

Constitution of India

Module 1

Fr. Dr. Bennet Kuriakose
Department of Civil Engineering
St. Joseph's College of Engineering and Technology Palai.



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COLLEGE OF ENGINEERING
AND TECHNOLOGY,
- PALAI -



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Module Syllabus

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1.1	Definition of constitution, historical back ground, salient features of the constitution.	1
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1.3	Meaning of citizenship, types, termination of citizenship.	2



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Constitution - Definition

- The word 'Constitution' is developed from the word 'Constitute', which means 'to frame or to establish or to compose'. The term *constitution* comes through French from the Latin word *constitutio*, used for regulations and orders.
- It is a document which contains the rules and regulations guiding the administrations of a country or organisation.
- Any law which is not in accordance with the Constitution becomes invalid.
- It explains the powers belonging to the government, the fundamental rights of the citizens and the relationship between the citizens and the government.



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Constitution - Definition

- **Classification:**
 - Classification based on codification status:
 - Written (Codified) Constitution: ex.- India, Pakistan, USA
 - Unwritten (Uncodified) Constitution: ex.- UK, Canada, Saudi Arabia
 - Classification based on Evolution status:
 - Evolved – no date of origin : ex.- UK
 - Enacted – there is a date of implementation. Ex.- India
 - Classification based on Rigidity:
 - Rigid – ex. USA
 - Flexible – ex. UK
 - Blend of rigidity and flexibility – ex. India





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Historical Background

- Cabinet Mission:** World War II in Europe came to an end on 9th May, 1945. In July, a new Government came to power in the United Kingdom. The new British Government announced its Indian policy and decided to convene a Constitution Drafting Body. Three British Cabinet members (Cabinet Mission 1946) were sent to find a solution to the question of India's Independence. The Cabinet Mission discussed the framework of the Constitution and laid down in some detail the procedure to be followed by the Constitution Drafting Body.







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Historical Background

- Establishment of Constituent Assembly:** Constituent Assembly (established in accordance with the Cabinet Mission Plan) initially summoned on 9th December, 1946, under the temporary Presidentship of Sachidananda Sinha, in the Constitution Hall (now it is called as Central Hall of Parliament House). On 1st July, 1947, the British Parliament passed the 'Indian Independence Act', to divide into India and Pakistan.



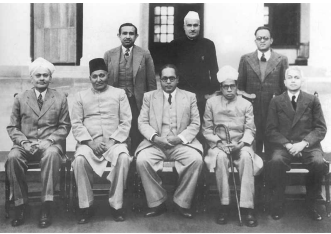


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Historical Background

- Framing of Constitution:** On the demise of Mr. Sinha, Dr. Rajendra Prasad became the President of the Constituent Assembly. In 29 August 1947 **Drafting Committee** appointed with Dr. B. R. Ambedkar as the Chairman. A Draft Constitution was published in February, 1948. The Constituent Assembly took almost three years to frame the constitution.






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Historical Background

- Implementation:** In 26 November 1949 the Constitution of India was passed and adopted by the Constituent Assembly. In 24 January 1950 had the last meeting of Constituent Assembly. The Constitution was signed and accepted. In **26 January 1950** the Constitution came into force. (The process took 2 years, 11 months and 18 days - at a total expenditure of ₹6.4 million to finish.), thus India became Republic.




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Salient Features

- The **Constitution of India** (*भारतीय संविधान or ഇന്ത്യൻ ഭരണഘടന*) is the supreme law of India.
- longest written constitution of any country in the world. Second longest after Constitution of the State of Alabama (USA).
- It imparts *constitutional supremacy*. Parliament cannot override the constitution. (the opposite is *parliamentary supremacy or parliamentarism*)
- The constitution declares India a sovereign, socialist, secular, and democratic republic, assures its citizens justice, equality and liberty, and endeavours to promote fraternity.
- At its enactment, it had 395 articles in 22 parts and 8 schedules.
- The constitution has a preamble and 470 articles, which are grouped into 25 parts.




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Salient Features

1. Have different sources

Government of India Act, 1935	1. Federal structure 2. Office of Governor 3. Judiciary 4. Public Service Commission 5. Emergency provisions, etc.
American constitution	1. President as executive head and the supreme commander of armed forces. 2. Making vice-president as the <i>ex officio</i> chairperson of the upper House of Parliament. 3. Fundamental rights from Bill of Rights of the USA. 4. Concept of Judicial Review: The judicial review is an acquired power of union judiciary. It has a constitution sanction but in India it was a part of the original constitution.
Canadian constitution	Quasi-federalism with a strong centre, i.e., vesting of residuary power in the union government.
Australian constitution	1. Concurrent list over which states and centre have equal jurisdiction. 2. Parliamentary privileges. 3. Provisions relating to trade, commerce and intercourse throughout the country (Articles 301–307).
Irish constitution	Concept of Directive Principles of State Policy: Certain detailed provisions of Directive Principles of State Policy can be traced back to the instrument of instructions of the Government of India Act, 1935.
Weimer constitution of Germany	Emergency provisions.
Japanese constitution	Procedure established by-law.




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Salient Features

2. There are **THREE pillars** of the Constitution: Legislature, Executive and Judiciary. This is known as ‘Doctrine of Separation of Power’.
 - Legislature or the Parliament (Lok sabha / House of People and Rajya Sabha Council of States)
 - Executive (President, Vice President, PM, Cabinet, Ministries, Agencies, Civil Services)
 - Judiciary
3. Federal System but residuary power is given to the Union (Quasi-federal system)
4. Three tier government: Union, state and local
5. Constitution empowers the Parliament and the state legislatures make laws to supplement the constitutional provisions.
6. Blend of Flexibility and Rigidity
 - Flexible –ex. British, Rigid - ex. USA
 - Indian Constitution is blend of both




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Salient Features

7. Fundamental Rights – 6 numbers
8. Directive Principles of the State Policy
9. Fundamental Duties – 11 numbers
10. Single citizenship – all the people of India enjoy a single citizenship
11. Guaranties a Secular country. (all religions are respected)
12. Universal Adult Franchise - Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth etc.




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Preamble

- The American Constitution was the first to begin with a Preamble.
- The term 'Preamble' refers to the introduction or preface to the Constitution.
- It contains the summary or essence of the Constitution.
- Objectives Resolution** which was drafted and moved in the Constituent Assembly by Jawaharlal Nehru on 13 December 1946 and adopted by Constituent Assembly as Preamble on 22 January 1947.
- The Supreme Court stated that it is an integral part of the constitution.
- The preamble was amended only once on 18 December 1976 (during the Emergency Period of Indira Gandhi) [Socialist, Secular and Integrity words were added]




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Preamble

- "The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution". (Thakur Das Bhargava, Member of Constituent Assembly).
- "Preamble resembles the Declaration of Independence of the United States of America" (M. Hidayatullah, Former Chief Justice).



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THE CONSTITUTION OF INDIA

PREAMBLE

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[;]

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**


1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for 'Sovereign Democratic Republic' (w.e.f. 3.1.1977)
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for 'Unity of the Nation' (w.e.f. 3.1.1977)



ഇന്ത്യൻ ഭരണഘടന

ആമുഖം

നമ്മൾ, ഇന്ത്യയിലെ ജനങ്ങൾ, ഇന്ത്യയെ ഒരു പരമാധികാര, സ്ഥിതിസ്ഥൈര്യ, ഖനനീയപക്ഷ, ജനാധിപത്യ വിഭജിക്കാത്ത സാമീപ്യാനം ചെയ്യുന്നതിനും ഭാരതത്തിലെ എല്ലാ പൗരക്കൾക്കും സാമൂഹികവും സാമ്പത്തികവും രാഷ്ട്രീയവുമായ നീതി, ചിന്ത, ആശയാവിഷ്കാരം, വിശ്വാസം, ഭക്തി, ആരാധന എന്നിവയ്ക്കുള്ള സ്വാതന്ത്ര്യം, സ്ഥാനാനന്തര, അവസരങ്ങൾ എന്നിവയിലുള്ള സമത്വം എന്നിവ ഉറപ്പുവരുത്തുന്നതിനും വ്യക്തിയുടെ അന്തസ്സം രാഷ്ട്രത്തിന്റെ ഐക്യവും അഖണ്ഡതയും ഉറപ്പുവരുത്തുന്ന സാഹോദരത്വം എല്ലാവരിലും വളർത്തുന്നതിനും ഊർജ്ജവും കൈവിട്ടുകൊണ്ട് നമ്മുടെ ഭരണഘടനാസഭയിൽവെച്ച്, 1949 നവംബറിന്റെ ഈ ഇരുപത്തിയാറാം ദിവസം ഈ ഭരണഘടനയെ അംഗീകരിക്കുകയും നിയമമാക്കുകയും നമുക്കായിത്തന്നെ സമർപ്പിക്കുകയും ചെയ്യുന്നു.




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Preamble

Summary of the Preamble

- Source of authority of the Constitution:** The Preamble states that the Constitution derives its authority from the people of India.
- Nature of Indian State:** It declares India to be of a sovereign, socialist, secular, democratic and republican polity.
- Objectives of the Constitution:** It specifies justice, liberty, equality and fraternity as the objectives.
- Date of adoption of the Constitution:** It stipulates November 26, 1949, as the date.



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Preamble

Key Words in Preamble

1. Sovereign

- India is neither a dependency nor a dominion of any other nation, but an independent state
- There is no authority above it, and it is free to conduct its own affairs (both internal and external).
- Full power over the State’s territory.
- The membership in Commonwealth and UNO does not affect the sovereignty.
- Examples of Non-sovereign states: Hong Kong, Greenland




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Preamble

2. Socialist

- Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy.
- root in the Latin *sociare*, which means to combine or to share.
- This advocates social ownership (shared) of the production within the country.
- India does not have “communistic socialism” (nationalisation of all production and abolition of private property) but “democratic socialism” or “Gandhian Marxism” (public and private properties coexist – mixed economy).




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Preamble

3. Secular

- the term was added by the 42nd Amendment in 1976. However from the beginning the constitution had Secular attitude through Fundamental Right to freedom of religion.
- Western model of Secularism – The State is independent of the Religion (Church).
- The Indian Constitution embodies the different concept of secularism ie., all religions in the State (irrespective of their strength) have the same status and support from the State.
- The State has no official religion.
- Examples of non-secular states: Pakistan, Ireland, Israel, UK




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Preamble

4. Democratic

- Possession of supreme power by the people (government of, by and for the people – Abraham Lincoln).
- India does not have “direct democracy” (People exercise supreme power directly). Ex: UK, Switzerland.
- India has “Indirect democracy” (Representativ democracy) where the Representatives elected by the people exercise the power.
 - India has Parliamentary democracy (head of the state is not head of the government)
 - Other type is Presidential democracy. Ex. USA.
- “One person, one vote” principle is adopted in India.




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Preamble

5. Republic

- A democratic polity can be classified into two categories—monarchy and republic. In a *monarchy*, the head of the state (usually king or queen) enjoys a hereditary position, that is, he comes into office through succession, e.g., Britain. In a *republic*, the head of the state is always elected directly or indirectly for a fixed period.
- India is called republic because it has an elected head (elected indirectly).
- Republic also means that the power is vested on the people.



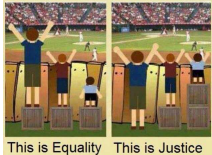
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Preamble

6. Justice

- social, economic and political Justice (borrowed from Russian Revolution), secured through various provisions of Fundamental Rights and Directive Principles.
- Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on.
- Economic justice denotes the non-discrimination between people on the basis of economic factors.
- Political justice implies that all citizens should have equal political rights





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Preamble

7. Liberty / Freedom

- The term 'liberty' means the absence of restraints on the activities of individuals
- liberty of thought, expression, belief, faith and worship
- liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself.
- Does not support slavery, oppression and discrimination.



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Preamble

8. Equality

- The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
- No discrimination based caste, religion, ethnicity, sex etc.

9. Fraternity

- sense of brotherhood



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Part 1: The Union and Its Territory

- Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.
- Article 1 describes India or Bharat as a ‘Union of States’ rather than a ‘Federation of States’. This provision deals with two things: one, name of the country; and two, type of polity.
 - Reason 1: the Indian Federation is not the result of an agreement among the states like the American Federation
 - Reason 2: the states have no right to secede from the federation.
- The country is an integral whole and divided into different states only for the convenience of administration.
- The Territory of India comprises of:
 - Territory of states
 - The Union Territories
 - Territories that may be acquired at any time



Part 1: The Union and Its Territory

- The union is sometimes understood as “Quasi-federal union” (Union has more power)
- India can acquire foreign territories according to the modes recognised by international law, i.e., cession (following treaty, purchase, gift, lease or plebiscite), occupation (hitherto unoccupied by a recognised ruler), conquest or subjugation. For example, India acquired several foreign territories such as Dadra and Nagar Haveli; Goa, Daman and Diu; Puducherry; and Sikkim since the commencement of the Constitution.
- 28 states and 8 union territories
- The President is the constitutional head of Executive of the Union. In the states, the Governor, as the representative of the President, is the head of Executive.



Part 2: Citizenship

Meaning of Citizenship

- Like any other modern state, India has two kinds of people—citizens and aliens. **Citizens** are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. **Aliens**, on the other hand, are the citizens of some other state and hence, do not enjoy all the civil and political rights. They are of two categories—friendly aliens or enemy aliens.
- Along with the above rights, the citizens also owe certain duties towards the Indian State.
- Various constitutional offices are to be filled by the citizens only. Being a citizen of India, the primary qualification for holding the office of President, Prime Minister or members of Parliament, etc. Since the constitution provides only for a single citizenship it has to be unambiguously defined.
- Constitution empowers the Parliament to decide and enact laws on citizenship which is not mentioned in the constitution.



Part 2: Citizenship

Types (Modes of Acquiring Citizenship)

- At the commencement of the Constitution
 - Every person in India
 - Who was born in the territory of India
 - Either of whose parents are born in India.
 - Resident of India for 5 years
- Migrated from Pakistan to India
- Some who have migrated to Pakistan, but returned
- Indian origin residing outside India

Other Provisions by “Citizenship Act, 1955”

- Citizenship by registration
- Citizenship by Naturalisation



Part 2: Citizenship

Modes of Termination of Citizenship

1. Who have acquired citizenship of other country (Termination)

Other Provisions by “Citizenship Act, 1955”

2. Renunciation

- Any citizen of India can voluntarily renounce the Indian citizenship. In case, a male citizen of India renounces his Indian citizenship, all his minor children will also lose their Indian citizenship.

3. Deprivation

- Deprivation is compulsory termination of citizenship. It is applicable only in cases of citizenship acquired by domicilt, registration or naturalization.



END OF MODULE 1

