

Malaysian Studies 3

CONSTITUTION: FEDERAL & STATE

Outline

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- Uniqueness of M'sian Constitution
- Main Features of M'sian Constitution
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Introduction

- Several states already have their own respective system of governance (before arrival of foreign powers in Malaya)
- *Undang-undang Laut Melaka, Hukum Kanun Melaka, Adat Temenggung, Adat Perpatih*
- Modern constitution : since independence 1957
- Improvised constitution : since formation of Malaysia 1963

Introduction

- **A constitution is:**
 - **a collection of measures and guidelines for regulating the administration of a country**
 - **a source of legislation in the country that is permanently supreme.**
- **Malaysian Constitution is a written constitution, which is supported by various additional documents to strengthen the action of the Constitution**

Why we need constitution?

1. To ensure **administration continuity and political stability.**
2. To **avoid irregularity of abuse of power** by ruling bodies.
3. The question of **fundamental rights and freedom** is **recorded** in the Constitution.
4. The Constitution requires **Malaysian citizens** to give **undivided loyalty** to the country.
5. The Constitution also provides **special rights for indigenous communities**

Types of Constitution

1) Written Constitution [✓]

– **A single document that covers 3 main elements:**

- a. Supreme law, hard to ammended.
- b. Parliament has the power to make, enact laws.
- c. Interpretation of constitution in the hands of Judiciary, to protect the constitution.

2) Unwritten Constitution

- Not collected in one single document.
- *Examples:* Parliament Act, courts judgements, custom (adat), etc.

The Superiority of Constitution

- The **3rd principle** of the **Rukun Negara**
- It is the only **source of law** that is **permanently supreme**.
- The superiority of the constitution is very important because it will **help** the federation government to **run things smoothly without having to compete with others**.
- Its **overrides the power of Yang di-Pertuan Agong, Parliament and the courts**

Uniqueness of Malaysian Constitution

- The Malaysian Constitution **covers all the legislative, executive and judiciary aspects** and has **special provision** to apply in a country with a diversity of races and religions.
- It is complete and comprehensive

Main Features of Malaysian Constitution

1. Malaysia is a **Federation**
2. Malaysia is a **constitutional Monarchy**
3. Malaysia is a country that **practices parliamentary democracy**
4. **Religious freedom** with **Islam** as the **official religion** of Malaysia

Main Features of Malaysian Constitution

- 5. Supremacy of the Constitution and the rule of law**
- 6. Doctrine of the separation of power in which the judiciary, the legislative and the government each has its freedom to carry out its different functions with no conflict of interest**
- 7. Validity and transparency of the Judiciary with exclusive powers subject to the provisions of the Constitution**
- 8. National Language, citizenship, and the special rights of the Malays and the native tribes of Sabah and Sarawak**

Federal & State Constitution

- Malaysia is a **federation country** with **13 states and four Federal Territories**.
- Thus, division of power was provided in the Malaysian Constitution between the **Federal Government** and the **State Governments**.
- The separation of power aim to **ensure the smooth** operation of the federal system and to **avoid disputes**.
- The power of **Fed. Government** is mentioned in the **Federal List** - covers matters of *national interest such as foreign affairs, defense, internal security, citizenship, education, commerce, industry and health*

Federal & State Constitution

- The **power of State Government** is mentioned in the **State List** such as *Islamic affairs, land, agriculture, forestry, local government and local services*
- - **Common List / Concurrent list** - matters that require for **cooperation between both Federal and State governments** such as *social welfare, scholarships, national parks, wildlife, drainage, irrigation and town and village planning*

Questions

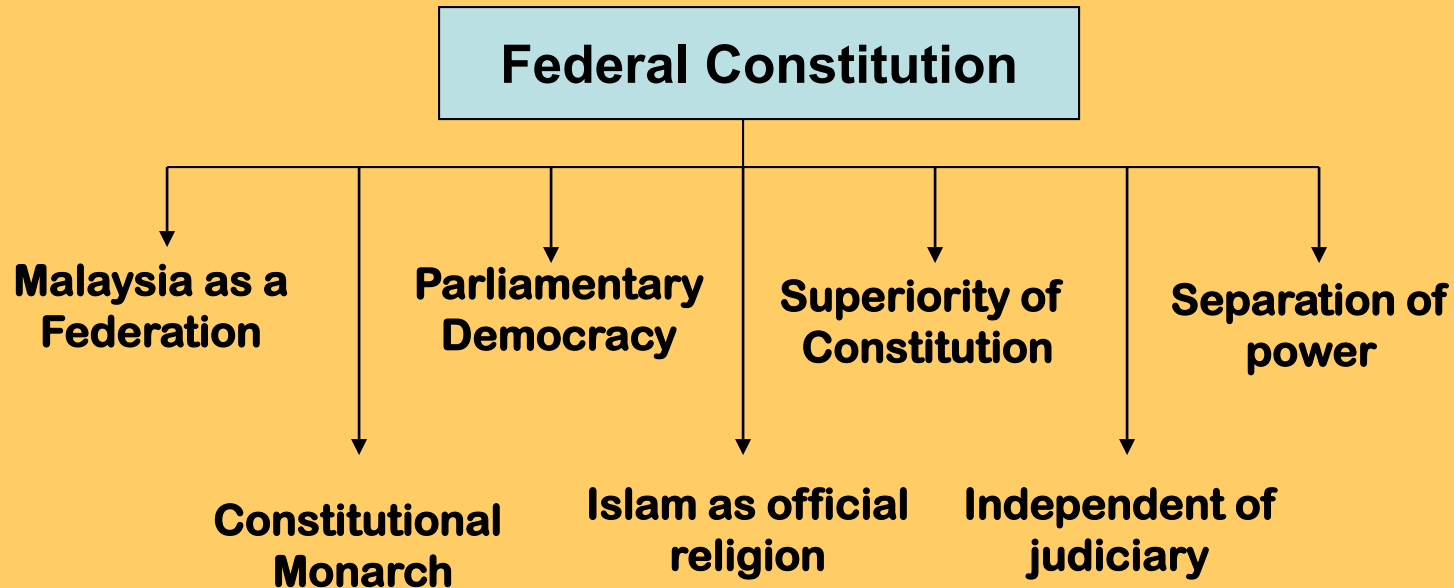
What is the list of power for Malaysia federal government in Malaysia constitution?

Answer

National interest such as :

- ***foreign affairs,***
- ***defense,***
- ***internal security,***
- ***citizenship,***
- ***education,***
- ***commerce,***
- ***industry***
- ***health***

FEDERAL CONSTITUTION



Constitution Amendments

- Article 159 of the Federation Constitution **permitted an amendment** to be made upon the Constitution.
- Since 1957, the **Malaysian Constitution** had been **amended for 22 times until the end of 1982**
- The **aim** is to **add, improve or abolish a provision** which is **felt not relevant anymore** according to the time and the people's need.
- The **amendment is done through Parliament** as have been explained in Article 159 and Article 161 (E).
- Not set and rigid but alive

Constitution Amendments

- **3 ways/ procedures of amendment** and matters involved:-
 - a) Article 159 (4) – some matters can be emended with **2/3 majority voice in every Council of Parliament** without others approval.
 - i. Merging of states into the Federation.
 - ii. Appointment and retirement of Dewan Negara members.
 - iii. Matters that relates to power of making or enacting laws in the Parliament

Constitution Amendments

- b) Article 161 (E) – certain matters that give **importance to Sabah and Sarawak** that can be amended by **2/3 majority with the approval from Yang Dipertua Negeri Sarawak and Sabah.**
 - i. **Membership and power of High Court of Sabah and Sarawak.**
 - ii. Regarding **State List** – religion, language, special position of Bumiputera.
 - iii. **Immigration Act**

Constitution Amendments

c) Certain matters can only be amended with **2/3 and more majority** from the **council of Parliament** and approval from the **Council of Rulers (Majlis Raja-raja)**.

- i. Regarding **citizenship**
- ii. **Function and power of Council of Rulers**
- iii. Laws regarding **changes in state border**.

Constitution Amendments

d) Usual **majority voice** in each **Parliament** – for matters **not mentioned in the previous three**.

Constitution Amendments

- **The reasons or rational of amendment:**
 1. To maintain **efficient management** of the country's administration such as **standardizing the regulations of land matters** in the states of the federation
 2. To control the **country's peace** as happened several times to the regulation relating to the **internal security act**
 3. **People's interest** can be protected

Thank You.