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**Professional Issues in IT Section A**

**Constitution of China**

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| **Original title** 中华人民共和国宪法 |
| **Jurisdiction** People's Republic of China (including Hong Kong and Macau) |
| **Ratified** December 4, 1982 |
| **Date effective** December 4, 1982 |
| **System** Unitary Marxist-Leninist single-party socialist republic |
| **Branches** Six (Legislative, Executive, Military, Supervisory, Judicial, Procuratorial) |
| **Head of state** President |
| **Chambers** Unicameral (National People's Congress) Owing to the NPC's large size and infrequent meetings, the De facto legislature is its Standing Committee |
| **Executive** Premier led State Council |
| **Judiciary** Supreme People's Court Supreme People's Procuratorate |
| **Federalism** Unitary with special administrative regions |
| **Electoral college** Yes – the National People's Congress, which is elects all other state authorities, is itself elected by two layers of Indirect election: County and Township People's Congresses elect the members of Provincial People's Congresses, who in turn elect the NPC deputies. |
| **First legislature** September 21, 1949 (Chinese People's Political Consultative Conference) September 27, 1954 (National People's Congress) |
| **First executive** September 27, 1954 (Chairman) October 1, 1949 (Premier) |
| **First court** October 22, 1949 |
| **Amendments** 5 |
| **Last amended** 11 March 2018 |
| **Location** Beijing |
| **Commissioned by** 11th Communist Party Central Committee |
| **Supersedes** 1978 Constitution of the People's Republic of China |

**Background:**

The **Constitution of the People's Republic of China** is nominally the supreme law within the People's Republic of China. The current version was adopted by the 5th National People's Congress on December 4, 1982, with further five revisions in 1988, 1993, 1999, 2004 and 2018. Three previous state constitutions—those of 1954, 1975, and 1978—were superseded in turn.

The Constitution is divided into five sections. They are the:

1. Preamble
2. General Principles (Chapter 1)
3. The Fundamental Rights and Duties of Citizens (Chapter 2)
4. The Structure of the State (Chapter 3) - which includes such state organs as the National People's Congress, the State Council, the Local People's Congress and Local People's Governments and the People's Courts and the People's Procuratorates
5. The National Flag, the National Anthem, the National Emblem and the Capital (Chapter 4).[1

**History:**

The first Constitution of the People's Republic of China was declared in 1954. After two intervening versions enacted in 1975 and 1978, the current Constitution was declared in 1982. There were significant differences between each of these versions, and the 1982 Constitution has subsequently been amended five times. In addition, changing Constitutional conventions have led to significant changes in the structure of Chinese government in the absence of changes in the

The new State Constitution provides a legal basis for the broad changes in China's social and economic institutions and significantly revises government structure. The posts of President and Vice President (which were abolished in the 1975 and 1978 constitutions) are re-established in the 1982 Constitution.

Much of the PRC Constitution is modelled after the 1936 Constitution of the Soviet Union, but there are some significant differences. For example, while the Soviet constitution contains an explicit right of secession, the Chinese constitution explicitly forbids secession. While the Soviet constitution formally creates a federal system, the Chinese constitution formally creates a unitary multi-national state.

The 1982 State Constitution is a lengthy, hybrid document with 138 articles.

Article 1 of the State Constitution describes China as "a socialist state under the people's democratic dictatorship"[3] meaning that the system is based on an alliance of the working classes—in communist terminology, the workers and peasants—and is led by the Communist Party, the vanguard of the working class. Elsewhere, the Constitution provides for a renewed and vital role for the groups that make up that basic alliance—the CPPCC, democratic parties, and mass organizations.

Emphasis is also placed throughout the 1982 State Constitution on socialist law as a regulator of political behaviour. There is an explicit statement in Article 5 that the Constitution and law are supreme over all organizations and individuals.

Thus, the rights and obligations of citizens are set out in detail far exceeding that provided in the 1978 constitution. Probably because of the excesses that filled the years of the Cultural Revolution, the 1982 Constitution gives even greater attention to clarifying citizens' "fundamental rights and duties" than the 1954 constitution did, like the right to vote and to run for election begins at the age of eighteen except for those disenfranchised by law. The Constitution also guarantees the freedom of religious worship as well as the "freedom not to believe in any religion" and affirms that "religious bodies and religious affairs are not subject to any foreign domination."

Article 35 of the 1982 State Constitution proclaims that "citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration."

Among the political rights granted by the constitution, all Chinese citizens have rights to elect and be elected.According to the later promulgated election law, rural residents had only 1/4 vote power of townsmen (formerly 1/8). As Chinese citizens are categorized into rural resident and town resident.

The 1982 State Constitution is also more specific about the responsibilities and functions of offices and organs in the state structure. There are clear admonitions against familiar Chinese practices that the reformers have labelled abuses, such as concentrating power in the hands of a few leaders and permitting lifelong tenure in leadership positions. On the other hand, the constitution strongly oppose the western system of separation of powers by executive, legislature and judicial. It stipulates the NPC as the highest organ of state authority power, under which the State Council, the Supreme People's Court, and the Supreme People's Procuratorate shall be elected and responsible for the NPC.

In addition, the 1982 Constitution provides an extensive legal framework for the liberalizing economic policies of the 1980s. It allows the collective economic sector not owned by the state a broader role and provides for limited private economic activity. Members of the expanded rural collectives have the right "to farm private plots, engage in household sideline production, and raise privately owned livestock." The primary emphasis is given to expanding the national economy, which is to be accomplished by balancing centralized economic planning with supplementary regulation by the market.

Another key difference between the 1978 and 1982 state constitutions is the latter's approach to outside help for the modernization program. Whereas the 1978 constitution stressed "self-reliance" in modernization efforts, the 1982 document provides the constitutional basis for the considerable body of laws passed by the NPC in subsequent years permitting and encouraging extensive foreign participation in all aspects of the economy. In addition, the 1982 document reflects the more flexible and less ideological orientation of foreign policy since 1978. Such phrases as "proletarian internationalism" and "social imperialism" have been dropped.

**2004 Amendments**

The Constitution was amended on March 14, 2004 to include guarantees regarding private property (*"legally obtained private property of the citizens shall not be violated,"*) and human rights (*"the State respects and protects human rights."*) This was argued by the government to be progress for Chinese democracy and a sign from Communist Party of China that they recognised the need for change, because the booming Chinese economy had created a wealthy new middle class who wanted protection of their own property.

Premier Wen Jiabao was quoted by *The Washington Post* as saying, "These amendments of the Chinese constitution are of great importance to the development of China." "We will make serious efforts to carry them out in practice.

**2018 Amendments**

The Constitution was amended on March 11, 2018, with 2,958 votes in favour, two against, and three abstentions. It includes an assortment of revisions to further cement the Communist Party’s control and supremacy; setting up the National Supervisory Commission, a new anti-graft agency, to extend the powers of the Communist Party’s graft watchdog; adding Hu Jintao's Scientific Outlook on Development and Xi Jinping Thought to the Preamble of the Constitution, and removing term limits for both the President and Vice President. The article 36 for the first time writes the phrase “Communist Party of China”—and its “leadership”—into the main body of the Constitution. Before this, the CCP and its leadership was only mentioned in the preamble. If the preamble is considered to have no legal force, this article for the first time constitutionalizes China’s status as a one-party state, and will render any competitive multi-party system unconstitutional.

**Constitutional enforcement**

The National People's Congress Constitution and Law Committee is responsible for constitutional review and the enforcement of the Chinese constitution under National People's Congress and its Standing Committee, and the constitution stipulates that the National People's Congress and its Standing Committee have the power to review whether laws or activities violate the constitution.

Furthermore, under the legal system of the People's Republic of China, courts do not have the general power of judicial review and cannot invalidate a statute on the grounds that it violates the constitution. A special committee of the Standing Committee of the National People's Congress which has reviewed laws and regulations for constitutionality. Although this committee has not yet explicitly ruled that a law or regulation is unconstitutional, in one case, after the subsequent media outcry over the death of Sun Zhigang , the State Council was forced to rescind regulations allowing police to detain persons without residency permits after the Standing Committee of the National People's Congress (NPCSC) made it clear that it would rule such regulations unconstitutional if they were not rescinded.

The Open Constitution Initiative was an organization consisting of lawyers and academics in the People's Republic of China that advocated the rule of law and greater constitutional protections. It was shut down by the government on July 14, 2009.