation, it is necessary that

the States must be consulted and that they give their consent.

- ❑ This provision respects the States and gives them participation in the process of amendment.
- ❑ Under this, any amendment can be passed by a Special Majority + ratification by more than half of the states.

An amendment needs to be ratified by the Legislatures of not less than one-half of the States, if such amendment seeks to make any change in:

- ❑ The election of **The President** (Article 54, 55).
- ❑ The extent of Executive Powers of the Union (Article 73).
- ❑ The extent of Executive Powers of the State (Article 162).
- ❑ Distribution of Legislative powers between Union and States, i.e. any list in the Seventh Schedule.
- ❑ Provisions affecting powers of **Supreme Court and High Courts**.
- ❑ Provisions of **Goods and Services Tax Council** (Article 279 A).
- ❑ Provisions related to Representation of States in the Parliament.
- ❑ The very procedure of Amendment laid down in **Article 368**.

#### Special Procedure in Constitutional Amendment Bills

- ❑ Whenever a motion has to be carried by a special majority, voting is always by a division vote.
- ❑ The Speaker, while announcing the result of the voting, makes a special mention of the fact that motion has been carried by the special majority.
- ❑ **In case of any disagreement between the two Houses of Parliament on a Constitution Amendment Bill, there cannot be a joint sitting of the Houses of Parliament on the Bill as Article 368 of the Constitution requires each House to pass the Bill by the prescribed special majority.**
- ❑ Constitution Amendment Bills passed by Parliament by the prescribed special majority are presented to the President under Article 368 of the Constitution under which the President is bound to give assent to such Bills. He cannot refuse such assent. This provision was added by 24<sup>th</sup> Amendment Act.

### Basic Structure of the Constitution

The Parliament has the power to amend the constitution under Article 368. But it does not put any specific limitations on this power, which may lead to a situation that the Parliament may make laws which excessively intrude into the rights of citizens.

## UNIT 2

# RIGHTS & DUTIES

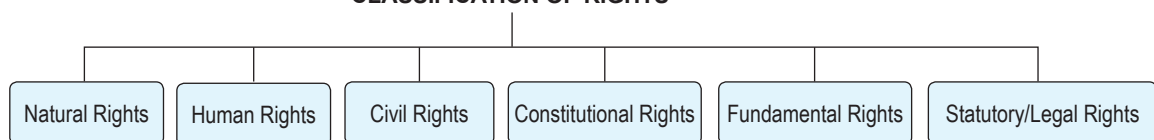
*Rights and Duties are correlative with each other. They cannot be totally separated from one another. In a democratic country like India, there are rights that are guaranteed to every citizen. Similarly there are certain duties that must be performed by democratic citizens.*

### Rights

*The concept of Rights emerged with the concept of Citizenship in ancient Greek Civilisation. But citizenship and granting of rights at that time was not universal, it was limited to a few people.*

- ♦ *Rights are those conditions which are necessary for the development of an individual personality.*
  - ♦ *They are legal claims that a citizen or any other individual is granted by a constitution or any statute. Rights protect against arbitrary state action.*
  - ♦ *Rights promote individual development and also promote social justice in the modern times.*
- *Documents asserting individual Rights, such the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) are the written precursors to many of today's Rights documents.*

#### CLASSIFICATION OF RIGHTS



### **Natural Rights**

- *In 17<sup>th</sup> century, it was argued that rights are given to us by nature or God, which means that these rights were not conferred by a King or a Ruler, rather humans were born with them. It was believed that the origin of Human Rights is divine in origin. Later this view changed and the theory of 'divine origin' was discarded.*
- *Natural Rights are those rights that are enjoyed by Man in the 'state of nature' i.e. before the formation of Civil Society and State.*

- ❑ *Another view is that Human Rights are those rights that come from the Moral Character of Man itself. They are not dependent upon laws and customs of any particular culture or government.*
- ❑ *They do not differ from person to person and country to country. They are possessed by all human beings regardless of colour, sex, caste, religion, etc.*
- ❑ *The basis of natural rights is considered as the “Natural Wants” which includes the need of Safety and Happiness.*
- ❑ *They are universal and inalienable rights and cannot be taken away from the Individual. For example, these rights include the right to life, liberty, security and property.*
- ❑ *All other rights are said to be derived from these basic rights.*

### **Human Rights**

- ❑ *In the contemporary period, the term Human Rights is used more often than Natural Rights. This is due to the fact that in the modern period, Rights are seen as guarantees that all Human Beings should have in order to lead a good life.*
- ❑ *Human rights are those rights that an individual has simply because He or She is a Human being. Human rights are held by all persons equally, universally, and forever. For example, these rights include Right to Life and Liberty, freedom of expression, right to work and education, etc.*
- ❑ *Human Rights are conferred upon persons by the virtue that each and every individual possesses and intrinsic value and all persons are born equal.*
- ❑ *Human Rights are-:*
  - ♦ **Inalienable:** *They cannot be taken away from a Human being.*
  - ♦ **Indivisible:** *They cannot be denied on the pretext that they are less important or non-essential.*
  - ♦ **Interdependent:** *All human rights are part of a comprehensive framework. One right cannot be separated from the other.*

### **Civil Rights**

- ❑ *These are rights that a citizen of a country enjoys and are conferred by ordinary law or the constitution of the country. Civil rights may differ from country to country.*
  - ♦ *For example, these rights include Right to vote, right to life, right to liberty and security, right to be informed of one’s arrest, right to move freely, prohibition of discrimination on the basis of race, caste, sex, etc.*

### **Constitutional Rights**

- ❑ *These rights are mentioned in the constitution. Some of these are fundamental in nature. They may enable the state to take positive steps to ensure welfare and wellbeing of citizens or may restrain the power of state from taking actions that are prejudicial to interests of citizens.*
  - ♦ *For example, Rights given by Constitution of USA include Freedom of Speech, Freedom of Press, Right to bear arms, Protection against unreasonable search and seizure, Protection against excessive fines, etc.*
- ❑ *Rights given by Constitution of South Africa include Right to free movement, right to reside anywhere in the Republic, Freedom of trade, etc.*
- ❑ *Rights given by French Constitution include Right to Liberty, Equality, Security and property, the protection from illegal trial, protection from retrospective state action, etc.*
- ❑ *They can only be taken away by the state by amending the Constitution.*

### **Statutory/Legal Rights**

- ❑ *These rights are those rights that are bestowed upon a person by a given legal system. It may or may not be a part of the Constitution.*
- ❑ *Statutory rights are granted by the state by enacting a particular legislation. These rights can be taken away by the state amending the respective legislation. For example, Rights of consumers under Consumer Protection Act, Right to insurance of one’s deposits in Banks (under DICGC Act), Rights of Persons with Disabilities (Under Persons with Disabilities Act), etc.*

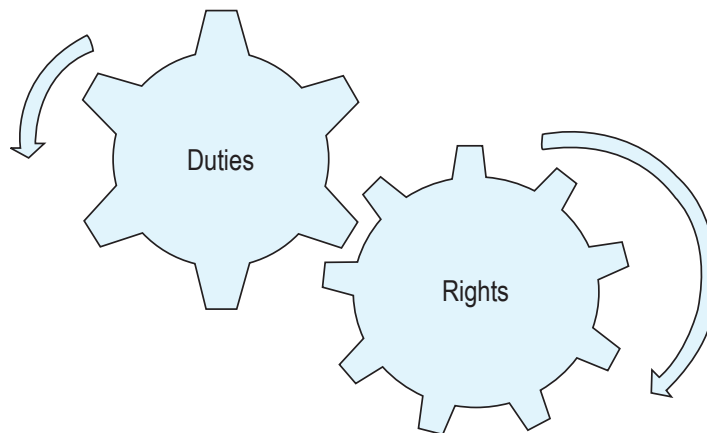
### **Fundamental Rights**

- ❑ *They are a branch of Civil rights and they stand on a higher pedestal than other rights.*
- ❑ *It means that Fundamental Rights are given more importance and protection than other ordinary rights. For example, Right to Freedom of Speech has been granted a much higher protection as compared to Right to vote. In India, for the violation of Fundamental Right to Freedom of Speech and expression, an individual can directly move to the Supreme Court for its enforcement.*
- ❑ *In India, Fundamental Rights are mentioned in the constitution and are protected by the Supreme Court of India.*

### **Duties**

*The rights and duties are correlative with each other.*

- ❑ *Rights have real meaning only if individuals perform their duties.*
- ❑ *A duty is an act that someone is expected or required to do.*
- ❑ *A democracy performs smooth if rights and duties go hand in hand and become complementary to each other.*
- ❑ *Duties accompany rights in the form of obligations.*



The Constitution is a document that sets limits on the powers of the government and ensures a democratic system in which all persons enjoy certain rights. This chapter deals with Fundamental Rights which are considered as Bedrock of Political Democracy and helps to ensure that individual liberties and democracy flourish.

## History of Demands

- ❑ The Commonwealth of India Bill, 1925 demanded seven Fundamental Rights for Indians.
- ❑ The Bill was followed by the visit of Simon Commission, which had rejected the idea of enacting a declaration of Fundamental Rights.
- ❑ The Nehru Committee was setup in 1928 and it proposed drafting of a “Swaraj Constitution for India.” A declaration of Rights was to form the basis of the draft Constitution. It proposed various Rights such as equal rights for women, right to form unions, universal adult suffrage and protection of minorities, etc.
- ❑ A resolution of Fundamental Rights was passed in 1931 in the Karachi Session of Congress, chaired by Sardar Vallabhbhai Patel.
- ❑ After independence, Fundamental Rights were incorporated into the Indian Constitution with the inspirations from sources such as England’s Bill of Rights, the United States Bill of Rights and France’s Declaration of the Rights of Man.
- ❑ These Rights constitute limitations upon both executive action as well as legislative enactments. It means that executive as well as legislative enactments can be declared unconstitutional by the judiciary if they violate any of the Fundamental Rights or put unreasonable restrictions.
- ❑ They are not sacrosanct in nature and the Constitution mentions certain reasonable restrictions which limits the exercise of these rights by the individual.
- ❑ The section on Fundamental Rights can be amended through a Constitutional Amendment. Any such amendment shall not violate the Basic Structure of the Constitution.
- ❑ Some of the Fundamental Rights are granted only to the Citizens of India while others are granted to any person living in the territory of India.
- ❑ Some Rights are available against State action while others are also available against private individuals. Rights against state action means that they place an obligation upon the state to act in a certain manner.
- ❑ On the other hand, certain Fundamental Rights also enable the state to take actions to provide for welfare of the people. For example, Article 16

## General Features

Fundamental Rights are considered as Bedrock of Political Democracy which are essential for an individual to attain full physical, intellectual, moral and spiritual development. These fundamental rights substantially cover all the traditional civil and political rights enumerated in Articles 2 to 21 of the Universal Declaration of Human Rights.

- ❑ The Constitution of India is the source of Fundamental Rights.
- ❑ Fundamental Rights are included in Part III of the Constitution under Article 12-35.
- ❑ The word ‘Fundamental’ suggests that these Rights are important and the Constitution has separately listed them and made special provisions for their protection.
- ❑ These Rights are protected and guaranteed by the Constitution.

## List of Fundamental Rights

**Originally, our Constitution had guaranteed seven Fundamental Rights, namely-**

### 1. Right to Equality (Articles 14-18)

- a) Equality before law and equal protection of laws
- b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- c) Equality of opportunity in public employment
- d) Abolition of untouchability
- e) Abolition of titles

### 2. Right to Freedom (Articles 19-22)

- a) All citizens shall have the right:
  - i. to freedom of speech and expression;
  - ii. to assemble peaceably and without arms;

## Directive Principles of State Policy

The makers of our Constitution knew that independent India was going to face challenges such as to bring about equality and well-being of all citizens. They also thought that certain policy direction was required for handling these problems. This chapter vividly describes such policies which will impose positive obligations on the State and give directions to promote social welfare.

The Part IV (Article 36-51) of our Constitution contains the Directive Principles of State Policy.

- ❑ The Directive Principles of State Policy refer to guidelines for the government to constitute a comprehensive economic, social and political programme to build a modern state promoting social and economic democracy.
- ❑ They embody the concept of a “welfare state”.
- ❑ This idea has been **borrowed from the Irish Constitution of 1937**, which had copied it from the Spanish Constitution.
- ❑ Inspired by the Irish Constitution and the concept of a welfare state, the Constituent Assembly decided to incorporate a separate chapter which include detailed and exhaustive list of Directive Principles.
- ❑ It also resembles the “Instrument of Instruction” enumerated in the “Government of India Act of 1935”.
- ❑ Through these Principles the Constitution seeks to achieve the ideal of a democratic welfare State set out in the Preamble and to bring about the social and economic revolution dreamt by the founding father of our republic.
- ❑ Dr. B.R. Ambedkar described these principles as **novel features of the Constitution**.
- ❑ **Granville Austin** has described the Directive Principles and the Fundamental Rights as the ‘**Conscience of the Constitution**’.

### Welfare State

Welfare state is a concept of government in which the state plays a key role in the protection and promotion of economic and social well-being of its citizens. Welfare essentially involves protecting the weak from strong.

The main idea of welfare state is that the government of welfare state plays a vital role in human development. The role of the welfare state extends to the protection and promotion of the well-being of its citizens. The economic and social well-being of the citizens is based on:

- ❑ The principle of equality of opportunity;
- ❑ Equitable distribution of wealth; and
- ❑ Public responsibility for those who cannot afford themselves the minimal provisions for leading a good life.

### Features

- ❑ A welfare state is based on the principles of equality of opportunity and equitable distribution of wealth.
- ❑ It also focuses on the governmental responsibility for those who are unable to avail themselves of the minimal provisions of a good life.
- ❑ Under this system, the welfare of its citizens is the responsibility of the state.

### The Concept of Welfare State in India

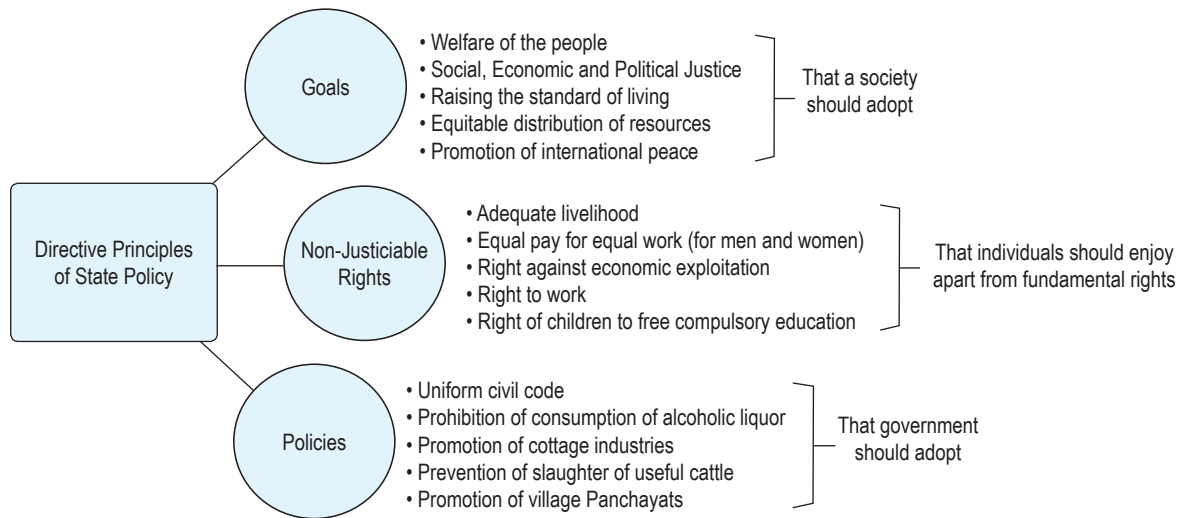
- ❑ **Ancient Times:** The welfare concept is not new to India. Welfare activity has existed in India since ancient times. In the Indian context the earliest conception of the social welfare was ‘Dana’ and the philosophy underlying it was known as ‘Dana’, ‘Dharma’ or ‘Dhamma’. Dana, literally meant sharing and ‘dharma’ had a variety of meanings ranging from duty or obligation to charity or equity. The divine form of welfare is known as ‘Rama Rajya.’
- ❑ **Medieval Period:** Mauryas and Guptas are evidence of the same. In medieval times, welfare activity existed in India in some form or the other - in some crude form during the rule of Khiljis, Tughlaqs, and earlier during Chalukyas, Cholas, etc. The rulers like Ashoka, Mohammad bin Tughlaq, Firoz Shah Tughalq, etc. planted trees on the roadsides to provide shade for the travellers, dug wells to provide water, provided money for the marriage of girls belonging to poor families, built educational institutions, provided agricultural loans, distributed grains during famines, etc. During the Mughal period, the state gave charity known as ‘Khairat’ (meaning giving alms). The goal of social welfare in this age was described as ‘Lok Sangraha’

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‘Loka Sreya’ or ‘Sarvodaya’ in Indian history.

- ❑ **British Period:** However, the welfare activities were dependent on the whims of the ruler and not on rights of people. With the advent of British, the concept of welfare state was subsumed and colonial interests were given preference. The British Government was only concerned with the collection of revenues and neglecting essential duties of Government. Welfare measures were taken but in their interest to improve trade and strengthen their power.
- ❑ **After Independence:** After attaining independence from clutches of colonial rule, India transformed into a welfare state whereby the basic objective is

protection, rehabilitation and upliftment of the weak. Accordingly, the Constitution has extensive provisions to ensure social and economic welfare of the people of India. This concept got crystallized in the form of Fundamental Rights and Directive Principles of State Policy. The Fundamental Rights enshrined in Part III of the Indian Constitution act as a guarantee that all Indian citizens can and will enjoy civil liberties and basic right. However this was insufficient. Indian citizens also needed opportunities for economic and social development. Thus, Part IV on Directive Principles of State Policy was included in the Indian Constitution.



### Features

- ❑ DPSP aims at creating a new socio-economic order to provide a firm foundation to political democracy in India.
- ❑ The Directive Principles aims at building a true welfare state and removing economic exploitation and inequalities
- ❑ These are Constitutional instruction to the state in legislative, executive and administrative matters.
- ❑ The DPSPs are also considered as the Positive obligation of the State which the State has to follow to promote welfare of the community and secure a just social order.
- ❑ They are sectarian/personal/ individualistic in nature.
- ❑ Various court rulings suggest that the Directive Principles don't provide any form of legal rights for the violation of which any individual cannot seek a remedy nor do they are bestowed with any power by the legislature.
- ❑ No law could be declared ultra vires on the ground of inconsistency with these principles.

- ❑ These mandate were made not 'enforceable by the courts' and were deliberately left to the legislature as their implementation depend on several imponderable factors, such as the availability of requisite resources, the readiness of society to accept the socio-economic change envisaged etc.
  - ◆ The non-justiciability clause in Article 37 sought only to make it clear that the judiciary could not compel the State to perform a duty under the Directives.
  - ◆ The moral force behind DPSP ensures that the government takes them seriously.
  - ◆ The people would also hold the governments responsible for implementing these directives.
- ❑ They are an elaboration of values enshrined in Preamble:
  - ◆ The socialistic ideology is enshrined in the principle of DPSP in our Constitution.
  - ◆ The secularism is found existential in the Article 44 where the goal of Uniform Civil Code is mentioned.

# Fundamental Duties

The chapter deals with Fundamental Duties as enshrined in our Constitution. It must be noted that our Constitution does not make the enjoyment of Rights dependent or conditional upon fulfillment of Duties. Thus, the inclusion of Fundamental Duties has not changed the status of our Fundamental Rights.

The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of nationalism and to uphold the unity of India. These duties set out in Part IV–A of the Constitution are concerned with individuals and the nation.

**The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR.**

These duties were drafted on the lines of moral, ethical, and cultural code of conduct which is to be followed by the people to uphold and protect the sovereignty, unity, and integrity of our country. Though the rights and duties of the citizens are correlative and inseparable, the original constitution contained only the Fundamental rights and not the Fundamental duties. While the Fundamental Rights provisions covered the rights of the individual and the Directive Principles the duties of the State, there were until 1976 no provisions in our Constitution laying down the duties of the individual.

**Although there were until 1976 no provisions in our Constitution laying down duties of the individual, the Constitution had some Articles under Fundamental Rights which were related to Fundamental Duties:**

- ❑ Fundamental Rights granted by Articles 17, 18 and 23 seek to abolish untouchability and titles and prohibit traffic in human beings and forced labor or beggar. These specifically obligate the citizens not to practice untouchability, not to accept or use titles and not to indulge in traffic in human beings or in taking beggar.
- ❑ Similarly, Article 15(a) demands citizens not to discriminate between fellow citizens on ground of religion, race, caste, sex or place of birth.
- ❑ In fact, each of the Fundamental Rights of individual citizens and others embodied in Part III of the Constitution implies a corresponding duty and obligation.

## Constitutional Provision- Article 51 A

The Fundamental Duties are enshrined in Indian Constitution in Part-IV A under Article- 51 A. These were incorporated by The Constitution (42nd Amendment) Act, 1976.

- ❑ Article 51(A) describes 11 fundamental duties — ‘a-j’ were added with the 42nd Amendment, 1976 with effect from 3 January 1977 and ‘k’ was added by the 86th Amendment in 2002 with effect from 1 April 2010. According to it, it shall be the duty of every citizen of India—

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom
- (c) to uphold and protect the sovereignty, unity and integrity of India
- (d) to defend the country and render national service when called upon to do so
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women
- (f) to value and preserve the rich heritage of our composite culture
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform
- (i) to safeguard public property and to abjure violence
- (j) 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
- (k) 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

## Features of Fundamental Duties

- ❑ The Fundamental Duties enshrined in Article 51A are in consonance with Article 29(1) of the Universal Declaration of Human Rights which says: “Everyone

## Special Provisions Relating to SCs, STs & OBCs

Some sections of the Indian society are most deprived. Their historical suffering is very old and they have suffered from social, economic, political and cultural deprivations. The Constitution has made various special provisions for the certain castes, classes or a group of castes or classes. These classes include the Scheduled Castes, Scheduled Tribes, and Other Backward Classes.

### Reservation of Seats for SCs & STs

As we know, India follows First-Past-the-Post Election system, where the candidate securing the highest number of votes in a particular constituency is declared elected. Often this works against the smaller social groups.

The Constitution has made provisions related to reservations for socially disadvantaged sections to ensure fair and just representation to the oppressed social groups.

Before Independence, there existed a system of Separate Electorates. In this system, for electing a representative from a particular community, only those voters are eligible to vote who belong to that particular community. After independence, India adopted the system of reserved constituencies. In this system, all voters in a constituency are eligible to vote for a reserved candidate.

### **Reservation of Seats for Scheduled Castes and Scheduled Tribes in Lok Sabha and State Assemblies**

- ❑ Seats are reserved for Schedule Castes and Schedule Tribes in the Lok Sabha in proportion to their population in the State/UT. The population figures of census (2001) are taken to provide reservation to these communities.
- ❑ These provisions were made initially for a period of 10 years but from time to time, it has been extended as a result of successive constitutional amendments. By the 104<sup>th</sup> Amendment Act, 2019, the following provisions have been extended up to 2030. The decision as to what constituencies shall be reserved will be taken by the Delimitation Commission.

### **Claims of Scheduled Castes and Scheduled Tribes to Services and Posts**

- ❑ The claims of the members of the Scheduled Castes and the Scheduled Tribes are taken into consideration in the making of appointments to Government services.
- ❑ The Government has made provisions in favour of SCs and STs by giving relaxation in qualifying

marks in an examination, or lowering the standards of evaluation, and even in providing reservation in matters of promotions.

### Scheduled Castes, Scheduled Tribes & Other Backward Classes

#### **Scheduled Castes**

The term 'Scheduled Caste' was coined by Simon Commission in 1927. The expressions 'Depressed Classes', 'Exterior Castes' and 'untouchables' were commonly used for the scheduled castes during the colonial period. Gandhiji called them 'Harijans', (the people of God).

- ❑ Since the passage of the Government of India Act of 1935 they have been generally referred to as 'scheduled castes'.
- ❑ For the purpose of the Constitution, Scheduled Castes are those castes/communities as are deemed under Article 341.
- ❑ The Indian Constitution has granted powers to the President to identify the Schedule Castes.

#### **How are Scheduled Castes identified?**

- ❑ Schedule Castes are identified by the President of India with respect to a UT and in a state after consultation with the Governor of the State.
- ❑ There is only one central list of SCs which can only be modified by a law of Parliament. It means that only the Parliament can include or exclude a Schedule Caste community from the list of STs and the State/UT Government can only recommend the inclusion or exclusion.
- ❑ The recommendation is sent to the Registrar General of India, and if he does not support such recommendation, he may send back the recommendation to the state government. If the Registrar General agrees, then it is sent to the National Commission of SCs which should also agree to the proposal.

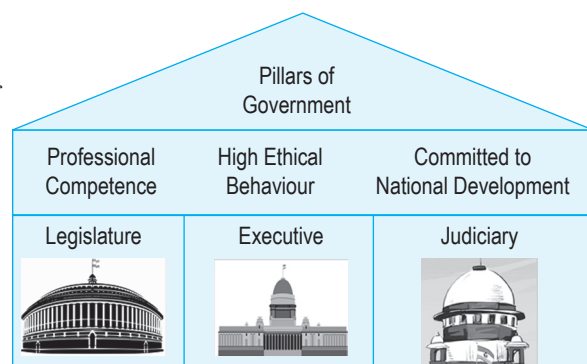
## UNIT 3

# PILLARS OF GOVERNMENT

*The governance structure of India stands on three pillars - Legislature, Executive, and Judiciary - with each having its own powers derived from the Constitution of India. The strength of each pillar and the way they complement each other determines the efficiency and effectiveness of governance of a country. Together, they perform the functions of the government, maintain law and order and look after the welfare of the people.*

*Legislature is the law making authority, executive has the role to implement the laws and judiciary ensures that the laws of the land are implemented in letter and spirit and a sense of justice and fair play prevails in society. In a parliamentary system, executive and the legislature are interdependent: the legislature controls the executive, and, in turn, is controlled by the executive.*

*The Constitution ensures that they work in coordination with each other and maintain a balance among themselves. Rather than strictly emphasizing on the doctrine of separation of powers, the Indian Constitution has sufficiently differentiated functions of different organs of the Government so that none of the organs can exercise unlimited power. Each organ checks the others, resulting in balance of power. This system of checks and balance ensures effective horizontal distribution of power.*



### Doctrine of Separation of Powers

- ♦ The doctrine of Separation of Powers describes the relations among the three organs of the Government namely legislature, executive and judiciary.
- ♦ The origin of this principle goes back to the period of Plato and Aristotle. It was Aristotle who for the first time classified the functions of the Government into three categories viz., deliberative, magisterial and judicial.
- ♦ The French Jurist Montesquieu in his book *L. Esprit Des Lois (Spirit of Laws)* published in 1748, for the first time articulated the principle of separation of powers. According to this principle, one person or body of persons should not exercise all the three powers of the Government viz. legislative, executive and judiciary i.e. each organ should restrict itself to its own sphere and restrain from transgressing the province of the other.

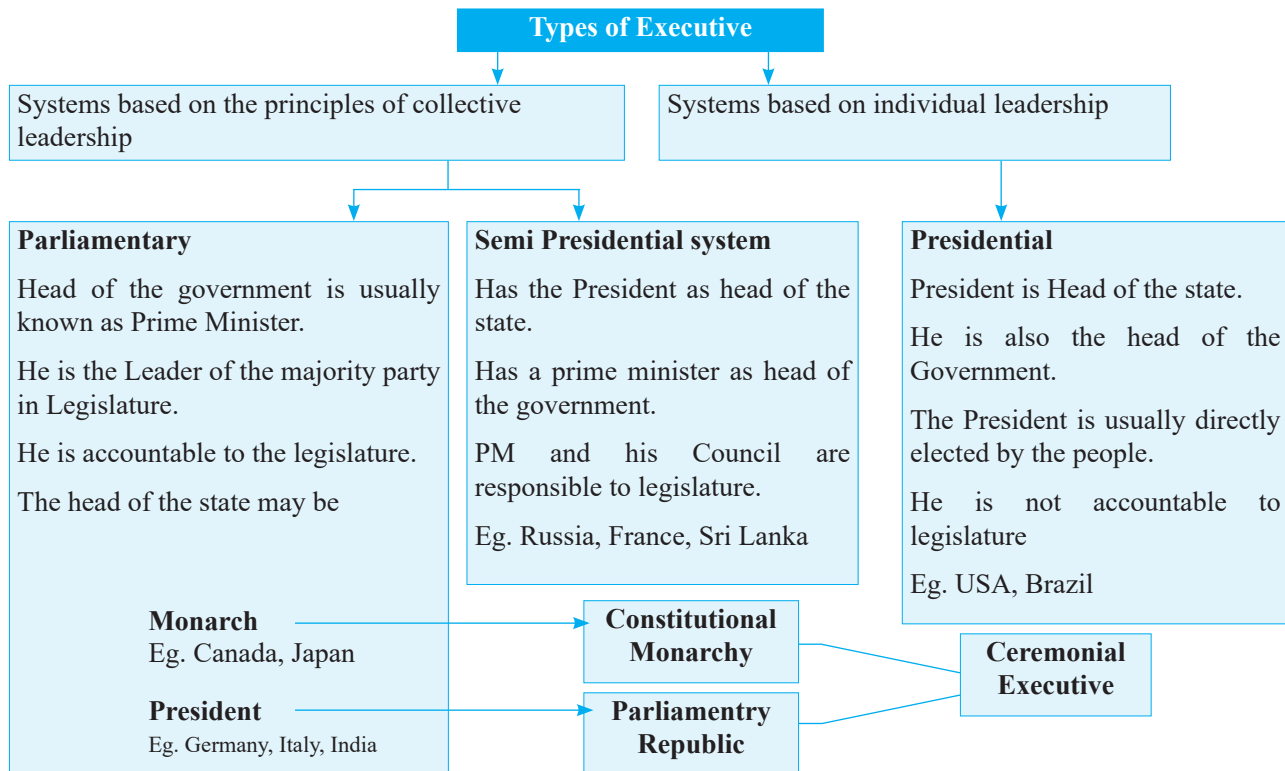
# The Executive

The executive is one of the organs of the Government. It takes policy decisions and decides about the execution of laws, rules and regulations. This chapter deals with the role of executive and details composition of Union and State executive.

The organ of government that primarily looks after the function of implementation and administration is called the executive. It is the branch of government responsible for the implementation of laws and policies adopted by the legislature. The executive is often involved in framing of policy.

EXECUTIVE	
<p><b>Political Executive</b></p> <p>The heads of government and their ministers, with the overall responsibility of government policy, are together known as the political executive</p>	<p><b>Permanent Executive</b></p> <p>The machinery that is responsible for day to day administration are called the permanent executive.</p>

## Types of Executive



□ The makers of the Indian Constitution wanted to ensure that the government would be sensitive to public expectations and would be responsible and accountable. The makers of the Indian Constitution wanted a government that would have a strong executive branch, but at the same time, enough safeguards

should be there to check against the personality cult. As the presidential executive puts much emphasis on the president as the chief executive and as source of all executive power, there is always the danger of personality cult in presidential executive. On the other hand in Parliamentary system, the role of president or