

# CONSTITUTIONAL LAW OF INDIA

## KEY FEATURES

- ✍ Structured and In-depth Coverage of Various Topics
- ✍ Bulletized Presentation of Content
- ✍ Special Emphasis on Bare Provisions
- ✍ Inclusion of Leading Case Laws



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# Chapter 2

## NATURE OF THE INDIAN CONSTITUTION



### INTRODUCTION

The nature of the Indian Constitution is multifaceted, embodying a unique blend of democratic principles, federalism, secularism, and social justice. It reflects the aspirations, values, and collective wisdom of the Indian people, while also drawing inspiration from various sources, including the constitutions of other nations and historical struggles for independence and social reform. In essence, the nature of the Indian Constitution is characterized by its adaptability, resilience, and commitment to fostering a just, inclusive, and progressive society.

### PRINCIPLES OF UNITARY AND FEDERAL GOVERNANCE

On the basis of division of power between the central and regional/ local authorities, political systems can be classified as unitary and federal systems of governance.

#### Unitary System

- ❑ It is the form of state governance where the powers of state are vested in a centralized authority which may or may not devolve power to the regional/provincial level.
- ❑ A unitary state has the following key features:
  - **Centralisation of Power:** In the unitary system, all powers- legislative, executive and judicial are vested in a central authority.
  - **Form of Government:** The central authority may be a republic or a monarchy.

#### ○ Separation of Power

- ◆ There may be separation of power between the three organs of the government at the central level.
- ◆ However, there is no division of power between the centre and the geographical/ regional/ local sub-units which are often called provinces.
- ◆ But the aforesaid non-sharing of power doesn't imply that the sub-units do not have any power. Rather, the central government can 'devolve' certain power to the lower levels if it finds it difficult to administer the entire state by itself.

#### ○ Non-permanent Power of the Provinces

- ◆ The power devolved by the center to the sub-units at the local or regional level is not permanent and can be revoked by the centre whenever deemed appropriate by it.
- ◆ In other words, the sub-units do not derive their powers from the constitution but from the legislative enactments of the centre.

#### ○ Amendability of the Constitution

- ◆ Since the sovereign power is undivided in the unitary system, the constitution in a unitary system is not rigid in nature.
- ◆ The power to amend the constitution is vested with the central authority (sometimes with the people).

- ♦ The United Kingdom, France, Scotland etc., are some of the examples of unitary systems of governance.

## Federal System of Governance

- It is the system of governance in which there is sharing of power between the centre and the provinces. A federal state has the following key features:
- **Division of Power**
  - In a federation, power is divided between a central authority and various constituent units of the country. Generally, a federation has two levels of government.
    - ♦ First is the central/federal government which is formed for the entire country and is responsible for subjects of common national interest.
    - ♦ Second are Provincial/State Governments which are formed to regulate the territorial administration of respective provinces.
  - This division and sharing of power between the central and the state governments is the core feature of federalism and is achieved by:
    - ♦ Either by specifying the subjects on which the federal government has exclusive jurisdiction and the keeping the residuary powers with the states (e.g. in the United States), or
    - ♦ By specifying the subjects allotted to both the centre & states and giving the residuary powers to the centre (e.g. in India, Canada and Belgium).
- **Written Constitution**
  - Generally, a federal system envisages a written Constitution to give effect to this division of power and to specify the areas over which the centre and states have their respective jurisdiction.
  - Both the centre and the states derive their powers from the constitution. Also, in a

federal set up, the constitution is supreme and powers of the center and the states are subordinate to the constitution.

- **Rigid Constitution:** Given the supremacy of the constitution, a federation provides for a rigid constitution which cannot be altered unilaterally either by the centre or by the states.
- **Independent Judiciary:** The supremacy of the constitution makes it necessary that there should be an independent and impartial judiciary in order to interpret the constitution and to decide whether the governments are operating within their respective constitutional domains.

## Difference between Unitary and Federal forms of Government

- **Sources of Power**
  - In a unitary system, the central government is the primary authority of power which may devolve power to the constituent units in cases of need. Therefore, in a unitary system, the central government and not the Constitution is the source of power for local/ regional units.
  - In a federal system, the constituent units enjoy well defined powers of their own, which is not delegated to them by the central government but is inherent to them by virtue of a constitution. Therefore, in a federation, the Constitution is the source of the power for the constituent units.
- **Nature of Power**
  - In a unitary system, the power devolved to the local/ regional units is temporary in nature and can be revoked by the central authority without the consent of such units.
  - In a federal system, the constituent units enjoy inherent and permanent powers which are guaranteed by the Constitution and cannot be taken away/ altered by the federal government on its whims and fancies.

- **Autonomy**
  - In a unitary system, the regional/local units have limited functional autonomy.
  - However, in a federal system, the constituent units enjoy greater functional autonomy and represent the ideas of "self rule" & "power sharing".
- **Efficiency of Administration vis-a-vis Diversity**
  - In a unitary system, a territory is demarcated into smaller units primarily for the purpose of effective administration of State.
  - However, a federal system focuses more on diversity and pluralism when units are divided or come together for the purpose of governance.

## Indian Polity Whether Federal or Unitary

- The Indian Constitution incorporates elements of both unitary and federal governance, although it predominantly leans towards federalism.
- **Article 1** of the Constitution of India provides that "India, that is Bharat shall be a Union of States." In fact the word "Federation" has nowhere been used in the Constitution.
- Moreover, the phrase "Union of States" implies that "Indian federation is not the result of an agreement between the center and the states and that no state has right to secede from the federation.
- This essentially shows that the Indian Constitution is a unique blend of federal and unitary features.

## Federal Features of Indian Constitution

- **Division of Powers**
  - The **Seventh Schedule** of the Constitution delineates the subjects on which each level of government can legislate.
  - The Union government can legislate on the **Union List** which includes subjects of national importance such as defense, foreign affairs, and currency, while the state government can legislate on the **State List** that contains subjects of local or regional significance like health, and police.
  - Both the Union and State Governments can make laws on the subjects enumerated in the **concurrent list** that contains subjects such as Marriage, Succession, Trade Union, Education, Forest etc. However, the Central law prevails in case of a conflict between the Central and state law.
- **Written and Rigid Constitution**
  - In India, we have a written Constitution, which is the supreme law of the land. Both the Central and State governments derive their powers from it.
  - The process of amendments to the Constitution is very rigid as compared to ordinary laws.
  - Furthermore, Amendments pertaining to those parts of the Constitution, which define the relationship between the Union and States are required to be passed by a two-third majority of the members present and voting in the Parliament and be ratified by half of the states of the Indian Union.
- **Independent and Impartial Judiciary**
  - The Supreme Court of India acts as the independent and impartial interpreter of the Constitution and the apex arbiter of disputes between two or more states under its original jurisdiction under **Article 131** of the Constitution.
  - Any law or order which contravenes any provision of the Constitution can be declared null and void by the Supreme Court under **Article 32** and High Court under **Article 226** of the Constitution.
- **Bicameralism**
  - The Indian Indian Parliament is bicameral. It has two houses, i.e., the lower house- the house of people or the Lok Sabha and the upper house- the council of states or the Rajya Sabha.

- The Lok Sabha has representatives elected directly by the people and the Rajya Sabha consists of representatives elected indirectly i.e., by the members of state legislatures and the members nominated by the President.
- The Rajya Sabha is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

### **Unitary Features of Indian Constitution**

- Despite the aforesaid federal features, the Indian Constitution also has an unmistakable unitary tendency.
- Following features of the Indian Constitution illustrate its unitary character:
  - **Absence of the word “Federal” or “Federation”**
    - ◆ Article 1 of the Constitution of India provides that “India, that is Bharat shall be a Union of States.” In fact the word “Federation” has nowhere been used in the Constitution.
    - ◆ Moreover, the phrase “Union of States” implies that “Indian federation is not the result of an agreement between the center and the states and that no state has right to secede from the federation. This shows a conspicuous attempt on part of the constitution makers to keep India unitary in spirit.
  - **Single Constitution:** Both the Union and state governments derive their authority from the same Constitution. This reflects a unitary characteristic, as the Constitution establishes the fundamental framework of governance for both the Union and the states.
  - **Single Citizenship:** Unlike other federations (e.g. USA) Indian Constitution does not provide for dual citizenship. Rather, it provides for single citizenship in India.
  - **Residuary Powers:** The residuary powers, i.e., powers not explicitly assigned

to either the Union or the states, are vested with the Union government. This ensures that matters not specifically enumerated in the Constitution fall under the purview of the central authority, aligning with a unitary principle.

- **Strong Centre**

- ◆ The Centre has large jurisdiction and stronger political and economic position as compared to the states. This allows the Centre to make necessary inroads into the jurisdiction of the provincial governments.
- ◆ The Unitary Territories are administered by the central government.
- ◆ The Centre has a supervisory control over states with the help of Governors, officers of all India Services, Election Commissioners, Comptroller and Auditor General of India etc., who are appointed by the central government which affects provincial administration and polity.
- **Emergency Provisions:** In an Emergency situation, the Centre can perform the functions and take on the powers of the State. The federal structure is converted into a Unitary one without the need of any formal constitutional amendment.
- **Integrated Judicial System:** The Indian judiciary, including the Supreme Court and High Courts, is integrated and operates at both the Union and state levels. While each state has its High Court, there is only one Supreme Court for the entire country. The Supreme Court has jurisdiction over matters of constitutional interpretation, disputes between the Union and states, and appeals from High Courts, ensuring uniformity in the application of law.
- **Dominance of Parliament:** The Parliament of India exercises supremacy over state legislatures; for example:

- ◆ **Article 249** empowers the Rajya Sabha to transfer any of the subjects included in the state list to the Parliament, if deemed necessary in national interest.
- ◆ **Article 253**, empowers the Parliament to make laws for the whole or any part of the country. Likewise, it can take decisions for implementing any treaty, agreement, and convention with any other country or countries.
- ◆ Further according to the **Article, 254** in case of repugnancy between a Central Law and State Law, it is the law made by the Parliament will prevail except in the case where the state law has received the assent of the President.
- ◆ **Article 3** empowers the Parliament to change the boundaries of any existing state, merge it with some other state, create a new state out of an existing one, or abolish a state altogether.
- **Flexible Constitution**
  - ◆ The bulk of the provisions in the Indian Constitution can be amended by the unilateral action of the Parliament, either by a simple majority or by special majority, which shows that the Indian Constitution is less rigid as compared to other federations.
  - ◆ Further, the power to initiate an amendment to the Indian Constitution lies only with the Centre.
- On careful analysis of almost every federation in the world, there is an ultimate centralizing tilt. So as to maintain the integrity and to serve the specific needs of the country.
- The Supreme Court in **Kuldip Nayar v. Union of India** held that Federalism is a basic feature of the Constitution of India and it is unique in its nature and is tailored according to the specific needs of the country.

## QUASI FEDERAL

- As regards the nature of Indian Constitution, Prof K.C. Wheare has rightly remarked that Indian Constitution provides, "a system of government which is quasi-federal; a unitary state with the subsidiary unitary features rather than a federal state with subsidiary unitary features."
- Moreover, the framers of the Constitution expressed clearly that the Indian Constitution has the harmony of federal and the unitary features.
- Dr. Ambedkar has remarked, "The political system adopted in the Constitution could be both unitary as well as federal according to the requirement of time and circumstances".
- Therefore, it can be concluded that the Indian Constitution envisages a "Cooperative federalism" with central guidance and state compliance.

## Cooperative and Competitive Federalism

- On the basis of the relationship between the Union Government and the state Governments, Federalism can be classified into Cooperative and Competitive federalism.
- Granville Austin has called Indian federalism as 'cooperative federalism' which 'produces a strong Central Government, yet does not necessarily result in weak provincial governments that are largely administrative agencies for central policies.'
- **Cooperative Federalism**
  - It refers to the cooperation between the Central and State Governments for unified political, social and economic development of the country.
  - In a cooperative federalism, the relation between the center and the states is horizontal.
  - Constitutional provisions relating to inter-state Council, Zonal Council, 7<sup>th</sup> Schedule etc., provide for cooperative federalism in India.

- The idea of cooperative federalism envisages that despite having differences, the Centre and the state are required to act together in order to face a national crisis.

#### □ **Competitive Federalism**

- It is the federalism where the Centre and the states compete with each other to attain economic growth and efficiency in administration.
- In a competitive federalism, the relationship between the central and state governments is vertical and between two or more state governments is horizontal.
- Economic reforms of 1990s and the establishment of NITI Aayog has inter alia strengthened the idea of competitive federalism in Indian polity.

## PARLIAMENTARY AND PRESIDENTIAL FORM OF GOVERNMENT

- On the basis of relation between the legislature and the executive, governments can be classified as Parliamentary and Presidential.
- The Constitution of India envisages Parliamentary form of government at both the central and state levels. **Articles 74 and Article 75** provide for the Parliamentary form of government at the centre and, **Articles 164 and 165** contain similar provisions for governments in the states.

### Parliamentary System

- It is also called the “cabinet form of government”. In this form of government, the citizens elect the representatives of the legislature and the political party with the highest number of representatives is allowed to form the government after elections.

- The Council of Ministers, including the Prime Minister, is collectively responsible to the Lok Sabha. They hold office as long as they enjoy the confidence of the majority of the members of the Lok Sabha.
- There are two executives, one is the President or the monarch who is the head of the State and the other is the Prime Minister who is head of the Government.
  - While the President/Monarch has a ceremonial/ titular status, it is the Prime Minister who enjoys effective powers in state-governance.
  - Moreover, the Prime Minister is empowered to dissolve the lower house of legislature.
  - Countries like the UK, Japan, Canada etc. have the parliamentary form of government.
  - Overall, the parliamentary system outlined in the Indian Constitution ensures that the executive remains accountable to the legislature, reflecting the principles of democratic governance and ensuring that the government remains responsive to the will of the people as represented by their elected representatives in Parliament.

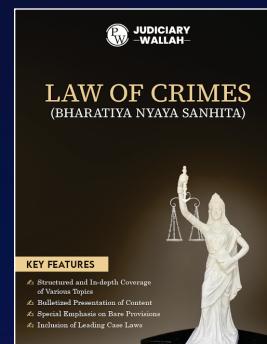
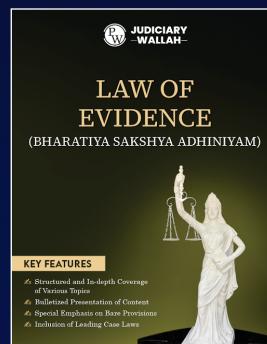
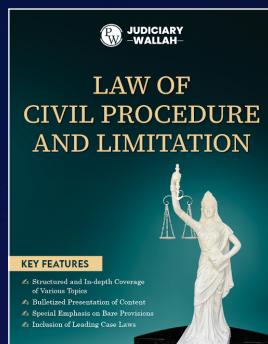
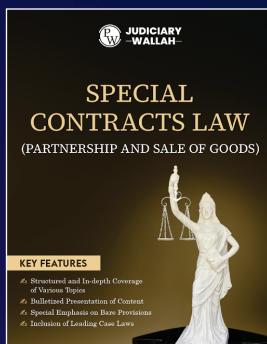
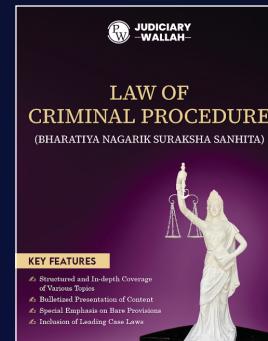
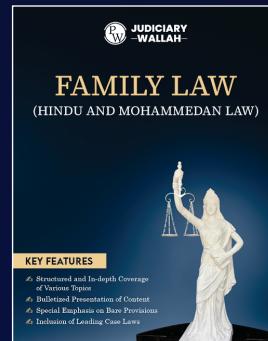
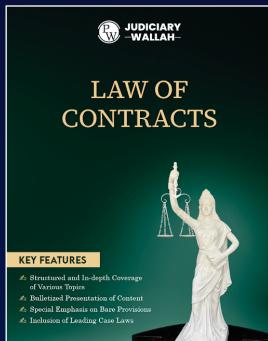
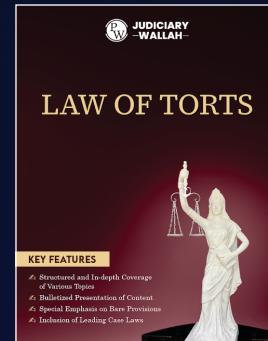
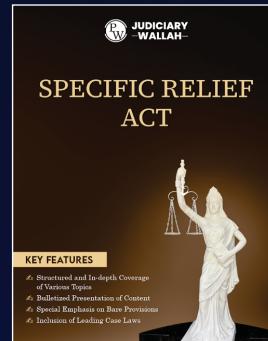
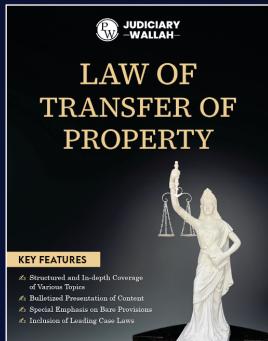
### Presidential System

- In this form of government, there is only one executive i.e., the President who is directly elected by people or an electoral college.
- Moreover, the executive is not responsible to the legislature for its policies and decisions and is independent of the legislature as regards its tenure.
- Since it is characterized by the concept of single executive, the President is both head of the State and head of the executive. However, the President is not empowered to dissolve the lower house of legislature.
- Countries like the USA, Russia, Brazil etc. have the presidential form of government.





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