

GEETHANJALI INSTITUTE OF SCIENCE AND TECHNOLOGY

CONSTITUTION OF INDIA

Lecture Notes

REGULATION-RG22
II-YEAR-I-SEMESTER
DEPARTMENT OF CSE(AI&ML)

UNIT-I

Constitution

A constitution is a set of fundamental rules that determine how a country or state is run.

Preamble

The preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose, principles and philosophy of the constitution.

The preamble gives an idea about the following:

- (1) The source of the constitution,
- (2) The nature of the Indian state
- (3) a statement of its objectives and
- (4) the date of its adoption.

We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens:

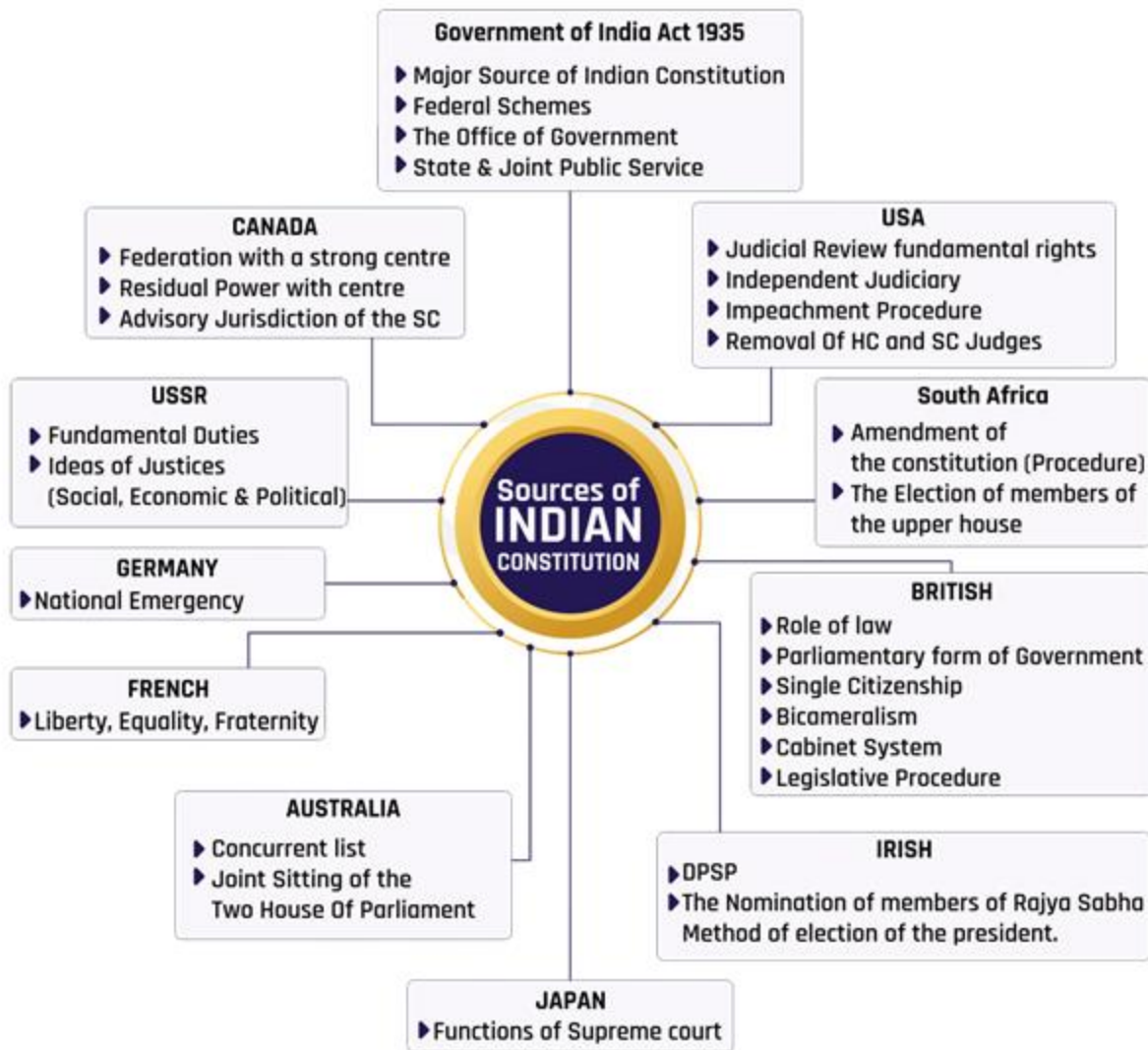
- **JUSTICE**, social, economic and political;
- **LIBERTY** of thought, expression, belief, faith and worship;
- **EQUALITY** of status and of opportunity;

and to promote among them all

- **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation;

Indian Constitution Sources and Constitutional History

Indian Constitution has absorbed those features from other nations' constitutions that suited Indian problems and aspirations. Constituent Assembly took the best of features from everywhere and made them its own.



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

Features of Indian Constitution

The Constitution of India begins with a Preamble.

The Preamble contains the ideals, objectives and basic principles of the Constitution.

The salient features of the Constitution have evolved directly and indirectly from these objectives which flow from the Preamble.

Constitution of India – Major Features

1. Lengthiest Written Constitution
2. Drawn from Various Sources
3. Blend of Rigidity and Flexibility
4. Federal System with Unitary Bias
5. Parliamentary Form of Government
6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy
7. Rule of Law
8. Integrated and Independent Judiciary
9. Fundamental Rights
10. Directive Principles of State Policy
11. Fundamental Duties
12. Indian Secularism
13. Universal Adult Franchise
14. Single Citizenship
15. Independent Bodies

16. Emergency Provisions

17. Three-tier Government

18. Co-operative Societies

Citizenship

Citizenship of India can be acquired in the following ways:

1. Citizenship at the commencement of the Constitution
2. Citizenship by birth
3. Citizenship by descent
4. Citizenship by registration
5. Citizenship by naturalization
6. By incorporation of territory (by the Government of India)
 - People who were domiciled in India as on 26th November 1949 automatically became citizens of India by virtue of citizenship at the commencement of the Constitution.
 - Persons who were born in India on or after 26th January 1950 but before 1st July 1987 are Indian citizens.
 - A person born after 1st July 1987 is an Indian citizen if either of the parents was a citizen of India at the time of birth.
 - Persons born after 3rd December 2004 are Indian citizens if both parents are Indian citizens or if one parent is an Indian citizen and the other is not an illegal migrant at the time of birth.
 - Citizenship by birth is not applicable for children of foreign diplomatic personnel and those of enemy aliens.

Termination of Indian Citizenship

Termination of citizenship is possible in three ways according to the Act:

1. **Renunciation:** If any citizen of India who is also a national of another country renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen. When a male person ceases to be a citizen of India, every minor child of his also ceases to be a citizen of India. However, such a child may within one year after attaining full age become an Indian citizen by making a declaration of his intention to resume Indian citizenship.

2. **Termination:** Indian citizenship can be terminated if a citizen knowingly or voluntarily adopts the citizenship of any foreign country.
3. **Deprivation:** The government of India can deprive a person of his citizenship in some cases. But this is not applicable for all citizens. It is applicable only in the case of citizens who have acquired the citizenship by registration, naturalization, or only by Article 5 Clause (c) (which is citizenship at commencement for a domicile in India and who has ordinarily been a resident of India for not less than 5 years immediately preceding the commencement of the Constitution).

Persons of Indian Origin (PIO) Card

A person would be eligible for the PIO card if he:

1. Is a person of Indian origin and is a citizen of any country except Pakistan, Sri Lanka, Nepal, Bangladesh, Bhutan, China or Afghanistan, or
2. Has held an Indian passport at any other time or is the spouse of a citizen of India or a person of Indian origin.

PIO cardholders can enter India with the multiple entry feature for fifteen years. They do not need a separate visa.

Overseas Citizen of India (OCI) Card

- OCI Card is for foreign nationals who were eligible for Indian citizenship on 26th January 1950 or was an Indian citizen on or after that date.
- Citizens of Pakistan and Bangladesh are not eligible for OCI Card. An OCI cardholder does not have voting rights.
- OCI is not dual citizenship. OCI cardholders are not Indian citizens.
- The OCI Card is a multipurpose, multiple entry lifelong visa for visiting India.
- Persons with OCI Cards have equal rights as NRIs in terms of financial, educational, and economic matters. But they cannot acquire agricultural land in India.

Fundamental rights

Fundamental Rights are the basic human rights guaranteed by the Constitution of India.

The six fundamental rights include

- Right to Equality
- Right to Freedom
- Right against Exploitation

- Right to freedom of Religion,
- Cultural and Educational Rights and
- Right to constitutional Remedies.

Classification of Fundamental Rights

The fundamental rights are classified into the following six categories:

Classification of Fundamental Rights	Article	Deals With
Right to Equality	14	Equality Before Law
	15	Prohibition of Discrimination
	16	Equality of Opportunity in Public Employment
	17	Abolition of Untouchability
	18	Abolition of Titles
Right to Freedom	19	Protection of 6 Rights <ul style="list-style-type: none"> • Right to freedom of speech and expression. • Right to assemble peaceably and without arms. • Right to form associations or unions or co-operative societies. • Right to move freely throughout the territory of India. • Right to reside and settle in any part of the territory of India. • Right to practice any profession or to carry on any occupation, trade or business.
	20	Protection in Respect of Conviction for Offences
	21	Protection of Life and Personal Liberty

	21-A	Right to Education
	22	Protection Against Arrest and Detention
Right Against Exploitation	23	Prohibition of Human Trafficking and Forced Labour
	24	Prohibition of Child Labour
Right to Freedom of Religion	25	Freedom of Conscience, Profession, Practice and Propagation
	26	Freedom to Manage Religious Affairs
	27	Freedom from Taxation for Promotion of a Religion
	28	Freedom from Attending Religious Instruction
Educational and Cultural Rights	29	Protection of Interests of Minorities
	30	Right of Minorities to Establish and Administer Educational Institutions
Right to Constitutional Remedies	32	<p>Right to remedies for the enforcement of the fundamental rights using five writs:</p> <ul style="list-style-type: none"> • Habeas Corpus - to direct the release of a person detained unlawfully. • Mandamus - to direct a public authority to do its duty. • Quo Warranto - to direct a person to vacate an office assumed wrongfully. • Prohibition - to prohibit a lower court from proceeding on a case. • Certiorari - the power of the higher court to remove a proceeding from a lower court and bring it before itself.
	33	Empowers the Parliament to restrict or abrogate the fundamental rights of the 'Members of the Armed Forces, paramilitary forces, police forces, intelligence agencies and analogous forces

	34	Provides for the restrictions on fundamental rights while martial law (military rule) is in force
	35	Empowers the Parliament to make laws on Fundamental Rights

Fundamental Duties

- Fundamental Duties are said to be one of the fundamental obligations mentioned in the Constitution of India (Others are Fundamental Duties and Directive Principles of State).
- These are the moral as well as civic obligations or duties that citizens should fulfill.
- In the Indian Constitution, these were not added originally by the founding fathers but later it was added by the 42nd Constitutional Amendment Act, 1976.

List of Fundamental Duties

The following are the fundamental duties of India defined in the constitution:

1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
2. To cherish and follow the noble ideals which inspired our national struggle for freedom.
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
6. To value and preserve the rich heritage of our composite culture.
7. To protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures.
8. To develop the scientific temper, humanism and the spirit of inquiry and reform.
9. To safeguard public property and to abjure violence.
10. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.
11. To provide opportunities for education to his child or ward between the age of six and fourteen years (added by the 86th Constitutional Amendment Act, 2002).

Directive Principles of State Policy

These lay down that the State shall strive to promote the welfare of people by securing and protecting as effectively as it may, a social order, in which justice-social, economic and political-shall form in all institutions of national life.

Objectives

The major objectives of DPSP are to maintain economic, social and political justice in the affairs of the State.

According to them, the State will cater for the secure and happy life of its citizens by guaranteeing secure and full employment, free education and free medical aid for all its citizens.

Classification of Principles:

The Directive Principles are classified on the basis of their ideological source and objectives. These are Directives based on:

- Socialist Principles
- Gandhian Principles
- Liberal and Intellectual Principles

Directives based on Socialist Principles

- **Article 38:** The State shall strive to promote the welfare of the people by securing and protecting a social order by ensuring social, economic and political justice and by minimizing inequalities in income, status, facilities and opportunities
- **Articles 39:** The State shall in particular, direct its policies towards securing:
 - Right to an adequate means of livelihood to all the citizens.
 - The **ownership and control of material resources** shall be organized in a manner to serve the common good.
 - The State shall **avoid concentration of wealth in a few hands.**
 - **Equal pay for equal work** for both men and women.
 - The protection of the strength and health of the workers.
 - Childhood and youth shall not be exploited.
- **Article 41:** To secure the right to work, to education and to public assistance **in cases of unemployment**, old age, sickness and disability.

- **Article 42:** The State shall make provisions for securing just and humane conditions of work and for maternity relief.
- **Article 43:** The State shall endeavor to secure to all workers a living wage and a decent standard of life.
 - **Article 43A:** The State shall take steps to secure the participation of workers in the management of industries.
- **Article 47:** To raise the level of nutrition and the standard of living of people and to improve public health.

Directives based on Gandhian Principles

- **Article 40:** The State shall take steps to organize village panchayats as units of Self Government
- **Article 43:** The State shall endeavor to promote cottage industries on an individual or cooperative basis in rural areas.
 - **Article 43B:** To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.
- **Article 46:** The State shall promote educational and economic interests of the weaker sections of the people particularly that of the Scheduled Castes (SCs), Scheduled Tribes (STs) and other weaker sections.
- **Article 47:** The State shall take steps to improve public health and prohibit consumption of intoxicating drinks and drugs that are injurious to health.
- **Article 48:** To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

Directives based on Liberal-Intellectual Principles

- **Article 44:** The State shall endeavor to secure for the citizen a Uniform Civil Code through the territory of India.
- **Article 45:** To provide early childhood care and education for all children until they complete the age of six years.
- **Article 48:** To organize agriculture and animal husbandry on modern and scientific lines.

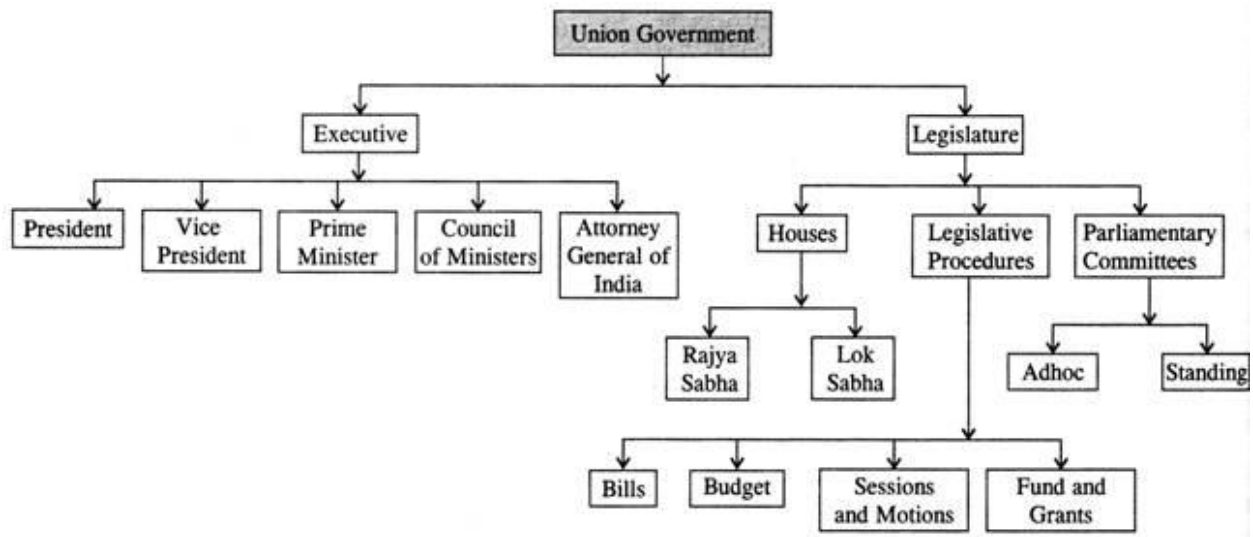
- **Article 48A:** To protect and improve the environment and to safeguard the forests and wildlife of the country.
- **Article 49:** The State shall protect every monument or place of artistic or historic interest.
- **Article 50:** The State shall take steps to separate judiciary from the executive in the public services of the State.
- **Article 51:** It declares that to establish international peace and security the State shall endeavor to:
 - Maintain just and honorable relations with the nations.
 - Foster respect for international law and treaty obligations.
 - Encourage settlement of international disputes by arbitration.

UNIT-II

Union Government

- The Government of India also known as the Union Government or Central Government but often simply as the Centre, is the national authority of the Republic of India, a federal democracy located in South Asia, consisting of 28 union states and eight union territories.
- The government, seated in New Delhi, has three primary branches: the legislative, the executive and the judiciary, whose powers are vested in a bicameral Parliament, a prime minister, and the Supreme Court respectively, with a president as head of state. Through judicial evolution, the Parliament has lost its sovereignty as its amendments to the Constitution are subject to judicial intervention. Judicial appointments are made with negligible say from the executive or legislature.

Administrative Structure of Indian Union



Federalism

Federalism is a system of government in which powers have been divided between the center and its constituent parts such as states or provinces. It is an institutional mechanism to accommodate two sets of politics, one at the center or national level and second at the regional or provincial level.

Federal System – Two Types of Federations

In a federation system, there are two seats of power that are autonomous in their own spheres. A federal system is different from a unitary system in that sovereignty is constitutionally split between two territorial levels so that each level can act independently of each other in some areas.

There are two kinds of federations:

1. **Holding Together Federation** – In this type, powers are shared between various constituent parts to accommodate the diversity in the whole entity. Here, powers are generally tilted towards the central authority. Example: India, Spain, Belgium.
2. **Coming Together Federation** – In this type, independent states come together to form a larger unit. Here, states enjoy more autonomy as compared to the holding together kind of federation. Example: USA, Australia, Switzerland.

Features of the Federal System of India

1. Dual government polity
2. Division of powers between various levels
3. Rigidity of constitution
4. Independence judiciary
5. Dual citizenship
6. Bicameralism

Centre State Relationship

- For the administration of the whole of India, the union government implies central governments that have several ministries.
- The governments of the Central and Union are similar to those defined as a unitary form of government.
- All authorities are vested in the central government in the unitary structure of government.

- The states have a bicameral structure, which means that each state has two legislative committees, more like the federal system of legislation.
- The state government is responsible for designing state legislation which can become state legislation.

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.

Election of President

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

President's Role, Power and Position

Powers and Functions of the President

Executive Powers of President

1. For every executive action that the Indian government takes, is to be taken in his name
2. He may/may not make rules to simplify the transaction of business of the central government
3. He appoints the attorney general of India and determines his remuneration
4. He appoints the following people:
 1. Comptroller and Auditor General of India (CAG)
 2. Chief Election Commissioner and other Election Commissioners
 3. Chairman and members of the Union Public Service Commission
 4. State Governors
 5. Finance Commission of India chairman and members

5. He seeks administrative information from the Union government
6. He requires PM to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council
7. He appoints National Commissions of:
 1. Scheduled Castes (Read about National Commission for Scheduled Castes in the linked article.)
 2. Scheduled Tribes Read about (National Commission for Scheduled Tribes in the linked article.)
 3. Other Backward Classes (Read about National Commission for Backward Classes in the linked article.)
8. He appoints inter-state council
9. He appoints administrators of union territories
10. He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

Legislative Powers of President

1. He summons or prorogues Parliament and dissolve the Lok Sabha
2. He summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock
3. He addresses the Indian Parliament at the commencement of the first session after every general election
4. He appoints speaker, deputy speaker of Lok Sabha, and chairman/deputy chairman of Rajya Sabha when the seats fall vacant (to know the difference between Lok Sabha and Rajya Sabha check the linked article.)
5. He nominates 12 members of the Rajya Sabha
6. He can nominate two members to the Lok Sabha from the Anglo-Indian Community
7. He consults the Election Commission of India on questions of disqualifications of MPs.
8. He recommends/ permits the introduction of certain types of bills (to read on how a bill is passed in the Indian Parliament, check the linked article.)
9. He promulgates ordinances
10. He lays the following reports before the Parliament:
 1. Comptroller and Auditor General
 2. Union Public Service Commission
 3. Finance Commission, etc.

Financial Powers of President

1. To introduce the money bill, his prior recommendation is a must
2. He causes Union Budget to be laid before the Parliament

3. To make a demand for grants, his recommendation is a pre-requisite
4. Contingency Fund of India is under his control
5. He constitutes the Finance Commission every five years

Judicial Powers of President

1. Appointment of Chief Justice and Supreme Court/High Court Judges are on him
2. He takes advice from the Supreme Court, however, the advice is not binding on him
3. He has **pardoning power**: Under article 72, he has been conferred with power to grant pardon against punishment for an offence against union law, punishment by a martial court, or death sentence.

Note: Pardoning powers of the president includes the following types:

- **Pardon** with the grant of pardon convicts both conviction and sentence completely absolved
- **Commutation with** this nature of the punishment of the convict can be changed
- **Remission** reduces the term of the imprisonment
- **Respite** awards lesser punishment than original punishment by looking at the special condition of a convict
- **Reprieve** stays the execution of the awarded sentence for a temporary period

Diplomatic Powers of President

1. International Treaties and agreements that are approved by the Parliament are negotiated and concluded in his name
2. He is the representative of India in international forums and affairs

Military Powers of President

He is the commander of the defense forces of India. He appoints:

1. Chief of the Army
2. Chief of the Navy
3. Chief of the Air Force

Emergency Powers of President

He deals with three types of emergencies given in the Indian Constitution:

1. National Emergency (Article 352)
2. President's Rule (Article 356 & 365)
3. Financial Emergency (Article 360)

Role, Power and Position of Prime Minister

Appointment of Prime Minister of India

President of India appoints a person as the Prime Minister who is either the leader of the party which holds a majority of seats in the Lok Sabha or is a person who is able to win the confidence of the Lok Sabha by gaining the support of other political parties. All other ministers are appointed by the President on the advice of the Prime Minister.

Powers and Functions 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

Loksabha and Rajyasabha

Legislature of the Union, which is called Parliament, consists of the President and two Houses, known as **Council of States (Rajya Sabha)** and **House of the People (Lok Sabha)**.

Each House has to meet within six months of its previous sitting.

A joint sitting of two Houses can be held in certain cases.

Lok Sabha

The Lok Sabha is composed of representatives of people chosen by direct election on the basis of adult suffrage. The maximum strength of the House envisaged by the Constitution is now 552 (530 members to represent States, 20 to represent Union Territories, and not more than two members of the Anglo-Indian community to be nominated by the President, if, in his opinion, that community is not adequately represented in the House).

Rajya Sabha

The Constitution provides that the Rajya Sabha shall consist of 250 members, of which 12 members shall be nominated by the President from amongst persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service; and not more than 238 representatives of the States and of the Union Territories.

Comparison between Lok Sabha and Rajya Sabha		
Difference	Lok Sabha	Rajya Sabha
What it is called?	House of People	Council of States
What is the meaning of the name?	House of People, where people who are qualified to vote can elect their representative by way of direct elections	Council of States, where the representatives are indirectly elected by the elected representative of the Assemblies of States and Union Territories
What is the tenure of the house?	It continues for 5 years Note: It can be dissolved earlier by passing no-confidence motion	It is a permanent body.
Who heads the house?	Speaker	Vice President of India as the Chairman of the house

What is the minimum age to become a member?	25 years	30 years
What is the strength of the house?	552 members	250 members
What are the functions of the house?	All bills originate in Lok Sabha mostly and after passing through Rajya Sabha, they are returned for Lok Sabha approval. It plays a major role in legislation.	Rajya Sabha has special powers to protect the states' rights against the Union.

Difference between Lok Sabha and Rajya Sabha w.r.t Representation of States	
Lok Sabha	Rajya Sabha
<ul style="list-style-type: none"> Members are directly elected by the people from the territorial constituencies in the states Election Principle used – Universal Adult Franchise Eligibility to Vote: Any Indian Citizen of/above 18 years of age <p>Note: Voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988</p>	<ul style="list-style-type: none"> Members are elected by the elected members of state legislative assemblies Election Principle used – Proportional Representation by means of Single Transferable Vote Allotment of Seats – On the basis of population <p>Note: Number of representatives varies from state to state</p>

Composition of Lok Sabha		Composition of Rajya Sabha	
Maximum Strength – 552	530 represent the States	Maximum Strength – 250	238 elected indirectly and are representatives of States and Union Territories
	20 are the representatives of Union Territories		12 are nominated by the President
	2 are nominated by the President from Anglo-Indian Community	Current strength – 245	233 represent states and Union Territories
Current Strength – 545	530 represent States		–
	13 represent Union Territories		12 are nominated by President
	2 are nominated by the President from Anglo-Indian Community		–

Council of Ministers

Two articles – Article 74 and Article 75 of the Indian Constitution deal with the Council of Ministers. Where article 74 mentions that the council will be headed by the Prime Minister of India and will aid and advise the President, article 75 mentions the following things:

- They are appointed by the President on the advice of Prime Minister
- They along with the Prime Minister of India form 15% of the total strength of the lower house i.e., Lok Sabha. (The number cannot exceed 15%)
- 91st Amendment Act provided for the disqualification of the minister when he stands disqualified as a member of Parliament.
- A Minister ceased to exist as one if he is not a member of either house of Parliament for six consecutive months.

- Parliament decides the salary and allowances of the council of ministers.

Types of Ministers

The Indian Constitution does not categorize ministers into ranks, however, in practice seen in India, ministers are of four types:

1. **Cabinet Ministers**—He is present and he participates in every meeting of the Cabinet.
2. **Minister of State with independent charge**—He is a Minister of State who does not work under a cabinet minister. When any matter concerning his department is on the agenda of the Cabinet, he is invited to attend the meeting.
3. **Minister of State**—He is a Minister who does not have independent charge of any Department and works under a cabinet minister. The work to such Minister is allotted by his cabinet minister.
4. **Deputy Minister**—He is a Minister who works under a Cabinet Minister or a Minister of State with independent charge. His work is allotted by the Minister under whom he is working.

Supreme Court of India

The Supreme Court of India is the country's highest judicial court.

It is the final court of appeal in the country.

It is hence, an extremely important topic in the UPSC exam polity and governance sections.

Supreme Court of India – Functions

- It takes up appeals against the verdicts of the High Courts, other courts and tribunals.
- It settles disputes between various government authorities, between state governments, and between the center and any state government.
- It also hears matters which the President refers to it, in its advisory role.
- The SC can also take up cases Suo moto (on its own).
- The law that SC declares is binding on all the courts in India and on the Union as well as the state governments.

Supreme Court Jurisdiction

The jurisdiction of the SC is of three types:

1. Original

2. Advisory
3. Appellate

Supreme Court Composition

- Including the CJI, there are 34 judges in the Supreme Court.
- The judges sit in benches of 2 or 3 (called a Division Bench) or in benches of 5 or more (called a Constitutional Bench) when there are matters of fundamental questions of the law is to be decided.

High Court

High Courts are the highest courts in a state. Presently, there are 25 High Courts in India, with some states having a common High Court. They are an important part of the judicial system in India

The functions of the High Court are described in the below section under subsections such as its jurisdiction, powers, role, etc.

High Court Jurisdiction

The various kinds of the jurisdiction of the High Court are briefly given below:

Original Jurisdiction

- The High Courts of Calcutta, Bombay and Madras have original jurisdiction in criminal and civil cases arising within these cities.
- An exclusive right enjoyed by these High Courts is that they are entitled to hear civil cases which involve property worth over Rs.20000.
- **Regarding Fundamental Rights:** They are empowered to issue writs in order to enforce fundamental rights.
- With respect to other cases: All High Courts have original jurisdiction in cases that are related to will, divorce, contempt of court and admiralty.
- Election petitions can be heard by the High Courts.

Appellate Jurisdiction

- **In civil cases:** an appeal can be made to the High Court against a district court's decision.
- An appeal can also be made from the subordinate court directly if the dispute involves a value higher than Rs. 5000/- or on a question of fact or law.

- **In criminal cases:** it extends to cases decided by Sessions and Additional Sessions Judges.
 - If the sessions judge has awarded imprisonment for 7 years or more.
 - If the sessions judge has awarded capital punishment.
- The jurisdiction of the High Court extends to all cases under the State or federal laws.
- **In constitutional cases:** if the High Court certifies that a case involves a substantial question of law.

High Court Powers

Apart from the above, the High Courts have several functions and powers which are described below.

As a Court of Record

- High Courts are also Courts of Record (like the Supreme Court).
- The records of the judgements of the High Courts can be used by subordinate courts for deciding cases.
- All High Courts have the power to punish all cases of contempt by any person or institution.

Administrative Powers

1. It superintends and controls all the subordinate courts.
2. It can ask for details of proceedings from subordinate courts.
3. It issues rules regarding the working of the subordinate courts.
4. It can transfer any case from one court to another and can also transfer the case to itself and decide the same.
5. It can enquire into the records or other connected documents of any subordinate court.
6. It can appoint its administration staff and determine their salaries and allowances, and conditions of service.

Power of Judicial Review

High Courts have the power of judicial review. They have the power to declare any law or ordinance unconstitutional if it is found to be against the Indian Constitution.

Power of Certification

A High Court alone can certify the cases fit for appeal before the Supreme Court.

Powers and Functions of High Court

High Court Autonomy

The independence of the High Courts can be corroborated by the points given below:

1. **Appointment of Judges:** The appointment of judges of the High Courts lies within the judiciary itself and is not connected to the legislature or the executive.
2. **Tenure of the Judges:** High Court judges enjoy the security of tenure till the age of retirement, which is 62 years. A High Court cannot be removed except by an address of the President.
3. **Salaries and allowances:** The High Court judges enjoy good salaries, perks and allowances and these cannot be changed to their disadvantage except in case of a financial emergency. The expenses of the High Court are charged on the Consolidated Fund of the State, which is not subject to vote in the state legislature.
4. **Powers:** The Parliament and the state legislature cannot cut the powers and jurisdiction of the High Court as guaranteed by the Constitution.
5. **Conduct of judges:** Unless a motion of impeachment has been moved, the conduct of the High Court judges cannot be discussed in the Parliament.
6. **Retirement:** After retirement, High Court judges cannot hold an office of emolument under the Government of India or that of a state. There is an exception to this clause, however, when, with the consent of the Chief Justice of India, retired judges can be nominated to a temporary office, and in the situation of emergencies.