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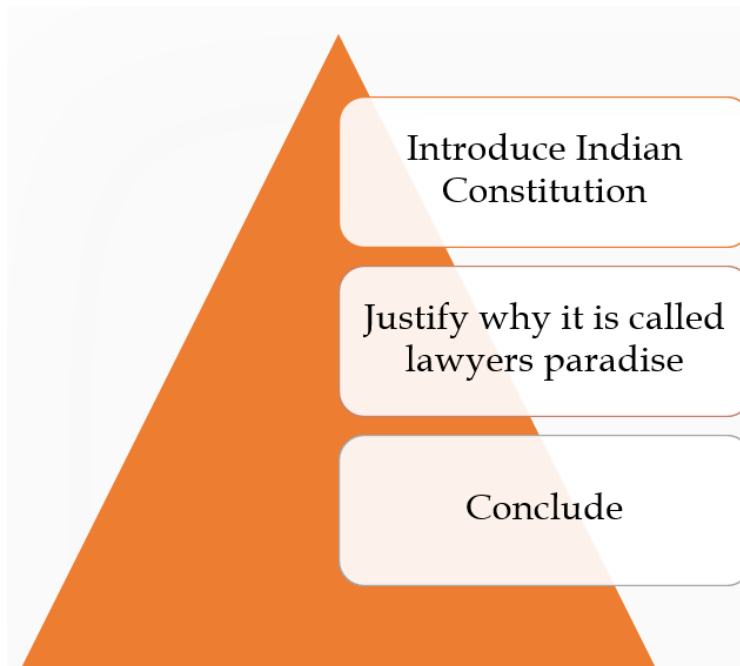
# Political Science & International Relations Crash Course

*Lecture - 20*

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## 1) The Indian constitution is a Lawyers Paradise. (Ivor Jennings). Discuss. [2018]



### Introduction

- The Indian constitution is the longest written constitution in the world. It not only includes constitutional matters but has also provided space to administrative mechanisms.

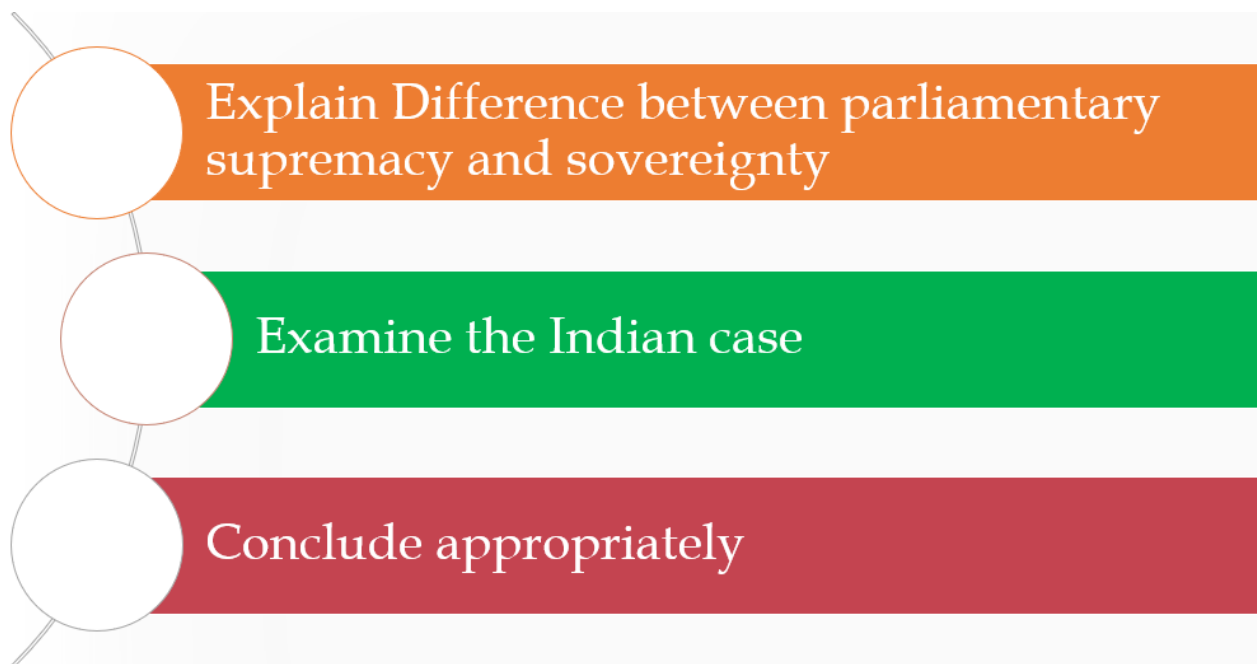
### Lawyers Paradise

- Dominant presence of lawyers-The Constituent Assembly of India significantly comprised politicians who were also qualified lawyers. Dr Rajendra Prasad, Jawaharlal Nehru, Sardar Patel and Dr BR Ambedkar were all lawyers. They framed the Constitution in the company of other legal stalwarts, such as the legal luminary- B.N. Rau.
- Difficult language-The vocabulary appears dense and difficult for laymen to comprehend, unlike for lawyers who are trained in legalistic language.
  - P. R. Deshmukh, a member of Constituent Assembly: " to our misfortune we have been burdened (constitution) with so much of words, words and words which could have been very easily eliminated."
- Excessive details: The Constitution does not merely comprise of a larger vision but also small administrative details which reflected the fear of leaders of a newly independent democracy.

### Conclusion

- Nonetheless, the Indian constitution is praised as a living constitution and the cornerstone of our country (**G Austin**).
- It has given justice and a life of dignity to all the citizens. It also helped make India the largest democracy.

2) Differentiate parliamentary supremacy from parliamentary sovereignty. Would you consider the Indian parliament as a sovereign parliament? Examine. [2017]



### Introduction

- Of the three organs of the state, if the executive is associated with the 'reason of the state,' the judiciary with the 'guardianship of the constitution', then legislature is the 'ultimate custodian of the popular will.'

### Parliamentary Supremacy V/S Sovereignty

- Parliamentary supremacy means that the Parliament has supreme authority over other organs of the government and the role of the judiciary is only interpretation, whereas, Parliamentary sovereignty means Parliament has sovereign powers of law making.
- A.V Dicey's conception of Sovereignty of Parliament has three connotations:
  - There is no law which the Parliament cannot make;
  - There is no law which the Parliament cannot repeal or modify.
  - There is no distinction between laws which are fundamental or constitutional and laws which are not.
- The British Parliament is regarded as a sovereign and supreme body with powers wide to make any law save change the 'colours of eyes of an individual.'

## Indian Context- Limited Sovereign Parliament

- Though the Constitution of India inherited ideas and frameworks from Britain, the Indian Parliament is not a sovereign legislature like the British Parliament.
- The Supreme Court of UK after the prorogation by former British PM Johnson, ruled that prorogation was illegal because it prevented Parliament from doing its work.
- However, Indian parliament functions within the bounds of a written Constitution setting up a federal polity with defined division of powers and an independent Supreme Court invested with the power of judicial review, basic structure doctrine (Keshvanada Bharati judgment) which limits the amendment power of Parliament provided under article 368 as well as fundamental rights secured to the citizens as per part III of the Constitution.
- There are also various checks on parliamentary supremacy ensuring a healthy system of checks and balances are:
  - **Written Constitution:** Indian Constitution is written which puts limitations on all organs of the state and defines their area of competence.
  - **Independent judiciary and Judicial review:** Judiciary can declare any law or ordinance passed by the legislature void, if it violates the constitution. E.g. SC declared 99th Amendment and National Judicial Appointment Commission as 'ultra vires' to the constitution.
  - **Doctrine of Separation of Powers:** The doctrine of SoP was found to be a part of the 'basic structure' of the Constitution and reiterated in the Indira Gandhi case.

Thus, our constitution vests legislative power with respect to union list and various powers of privilege in the central legislature that is Parliament and the Supreme Court with judicial review authority.

- The Indian Constitution therefore maintains a delicate balance between UK's system of Parliament sovereignty and USA's judicial supremacy. The Indian Constitution is thus a truly 'sui generis' document that ensures a system of democracy and accountability to people to formulate a truly constitutional government.



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