



## UNIT I INTRODUCTION

### Background of Indian Constitution:

In 1928, the All Parties Conference convened a committee in Lucknow to prepare the Constitution of India, which was known as the Nehru Report.

Most of India was under direct British rule from 1857 to 1947. Upon independence it became clear a new constitution was needed to be created. But for that all of India needed to be brought into the union. This meant the Princely States needed to be convinced to become a part of the Indian union. Either by force or diplomacy. Sardar Vallabhai Patel and V.P Menon did this unenviable task. Until this happened India was still legally a dominion under the British, responsible for external security.

Thus, the constitution of India repealed the Indian Independence Act 1947 and Government of India Act 1935 when it became effective on 26 January 1950. India ceased to be a dominion of the British Crown and became a sovereign democratic republic with the constitution.

### Historical Evolution of the Indian Constitution

There are various layers in the background of the Indian Constitution:

- Regulating Act 1773
- Pitt's India Act 1784
- Charter Act of 1813
- Charter Act of 1833
- Charter Act of 1853
- Government of India Act 1858
- Indian Councils Act 1861
- India Councils Act 1892
- Morley-Minto Reforms 1909
- Montague-Chelmsford Reforms 1919
- Government of India Act 1935
- Indian Independence Act 1947

These acts were in some way instrumental for the development of the Indian Constitution.

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### *Philosophy of the Constitution:*

The Constitution provides a framework of governance. It lays down the basic governing set of principles or essential rules of governance to establish the basic organs and structure, functions, composition, and powers of government.



The philosophical thought behind it was that for being a strong and independent country there must be a constitution that helps to frame the interrelationship between various organs and regulate their relations with people. In the form of certain rights, the relationship between the government and the people was generally given on the basis of fundamental political, economic, and religious views of the nation.

*Philosophy of Constitution through Preamble:*

The preamble is a brief introduction to the Constitution and it gives summarised knowledge of the legislative intent and policy. A preamble is a brief form of ideas and beliefs which the constitution wants to achieve. It states the marginal contents of the constitution that are in our constitution.

The preamble of the constitution is the core of the constitution which contains words that the constitution-makers want to achieve like ‘**we the people of India**’ means ‘by the people, for the people, and to the people.’

*1. Sovereign:*

Sovereignty is one of the essential requirements of statehood. It is indicative of the fact that India is not subject to any foreign power from an internal or external perspective and the state is free to legislate on any subject in conformity with the constitution.

*2. Socialist:*

Socialist word was not there when the constitution was made but later by the 42nd amendment, it was added to our constitution and the basic meaning of socialist is socialism which the constitution provides to safe and secure the Indian citizens from social endangerment.

*3. Secularism:*

Being secular means the state is neutral in any matters related to religion and it means the constitution does not promote or deprive any religion. It was also added in the 42nd amendment. Unlike the West, Indian secularism is not the result of a conflict between church and state; very often in our common language, the term secularism is used simply as the opposite of communitarianism.

*4. Democratic:*

It indicates that the source of the power of the government is in its people. It is the Government of the people for the people and by the people. In **Indira Nehru Gandhi VS Raj Narain**, it was held that democracy is a basic feature of the Indian Constitution and free and fair elections are also impliedly a basic feature. Democracy is the People’s power and State’s power vest in the people which means democracy makes the people supreme.



### 5. Republic:

It means that the head of the nation is an elected representative. Republic is a government that derives its powers directly or indirectly from the great body of the people and is administered by people who hold office for pleasure, for a limited time, or for good conduct.

*The Constitution also includes the Rights of the People in the Preamble:*

#### 1. Justice:

- **Social justice** has been given precedence over economic and political justice whereas economical justice precedes political justice in the Preamble. Social justice implies equal treatment of citizens regardless of their social status. Articles 14, 15, and 38 express this aim in particular.
- **Economic justice** is the binding gap between the rich and poor. Article 39 of DPSP is the charter of economic justice; in fact, all the provisions of DPSP (article 36-51) carry forward the goals of economic and Social Justice.
- **Political justice** implies the equal participation of all in the political process. Articles 325 and 326 provide for equal rights to all citizens(adults) to participate in elections and to vote in elections.

#### 2. Liberty:

In the western concept, liberty was largely a negative concept. It meant an absence of interference in individual action by the government. But in the Indian Constitution Liberty is a positive concept. These have been drafted as fundamental rights. Liberty would mean freedom to do what one likes but it also means Liberty has to be regulated in the larger interest of the society; so the constitution by giving fundamental rights also contains regulatory provisions for them.

**Liberty of thought, expression, belief, worship** in the preamble is given under Articles 14 to 35 as fundamental rights.

#### 3. Equality:

The preamble talks of **equality of status and opportunity**. It has got legal, social, political, and economic dimensions. The concept is drafted in articles 14 to 18.

#### 4. Fraternity:

It means a feeling of brotherhood. The goal of the constitution is to subdue the division forces in India by fostering a feeling of brotherhood among the Indian despite their diversity.

What is a Preamble?

- A preamble is an introductory statement in a document that explains the document's **philosophy and objectives**.
- In a Constitution, it presents the **intention of its framers**, the **history behind its creation**, and the **core values and principles of the nation**.
- The preamble basically gives idea of the following things/objects:



- **Source of the Constitution**
- **Nature of Indian State**
- **Statement of its objectives**
- **Date of its adoption**

#### History of the Preamble to Indian Constitution

- The ideals behind the Preamble to India's Constitution were laid down by **Jawaharlal Nehru's Objectives Resolution**, adopted by the Constituent Assembly on January 22, 1947.
- Although not enforceable in court, the Preamble states the objectives of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous.

#### Components of Preamble

- It is indicated by the Preamble that the **source of authority** of the Constitution lies with the **people of India**.
- Preamble declares India to be a **sovereign, socialist, secular and democratic republic**.
- The objectives stated by the Preamble are to **secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation**.
- The date is mentioned in the preamble when it was adopted i.e. **November 26, 1949**.

#### Key words in the Preamble

- **We, the people of India:** It indicates the **ultimate sovereignty of the people of India**. Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.

#### Fundamental Rights (Articles 12-35)

Fundamental Rights UPSC is one of the important topics in Indian polity subject in UPSC Syllabus. In this article, we will touch upon some of the most important points from this topic. We'll also discuss some of the previously asked questions centred around Fundamental Rights.

Enshrined in Part-III of the Indian Constitution, Fundamental Rights are the basic human rights guaranteed by the Constitution of India. The six fundamental rights include the Right to Equality, Right to freedom, Right against exploitation, Right to freedom of Religion, Cultural and Educational Rights and Right to constitutional Remedies.

Originally Right to property (Article 31) was also included in the Fundamental Rights. However, by the 44th Constitutional Amendment Act, 1978, it was deleted from the list of Fundamental Rights and made a legal right under Article 300A in Part XII of the constitution.

#### Directive Principles of State Policy:



The Sapru Committee in 1945 suggested two categories of individual rights. One being justiciable and the other being non-justiciable rights. The justiciable rights, as we know, are the Fundamental rights, whereas the non-justiciable ones are the Directive Principles of State Policy.

DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:

- They are an ‘instrument of instructions’ which are enumerated in the Government of India Act, 1935.
- They seek to establish economic and social democracy in the country.
- DPSPs are ideals which are not legally enforceable by the courts for their violation.

S.No	11 Fundamental Duties
1.	Abide by the <u>Indian Constitution</u> and respect its ideals and institutions, the National Flag and the National Anthem
2.	Cherish and follow the noble ideals that inspired the national struggle for freedom
3.	Uphold and protect the sovereignty, unity and integrity of India
4.	Defend the country and render national service when called upon to do so
5.	Promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women
6.	Value and preserve the rich heritage of the country’s composite culture
7.	Protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures
8.	Develop scientific temper, humanism and the spirit of inquiry and reform
9.	Safeguard public property and to abjure violence
10.	Strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement
11.	Provide opportunities for education to his child or ward between the age of six and fourteen years. <b>This duty was added by the 86th Constitutional Amendment Act, 2002</b>

#### Citizenship of India

In the run-up to the publication of the final National Register of Citizens (NRC) in Assam, the Supreme Court, in August, 2019 rejected a plea to include those born in India between **after March 24, 1971 and before July 1, 1987** in NRC unless they had **ancestral links** to India.



- In any other Indian state, they would have been citizens by birth, but the **law is different for Assam.**
- In this context, citizenship has become the most talked about topic in the country.

### **National Register of Citizens (NRC)**

- The National Register of Citizens, 1951 is a register prepared **after the conduct of the Census of 1951** in respect of each village, showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein.
- The NRC was published **only once in 1951.**

### **Constitutional Remedies for citizens:**

#### **Parts of the law relating to writs are outlined in the Constitution of India.**

- Type of Writs. The Constitution empowers the Supreme Court and High Courts to issue orders or writs. ...
- Habeas Corpus. ...
- Certiorari. ...
- Prohibition. ...
- Mandamus. ...
- Quo-Warranto. ...
- Suspension of Fundamental Rights. ...
- Status of Writs in Other Countries.





## UNIT – II STRUCTURE AND FUNCTION OF CENTRAL GOVERNMENT

### Union Government – Structures of the Union Government and Functions:

The Tamil Nadu government's decision to shun the usage of the term 'Central government' in its official communications and replace it with 'Union government' is a major step towards regaining the consciousness of our Constitution. Seventy-one years since we adopted the Constitution, it is time we regained the original intent of our founding fathers beautifully etched in the parchment as Article 1: "India, that is Bharat, shall be a Union of States". If a student of Indian polity attempts to trace the origin of the term 'Central government', the Constitution will disappoint him, for the Constituent Assembly did not use the term 'Centre' or 'Central government' in all of its 395 Articles in 22 Parts and eight Schedules in the original Constitution. What we have are the 'Union' and the 'States' with the executive powers of the Union wielded by the President acting on the aid and advice of the Council of Ministers headed by the Prime Minister. Then, why did the courts, the media and even the States refer to the Union government as the 'Centre'?

Even though we have no reference to the 'Central government' in the Constitution, the General Clauses Act, 1897 gives a definition for it. The 'Central government' for all practical purposes is the President after the commencement of the Constitution. Therefore, the real question is whether such definition for 'Central government' is constitutional as the Constitution itself does not approve of centralising power.

### President

Who is President of India?

The Indian President is the head of the state. He is the first citizen of India and is a symbol of solidarity, unity, and integrity of the nation. **He is a part of Union Executive along with the Vice-President, Prime Minister, Council of Ministers, and Attorney-General of India.**

How is President elected?

There is no direct election for the Indian President. An electoral college elects him. The electoral college responsible for President's elections comprises **elected members of:**

1. Lok Sabha and Rajya Sabha
2. Legislative Assemblies of the states (Legislative Councils have no role)
3. Legislative Assemblies of the Union Territories of Delhi and Puducherry

**Note:**



- The value of the vote of an MLA is given below:

$$\begin{aligned} &\text{Value of the vote of an MLA} \\ &= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000} \end{aligned}$$

- The value of the vote of an MP is given below:

$$\begin{aligned} &\text{Value of the vote of an MP} = \\ &\frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}} \end{aligned}$$

### Vice President

The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term, until the successor assumes office.

The Constitution is silent on who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, before the expiry of his term, or when the Vice-President acts as the President of India. The only provision in the Constitution is with regard to the Vice-President's function as the Chairperson of the Council of States (Rajya Sabha), which is performed, during the period of such vacancy, by the Deputy Chairperson of the Rajya Sabha, or any other member of the Rajya Sabha authorised by the President of India.

The Vice-President may resign his office by submitting his resignation to the President of India. The resignation becomes effective from the day it is accepted.

The Vice-President can be removed from office by a resolution of the Council of States (Rajya Sabha), passed by a majority of its members at that time and agreed to by the House of the People (Lok Sabha). A resolution for this purpose may be moved only after a notice of at least a minimum of 14 days has been given of such an intention.

### Prime Minister

President can also appoint Prime Minister on his own discretion but only when no party has a clear majority in the Lok Sabha. To get the [list of Prime Ministers of India](#), candidates can check the linked article.





## Power and Function of Prime Minister

Prime Minister of India serves the country by following various functions. He performs his functions taking responsibilities as:

- **The leader of Country:** The Prime Minister of India is the Head of the Government of India.
- **Portfolio allocation:** The Prime Minister has the authority to assign portfolios to the Ministers.
- **Chairman of the Cabinet:** The Prime Minister is the chairman of the cabinet and presides the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference among the members.
- **Official Representative of the country:** Prime minister represents the country for high-level international meetings
- **The link between the President and the Cabinet:** The Prime Minister acts as the link between President and cabinet. He communicates all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.
- **Head:** The Prime Minister is the head of Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
- **Chief Advisor:** He acts as the chief advisor to the President

## Cabinet

(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.



(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

### **Parliament:**

Parliament, which is a platform to do a discussion on issues having social and civic importance in any popular democracy, is a cornerstone of democratic values in any representative democracy.

Parliament may be perceived as a political institution to ensure the realization of what Mahatma Gandhi once envisaged that, Democracy essentially is the art and science of mobilizing and utilizing the entire physical, economic and immaterial & metaphysical resources for the common good of all the people.

Though the origin of the concept of Parliament traces to European nations since medieval ages, it has been an indispensable part of the Indian democratic structure since the inception of democracy in India.

The stalwarts of Indian freedom struggle, legal experts and other members of the Constituent Assembly, arrived at a conclusion of endorsing a parliamentary system of government after an extensive and in-depth study of the Constitution of other nation-states.

After the first general election in the year 1952, both the houses of parliament came into existence.

It must be noted that after the Constitution was adopted and till general elections, i.e between 1950 to 1952, the Constituent Assembly itself functioned as the provisional legislative body.

### **Supreme Court of India**

Supreme Court at the apex of the Indian Judiciary is the highest authority to uphold the Constitution of India, to protect the rights and liberties of the citizens, and to uphold the values of rule of law. Hence, it is known as the *Guardian of our Constitution*.

The Indian Constitution provides for a provision of the Supreme Court under Part V (The Union) and Chapter 6 titled 'The Union Judiciary'. The Constitution of India has provided an independent judiciary with a hierarchical setup containing High Courts and Subordinate Courts under it.



### **Composition of the Supreme Court**

**Article 124(1) and Amendment act of 2008 states that there shall be a Supreme Court of India** consisting of a Chief justice of India (CJI) and **34 judges including the CJI**. Article 124(2) states that every judge of the Supreme Court shall be appointed by the President of India by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the states.

Here, the collegium system(appointment of judges to the courts) was followed which is also known as the three judges cases, which comprises of the Chief Justice of India (CJI) and four senior-most judges of the SC, one Chief Justice of the High Court and two of its senior-most judges. This system demanded a consensus decision of all the senior-most judges in conformity with the Chief Justice of India.

However, due to lack of transparency and delay in the appointment, a new article 124 A was incorporated in the constitution, under which the National Judiciary Appointments Commission (NJAC) replaced the collegium system for the appointment of judges as mandated in the existing pre-amended constitution by a new system.

### **Judicial Review**

**Meaning of Judicial Review**  
Judicial Review can be understood as a form of court proceeding, usually in the Administrative Court where the lawfulness of a decision or action is reviewed by the judge. Where there is no effective means of challenge, judicial review is available. The concern behind Judicial Review is that whether the law has been correctly applied with and right procedures have been followed.[2]

**Judicial Review And Constitution of India**  
In order to scrutinize the legitimacy of administrative action and the statutes, the Constitution of India has given influences to the Higher courts and the Supreme Court of India. To guard the rights of public and implement the fundamental rights are the main objects of judicial review. If any difficulty arises between State and Center relation, then Article 246 and the Schedule 7 of the Constitution has marked the working zone for the regulation construction between both State and Center.

**Judicial review has evolved in three dimensions:**  
# To protect the legality of essential rights under Part III of the Indian Constitution.  
# To authorize the disinterest of organizational achievement.  
# Interrogation of public interest.[3]