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# UNIT 6 UNDERSTANDING INDIAN LEGAL SYSTEM

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## 6.1 INTRODUCTION

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In the previous unit, you have read about the ‘Concept of Law’. In this unit, you will study about ‘Understanding Indian Legal System’. As you know a well-functioning legal system is the cornerstone of any modern nation state. A legal system is defined as, “a procedure or process for interpreting and enforcing the law.” Every modern nation that is well evolved politically has a legal system. Irrespective of whether a country is democratic, autocratic, theocratic or monarchical – it has a legal system that helps the rulers to govern the country. The legal systems of autocratic countries differ significantly from that of democratic countries. In an autocracy, the word of the autocrat becomes the law. In a democracy, the will of the people be expressed through the parliament becomes the law. A legal system generally consists of a Constitution, court system with different jurisdictions, laws, legal professionals and administrative machinery. The Constitution of India delineates the framework of the legal system. In this Unit, we shall study the constituents of the Indian legal system and understand how they work.

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## 6.2 LEARNING OUTCOMES

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After studying this Unit, you shall be able to:

- Define a legal system
- Describe the constituents of a legal system
- Explain the features of the Indian Constitution
- Distinguish the different types of laws and
- Explain the Indian judicial system

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## 6.3 CONSTITUTION OF INDIA

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When a new nation is created, the founders go through the exercise of laying down the rules and laws that will form the framework for the governance. Such a document is called the constitution. Though primarily a legal document because it sets out the rights of the citizens and the responsibilities of the state, the constitution also states the aspirations of the people and provides directives on the fulfillment of these aspirations. A Constitution lays down the legal framework that guides the State in its governance of the country. It is a document from which rights, duties and responsibilities flows to the citizens and from the state. In monarchies and autocracies, the ruler is supreme. In a democracy, the Constitution is supreme. A Constitution is often referred to as the “supreme law of the land.”

The Indian Constitution consists of the principles on which the country is governed. The state cannot pass legislation contrary to the provisions of the Constitution. The Indian Constitution lays down the division of powers between the various branches of the Government and the way in which the political system is organized. The Constitution puts limits on the powers of the Government and guarantees certain rights to the people. The Indian Constitution was adopted in 1950.

### 6.3.1 Making of the Indian Constitution

Prior to independence in 1947, most of Indian territory was ruled by the British. Independence was gained following the freedom movement in India and the political pressure in England. Leaving the country overnight would have left the whole country in utter chaos. Hence, the British had consultations with various Indian leaders for several years about the future plans. In accordance with the Cabinet Mission Plan, elections were held for the “Constituent Assembly” in the year 1946. This Constituent Assembly was a temporary body that was in charge of governing India and was also in charge of framing a Constitution. The future India was to be governed as per the new Constitution. Initially, the number of members of constituent assembly were 389. After partition, some of the members went to Pakistan and the number came down to 299 out of which 229 members elected from 12 Indian Provinces and 70 were nominated from 29 princely states.

The first meeting of the Constituent Assembly was held on December 9, 1946. The task of drafting the Constitution was done by the various committees. The recommendations of each committee were put before the entire Assembly for a debate and then finalized. It took around 3 years to conclude the drafting of the Constitution. On November 26, 1949, the Constitution of India was passed and adopted by the assembly. On January

26, 1950, the Constitution came into force after which India became a republic and was no more a British colony ruled by a monarchy

There were 284 members in the Constituent Assembly who signed the Constitution of India. Dr. B. R. Ambedkar is the active member who discussed and debated for the longest period of time, going by the number of words he spoke. Ambedkar was also the Chairman of the drafting committee and had a huge task of putting together the gigantic aspirations of members into a text form that would stand the test of times. The proceedings of the Constituent Assembly are published by the Government of India and if one goes through the 12 volumes of the debates, it is clear that Ambedkar is indeed the chief architect of the Indian Constitution. Apart from Ambedkar, members like H.V. Kamath, Naziruddin Ahmad, T.T. Krishnamachari, Alladi Krishnaswamy Ayyar, K.M. Munshi and N. Gopaldaswamy Ayyangar are the significant members who shaped the Indian Constitution.

### 6.3.2 Salient Features of Indian Constitution

The following are the salient features of the Indian Constitution:

- **Written Constitution:** Indian Constitution is a written Constitution. Unlike countries like United Kingdom, most modern democratic countries have a written constitution.
- **Federal:** Indian Constitution specifies provisions that suggest India is a federal state. There is Union Government which has control over the whole territory. And there are Governments in every state having control only within their respective states. The Union Government is vested with powers of important matters like defence, finance, heavy industries and so on. The powers are distributed between the Union and the State Governments. During emergency times, the Indian governance system turns into unitary form. Hence, some legal scholars refer Indian Constitution as being “quasi-federal”.
- **Democratic Republic:** Indian Constitution declares India to be a democratic republic. It signifies that governance in India is by the people, for the people and of the people through their elected representatives.
- **Secular State:** The Indian Constitution declares India to be a secular state. It signifies that the Indian state has no religion. This is in recognition of the fact that people of India follow various and several religion and religious traditions. The Constitution guarantees freedom to practise and preach any religion. India being a secular state, the state is required to maintain distance from all religions.
- **Separation of Powers:** Indian governance system has three independent pillars of governance – legislature (law making), executive (enforces and administers the laws) and judiciary (reviews and interprets the laws). The legislative power is vested in the Union Parliament and State Assemblies. The executive power is vested in the President and the State Governors. The Judicial power is vested in the Supreme Court and the High Courts.

- **Independent Judiciary:** The Indian Constitution establishes an independent judicial system. The judges are appointed on the basis of qualification and experience. The removal of judges is not easy, even in cases of misconduct. The orders of the court are to be followed sincerely by the other branches. Hence, the Judiciary is independent and protects the Constitutional values.
- **Judicial Review:** Judicial review entails that the laws made by the legislature and executive can be questioned before the judiciary (courts). The judiciary has the power to “review” these laws. If the laws are found to be against the Constitutional values, then such laws can be declared as “unconstitutional” by the higher courts.

***Check Your Progress -1***

- 1) *Write silent features of Indian Constitution*

### **6.3.3 Overview of the Indian Constitution**

The Indian Constitution is one of the longest Constitutions in the world. The Indian Constitution is divided into several parts and each part deals with a certain aspect of governance. The important parts of the Constitution are listed below:

- Preamble is the declaration found in the beginning of the Constitution and contains the founding principles and values that forms the basis for the rest of the provisions in the constitutions.
- Part I deals with the “Union and its territory” containing aspects like creation of new states and alteration of boundaries of states.
- Part II deals with provisions regarding citizenship. A separate chapter is dedicated to the citizenship issues arising out of the difficulties posed by India-Pakistan partition.
- Part III is an important part which deals with the Fundamental Rights guaranteed to the citizens. Right to equality, freedom of speech and expression. Right to life and personal liberty and right to religion are some of the important rights listed in this part.
- Part IV deals with the Directive Principles of State Policy. These are guidelines for states to follow while making its policies. For example, Article 42 envisages that “maternity benefits” should be given to women employees.
- Part IVA lays down certain duties upon the citizens. For example, the citizens are expected to respect the values of the Constitution and national flag.
- Part V deals with the working of 3 pillars of the Union, namely – the Union Executive, the legislature i.e., Parliament and the Judiciary - Supreme Court.
- Part VI deals with the working of State Legislature, State executive, High Courts and the subordinate courts.

- Part VIII deals with the administration of the Union territories like Pondicherry and Delhi.
- Part IX deals with the organisation of village panchayats. Part IX A deals with the city municipalities. Part IXB deals with the cooperative societies.
- Part X deals with the scheduled and tribal areas, especially in the North Eastern part of India. These tribal areas are given autonomous power of internal administration.
- Part XI deals with the administrative and legislative relationship between the Union and the States.
- The other parts of the Constitution deal with aspects like election commission, public service commissions and tribunals.
- There are “schedules” towards the end of the Constitutional text which are also a part of the Constitution. These schedules contain some detailed information and lists.

### 6.3.4 Fundamental Rights and Directive Principles

The British colonial rule curbed freedoms of Indians for more than 200 years. Even some of the contemporary Indian rulers had exploited the people of India. With the introduction of modern education, Indians realized the importance of liberty and various freedoms necessary for the overall development of the individuals. Indians wanted an assurance that in the future, their freedoms had to be guaranteed and preserved. The Part III of the Constitution consists of several “Fundamental Rights” – the values that are necessary for the survival and overall development of human life. For example, Article 19 guarantees “freedom of speech and expression.” Every person aspires to express herself through various means. An artist expresses it through her art, a musician expresses through her songs, a writer expresses her joy and agony through her writings. If people are deprived of this right to speak and express, a healthy society cannot be formed.

To understand the importance of these freedoms, we need to compare it with the situation in certain autocratic countries where these freedoms are not given. During November 2019, several doctors and scientists in Wuhan (China) alerted the authorities that a strange disease was prevalent among the people. The Chinese government shut these doctors and booked cases against the reporters who reported these events. The Chinese authorities even went to the extent of “under reporting” the number of deaths. The result of curbs on all these forms of free speech is that, the Covid-19 virus had soon spread to many other countries. Had there been robust free speech in China, this catastrophe could have been nipped in the bud.

Six broad Fundamental Rights have been guaranteed in Part III. They are:

- Right to Equality (Articles 14, 15, 16, 17 and 18)
- Right to Freedom (Articles 19, 20, 21, 21A and 22)
- Right against Exploitation (Articles 23, and 24)
- Right to Freedom of Religion (Articles 25, 26, 27, and 28)

- Cultural and Educational Rights (Articles 29 and 30)
- Right to Constitutional Remedies (Article 32)

Article 14 & 15 guarantees right to equality, equality before law and guarantees of non-discrimination. It means all are equal and no one can be discriminated on the basis of caste, class, sex, religion etc. It also means all are equal before law i.e., all persons will be equal before the law unless otherwise stated in the constitution or laws. The exceptions are usually in the nature of affirmative action in favor of vulnerable sections of society towards the goal of achieving the effect of equality in the society.

For example, if the Government advertises for the post of clerical staff and stipulates a bachelor's degree as the qualification to apply for the job, a person who does not have a degree cannot say that he is being discriminated. Because, there is a reason why a distinction is made between the candidates having a bachelor's degree and those who do not have this qualification. The bachelor's degree education is required if one has to carry out the functions of a clerical staff.

Let us take another hypothetical example. If the Government advertises for the post of clerical staff, but makes it mandatory that the candidates should be of fair complexion, such a distinction would be a violation of right to equality.

In Bollywood film industry, a practice that was followed for a long time was that the makeup artists would be all male members and hair stylists were to be female members. A male member was not allowed to become a hair stylist and a female member was not allowed to become a makeup artist. Charu Khurana – a makeup artist trained in the USA, was not given the membership of the makeup artists association. She fought the case till the Supreme Court. In November, 2014, the Supreme Court of India passed a judgement that dividing the profession of makeup and hair dressing on the basis of sex was discriminatory and violated Article 14. After this decision, female makeup artists are allowed to work in Bollywood. A similar legal fight is in the process for recruiting women in the Army for higher positions.

Right to equality is to be read with Article 15 which prohibits discrimination on the basis of religion, race, caste, sex or place of birth. The ancient practice of caste-based system of untouchability is abolished through Article 17. Even titles are abolished through Article 18. Article 19 guarantees Freedom of Speech, Freedom of Association, Freedom of Trade and Freedom of Movement. These freedoms are not absolute and are curbed in certain situations. The Right to Life and Personal Liberty is guaranteed under Article 21. In relation to the Right to Life, certain protections are given to persons when they are arrested and convicted for offences. These rights give a protection against the high handedness of the State and police system. Right to Education was made a fundamental right under Article 21A from the year 2002. Under Article 23, trafficking in human beings and forced labor are prohibited. Under Article 24, the employment of children in factories is prohibited.

Freedom of Religion is a fundamental right guaranteed to both individuals and groups. Individuals has the freedom to practice and preach their religion. However, social realities in India show that practice of one's religion has violated other fundamental rights of other individuals or groups. Most religions often have forms of discriminatory practices, particularly against women and such practices violate right to equality under Article 14. The women's struggle for entry into religious places is a classic example where the religious rights clash with the gender equality.

Of all the rights in the section on Fundamental Rights, the "Right to Constitutional Remedies" is an important one. If any person's fundamental right is violated, Article 32 gives that person the right to approach the Supreme Court to enforce her rights. Without this right, the guarantee of fundamental rights would be hollow promises. By the virtue of Article 32 and Public Interest Litigations (PIL), several injustices in the society have been corrected.

The Directive Principles of State Policy (DPSP) are discussed in the Part IV of the Indian Constitution. Directive principles consists of certain socio-economic rights like – welfare of the people, right to livelihood, equal wages for both the genders, distribution of material resources for common good, free legal aid, maternity relief and uniform civil code. Article 37 states that the rights contained in this part cannot be enforced through the courts. Given the economic nature of these rights, it is practically difficult and cumbersome to enforce these rights through the courts. However, Article 37 encourages the Governments to apply these principles in their policies and promote them. For example, the Government introduced the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) programme to provide adequate livelihood and employment to the rural masses. Free legal aid is being provided through the Legal Services Authority. Initially, the principles in this part were said to be not enforceable through the courts, but many of these rights have been recognised as fundamental rights by the Supreme Court.

### **6.3.5 Parliament**

India has federal governance system and follows the parliamentary form of government. Federal system means that there is a Union Government at the Centre and State Governments in every state. The Union Parliament is situated in New Delhi, while the State Assemblies are situated in the capital cities of the respective states. The Union parliament is bicameral i.e., there are two houses. The lower house is known as the Lok Sabha and the representatives to this house are directly elected by the people. There is one representative for every 15 to 30 lakh voters. Lok Sabha constituencies are larger than State Assembly constituencies. Lok Sabha is chaired by the Speaker. The party or the coalition having majority seats in the Lok Sabha forms the Government at the Union. The majority members choose one among them as the Prime Minister. The Prime Minister along with the "cabinet" takes important decisions for the country. Lok Sabha has 543 seats as on May, 2021.

The upper house is also known as “Rajya Sabha”. The members to Rajya Sabha are elected indirectly through nominations. Of the 245 members (as on May, 2021), 233 are elected from the state legislatures and union territories through a process known as “single transférable vote”. The remaining 12 members are appointed by the President from the field of art, literature, science and social services and other disciplines.

The law-making process in India is distributed between the Union Parliament and the State Legislatures. By the virtue of Article 246, three lists of subject matters have been made, namely – Union List, State List and Concurrent List. The Union List consists of matters of national importance like defence, atomic energy, war, citizenship and so on. Laws relating to these subjects can be made only by the Union Parliament. As State List has subjects like agriculture, health, law and order and so on. Laws relating to these subjects can be made by the State Assemblies for their respective states. Laws relating to the subjects in the Concurrent List can be made both by the Union Parliament and State Assemblies.

Union Parliament first introduces a proposed new law or an amendment as a “bill”. Such a bill, when passed through the Lok Sabha and then by Rajya Sabha become an “Act”. Acts come into force once assented by the President. The procedure relating to the passing of laws in the Union Parliament are given in the Articles 107 to 117. The laws made by the Union Parliaments are referred as “Central Acts” and are applicable across the whole of India.

### **6.3.6 State Assemblies**

There are State Assemblies (also referred as State Legislatures) in each state. Some State Assemblies like Karnataka have two houses, while some like Jharkhand have a single house. The members of the State Assemblies are called as “Members of Legislative Assembly”. These members are elected directly by the people. The Assembly constituencies are smaller than Parliamentary constituencies. The number of members in each state’s assembly varies on the basis of population and geography. The State Assemblies make pass bills and get the assent of the Governor. The law-making procedure of the State Assemblies are given under Articles 196 to 207. The laws made by the State Assemblies are applicable only within the territory of that State.

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## **6.4 LAWS**

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There are different types of laws made by the Union Parliament and State Assemblies. Parliament makes laws on subjects that are important and are applicable across the states. Laws in India are in the written form and are called as “Acts” or “Code”. On every important subject, there is an Act. Laws can be grouped into different categories. Indian Penal Code, Evidence Act and Criminal Procedure Code are the three laws that are applicable to the criminal cases. Civil Procedure Code is applicable to civil cases. There are “labor laws” that deal with issues like industrial disputes, payment of wages, bonus, safety in factory, maternity benefits etc. These laws adhere to the broad principles set out in the constitution.



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## 6.5 JUDICIAL SYSTEM

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The Indian Judiciary through its high courts and the Supreme Court reviews and interprets the laws passed by the legislature. Supreme Court is also the final appellate court in the judiciary. When there is controversy about any aspects of law, the superior courts “interpret” the laws. When laws violate Constitutional values, these can be challenged in the high courts, which either uphold or declare it to be unconstitutional after hearing all parties.

The Judicial system in the Constitution consists of:

- Union Judiciary (Supreme Court)
- High Courts in the States
- Subordinate Courts

Articles 124 to 147 deal with the establishment of Supreme Court, appointment of the Judges and the powers of the Supreme Court. The Supreme Court is the highest court in India. If the state violates Fundamental Rights, one can approach the Supreme Court directly. Decision of the High Courts can be appealed at the Supreme Court for the final verdict. Supreme Court has administrative control over all the High Courts in the States including the subordinate courts. The decisions given by the Supreme Court are binding on all the High Courts and subordinate courts. The Supreme Court has the power to make orders against any executive authority.

Articles 214 to 231 deal with the establishment of High Courts in the States, appointment of judges and the powers of High Courts. Generally, each State has a High Court. In some situations, several states and union territories have a single High Court. The decisions of High Court are binding on the subordinate courts within the same state. High Courts have the power to issue 5 types of writs for protecting the rights of the people. Article 226 gives powers to the High Courts to decide on case of violation of Fundamental Rights.

The subordinate courts are established in each district of the state. The structure, hierarchy and number of courts in the subordinate courts level vary from place to place. Usually, matters are distributed between civil courts and sessions courts. Sessions courts take up criminal cases. The fundamental difference between High Courts, Supreme Court and subordinate courts is that – High Courts and Supreme Court have the power to interpret the law and declare them invalid. The subordinate courts only have the power to apply the law to the cases and give a decision. The subordinate courts do not have the power to declare a law as invalid. The subordinate courts are also bound to follow the decisions of the higher courts.

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## 6.6 LAWYERS

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Lawyers are an integral part of the legal system in India. The Advocates Act, 1961 comprehensively regulates the legal profession in India. A Bar Council of India is established for the whole of India, which has a say in the legal education and lays down the requirements to enroll a law graduate as an

advocate. The Bar Council of India conducts “All India Bar Examination” and only those law graduates who pass the exam are allowed to appear in the courts. There are State Bar Councils in each state and look after the welfare of the advocates.

According to the Advocates Act, every advocate has a duty to take up the case that comes before her. The advocates are supposed to maintain high level of service and integrity to their clients. The communications made by the clients to the advocates are considered to be confidential. Every person has the right to be represented by an advocate. This right cannot be denied. Advocates help people to enforce their rights in the courts and get protection from the arbitrary arrest and detention of the state.

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## 6.7 ADMINISTRATIVE MACHINERY

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The executive branch of the State is vested with the duty to administer and execute the laws and policies of the Government in power. The executive branch does not have its own independence. It takes the orders from the Government. The executive branch at the Union is headed by the President. The President takes decision on the aid and advice of the cabinet. At the State level, the Governor is the head of the executive. The Governor acts on the aid and advice of the State Cabinet. However, in reality, there are instances where the Governors of the state take orders from the Union Cabinet.

Both at the Union as well as State level, there are various “departments” which handle a specific area of administration. Each department is controlled by a minister. The minister has several officials under her to assist in the administration. At the district level, there is a District Collector (DC) who is in charge of the overall administration of the district and all rural areas within that district. Deputy Collectors of all districts are controlled by the State Cabinet. The officials in the executive are also bound by the Constitutional principles.

### ***Check Your Progress: 2***

- 1) *Download a copy of the Indian Constitution from the internet and read the “Preamble”. Search the dictionary and write down the meaning of the following words:*
  - a. *Sovereign:* .....
  - b. *Socialist:* .....
  - c. *Democratic:* .....
  - d. *Republic:* .....
  - e. *Justice :* .....
  - f. *Equality:* .....
  - g. *Liberty:* .....
  - h. *Fraternity:* .....
  - i. *Dignity:* .....

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## 6.8 LET US SUM UP

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Thus, in this unit you have read about the framework of Indian legal system and how it is founded in the Indian Constitution. How certain Fundamental Rights are guaranteed by the Indian Constitution. In case, if a law violates the Constitutional values, it can be questioned before the courts. It also tells us that how India has a three-tier judicial system. In the interest of people, how the courts protect the rights of the people. At the same time, the advocates aid the people to navigate through the legal process and protect their rights

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## 6.9 UNIT END QUESTIONS

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1. Write a note on the process of making of Indian Constitution
2. What are the salient features of Indian Constitution?
3. Discuss the various Fundamental Rights guaranteed by the Indian Constitution.
4. Explain the law-making process by Union Parliament and State Assemblies.
5. Describe the organisation of Judicial system in India.

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