

UNIT-1

(Introduction and Basic Information about Indian Constitution)

Definition and Scope of Constitutional Law:

Studying Constitutional Law entails the key questions as below:

1. How is individual freedom to be reconciled with the claims of social justice?
 2. Is society founded upon a reciprocal network of rights and duties?
 3. Is the individual merely a pawn in the Hands of State power?
- Constitutional law concerns the relationship between the individual and the state, seen from a particular view front, namely the notion of law.
 - The rules of constitutional law govern political relations within a given society, reflecting a particular distribution of political power.

In a stable society, constitutional law expresses what may be a very high degree of consensus about the organs and procedures by which political decisions are taken by recourse to armed force, gang warfare, or the might of terrorist violence, the rules of constitutional law are either non-existent or at best, no more than a transparent cover for a power struggle that is not conducted in accordance with anything deserving the name of law.

- Within a stable democracy, constitutional law reflects the value that people attach to orderly human relations, to individual freedom under the law and to institutions such as Parliament, political parties, free elections and a free press.

What is a Constitution?

Applied to the system of law and government by which the affairs of a modern state are administered, the word constitution has two main meanings:

1. It means a document having a special legal status which sets out the framework and principal functions of the organs of government within the state and declares the principles or rules by which those organs must operate.
2. In modern words, constitution refers to the whole system of government of a country, the collection of rules which establish and regulate or govern the government. This system is founded partly on Acts of Parliament and Judicial decisions, partly upon political practice and partly upon detailed procedures established by the various organs of government for carrying out their own tasks, e.g. the law and custom of Parliament or the rules issued by the Prime Minister to regulate the conduct of Ministers.

It has been said of the US constitution that (the) governing constitution is a synthesis of legal doctrines, institutional practices, and political norms.

The Making of Written Constitutions:

It was in the late 18th century that the word constitution came to be identified with a single document, mainly as a result of the American and French Revolutions. The political significance of the new concept of constitutions was stressed by the radical, Tom Paine.

A constitution is a thing antecedent to a government, and a government is only the creature of a constitution.

A constitution is not the act of a government, but of a people constituting a government and a government without a constitution is power without a right.

A documentary constitution normally reflects the beliefs and political aspirations of those who have framed it. During the 1990s, after the collapse of Communism, eastern and central Europe saw an end of constitution making, as revolution against socialist regimes led to the creation of new structures that embraced liberal and democratic values.

After 1945, as British colonies acquired their independence, numerous variants of what was referred to as the “Westminster Model” constitution were created. It became common practice for guarantees of rights and broad political declarations to be included in the constitution of the newly independent countries.

Constitutionalism:

This term often appears in the discussion of the relationship between state power, law, democracy and the preservation of liberal values.

A Norwegian political scientist has said that constitutionalism is the political doctrine that claims that political authority should be bound by institutions that restrict the exercise of power.

A Hungarian jurist has written that constitutionalism “is the set of principles, manners and institutional arrangements” that have traditionally served to limit government.

And for an American commentator, “the special virtue of constitutionalism lies not merely in reducing power of the state, but in effecting that reduction by the advance imposition of rules”

The idea of constitutionalism is particularly associated with the existence of a written constitution from which the state's authority and legitimacy may be felt to derive, and which may limit the power of the state and help protect the rights of individuals and minorities.

What is Constitutional Law?

There is no hard and fast definition of constitutional law. According to one wide definition--

“Constitutional law is that part of national law which governs the systems of public administration and the relationship between the individual and the state.”

Constitutional law presupposes the existence of the state (N. Mac Cormack, 1993), and includes those laws which regulate the structure and functions of the principal organs of the government and their relationship to one another and to the citizen.

Where there is a written constitution, emphasis is placed on the rules which it contains and on the way in which they have been interpreted by the highest court with constitutional jurisdiction.

These rules, principles and practices are essential to understanding of the relationship between what may be called “Political Constitution” and the “legal constitution”, and give a constitutional meaning to apparently disparate events. Constitutional law does not comprehend the whole of the legal system, but that the manner in which issues concerning rights, powers and duties are settled is of direct concern to constitutional law.

Historical Background of the Constituent Assembly:

The **Constituent Assembly of India** was elected to write the Constitution of India. Following India's independence from British Government in 1947, its members served as the nation's first Parliament.

An idea for a **Constituent Assembly was proposed in 1934 by M. N. Roy**, a pioneer of the Communist movement in India and an advocate of radical democracy. It became an official demand of the Indian National Congress in 1935, **C. Rajagopalachari voiced the demand for a Constituent Assembly on 15 November 1939 based on adult franchise, and was accepted by the British in August 1940.**

On 8 August 1940, a statement was made by Viceroy Lord Linlithgow about the expansion of the Governor-General's Executive Council and the establishment of a War Advisory Council. This offer, known as the August Offer, included giving full weight to minority opinions and allowing Indians to draft their own constitution. Under the Cabinet Mission Plan of 1946, elections were held for the first time for the Constituent Assembly. The Constitution of India was drafted by the Constituent Assembly, and it was implemented under the Cabinet Mission Plan on 16 May 1946. The members of the Constituent Assembly were elected by the provincial assemblies by a single, transferable-vote system of proportional representation.

The total membership of the Constituent Assembly was 389 of which 292 were representatives of the provinces, 93 represented the princely states and four were from the chief commissioner provinces of Delhi, Ajmer-Merwara, Coorg and British Baluchistan.

The elections for the 296 seats assigned to the British Indian provinces were completed by August 1946. Congress won 208 seats, and the Muslim League 73. After this election, the Muslim League refused to cooperate with the Congress and the political situation deteriorated. Hindu-Muslim riots began, and the Muslim League demanded a separate constituent assembly for Muslims in India.

On 3 June 1947 Lord Mountbatten, the last British Governor-General of India, announced his intention to scrap the Cabinet Mission Plan; this culminated in the Indian Independence Act 1947 and the separate nations of India and Pakistan.

The Indian Independence Act was passed on 18 July 1947 and, although it was earlier declared that India would become independent in June 1948, this event led to independence on 15 August 1947.

The Constituent Assembly met for the first time on 9 December 1946, reassembling on 14 August 1947 as a sovereign body and successor to the British parliament's authority in India. As a result of the partition, under the Mountbatten plan, a separate Constituent Assembly of Pakistan was established on 3 June 1947.

The representatives of the areas incorporated into Pakistan ceased to be members of the Constituent Assembly of India. New elections were held for the West Punjab and East Bengal (which became part of Pakistan, although East Bengal later seceded to become Bangladesh); the membership of the Constituent Assembly was 299 after the reorganization, and it met on 31 December 1947.

The constitution was drafted by 299 delegates from different caste , region religion ,gender etc. These delegates sat over 114 days spread over 3 years (2 years 11 months and 17days to be precise) and discussed what the constitution should contain and what laws should be included.

The Drafting Committee of the Constitution was chaired by Dr. B.R Ambedkar.

The Government of India Act, 1935 derived material from four key sources viz. Report of the Simon Commission, discussions at the Third Round Table Conference, the White Paper of 1933 and the reports of the Joint select committees. This act ended the system of dyarchy introduced by the Government of India Act 1919, and provided for establishment of a **Federation of India** to be made up of provinces of British India and some or all of the Princely states. However, the federation never came into being as the required number of princely states did not join it.

It was the last constitution of British India which split Burma from it. It lasted until 1947, when British territory was split into Pakistan and India.

Salient Features of the Government of India Act 1935:

Salient Features of the Government of India Act 1935 were as follows:

- ❖ Abolition of provincial dyarchy and introduction of dyarchy at centre.
- ❖ Abolition of Indian Council and introduction of an advisory body in its place.
- ❖ Provision for an All India Federation with British India territories and princely states.
- ❖ Elaborate safeguards and protective instruments for minorities.
- ❖ Supremacy of British Parliament.
- ❖ Increase in size of legislatures, extension of franchise, division of subjects into three lists and retention of communal electorate.
- ❖ Separation of Burma from India

Indian Independence Act of 1947:

The Indian Independence Act was passed in 1947. The act created two new independent dominions; India and Pakistan. Pakistan was split into Pakistan and East Pakistan which is now Bangladesh.

The Bengal and Punjab provinces were partitioned between the two new countries. These dominions separated the Muslim, Hindu and Sikh population and caused the biggest forced migration which has ever happened that was not the result of war or famine.

The Act repealed the use of 'Emperor of India' as a title for the British Crown and ended all existing treaties with the princely states. Lord Mountbatten continued as Governor-General and Jawaharlal Nehru was appointed India's first Prime Minister, Muhammad Ali Jinnah became Pakistan's Governor-General and Liaquat Ali Khan its Prime Minister.

The 15th August 1947 has since become celebrated as India's and Pakistan's Independence Day.

Indian Constitution:

The **Constitution of India** (*Bhāratīya Saṁvidhāna*) is the supreme [law of India](#). The document lays down the framework demarcating fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, [directive principles](#), and the duties of citizens. It is the longest written constitution of any country on earth. [B. R. Ambedkar](#), chairman of the drafting committee, is widely considered to be its chief architect.

It imparts constitutional supremacy (not parliamentary supremacy, since it was created by a constituent assembly rather than Parliament) and was adopted by its people with a declaration in its preamble Parliament cannot override the constitution.

It was adopted by the Constituent Assembly of India on 26 November 1949 and became effective on 26 January 1950. The constitution replaced the Government of India Act 1935 as the country's fundamental governing document, and the Dominion of India became the Republic of India.

To ensure constitutional autochthony, its framers repealed prior acts of the British parliament in Article 395. India celebrates its constitution on 26 January as Republic Day.

The constitution declares India a sovereign, socialist, secular democratic republic, assuring its citizens justice, equality and liberty, and endeavours to promote fraternity. The original 1950 constitution is preserved in a helium-filled case at the Parliament House in New Delhi. The words "secular" and "socialist" were added to the preamble in 1976 during the Emergency.



[B. R. Ambedkar](#) and Constitution of India on a 2015 postage stamp of India

Background:

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 the [colonial India](#) was under [British rule](#) from 1857 to 1947. From 1947 to 1950, the same legislation continued to be implemented as India was a [dominion](#) of Britain for these three years, as each princely state was convinced by [Sardar Patel](#) and [V.P.Menon](#) to sign the [articles of integration](#) with India, and the British government continued to be responsible for the external security of the country. 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. Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, 393, and 394 of the constitution came into force on 26 November 1949, and the remaining articles became effective on 26 January 1950.

Formation of the Constitution of India:

- **6 December 1946:** Formation of the Constitution Assembly (in accordance with French practice).
- **9 December 1946:** The first meeting was held in the constitution hall (now the **Central Hall of Parliament House**). The 1st person to address was **J. B. Kripalani**, **Sachchidananda Sinha** became temporary president. (Demanding a separate state, the Muslim League boycotted the meeting.)
- **11 December 1946:** The Assembly appointed **Rajendra Prasad** as its president, **H. C. Mukherjee** as its vice-chairman and **B. N. Rau** as constitutional legal adviser. (There were initially 389 members in total, which declined to 299 after **partition**. Out of the 389 members, 292 were from government provinces, 4 from chief commissioner provinces and 93 from princely states.)
- **13 December 1946:** An 'Objective Resolution' was presented by **Jawaharlal Nehru**, laying down the underlying principles of the constitution. This later became the Preamble of the Constitution.
- **22 January 1947:** Objective resolution unanimously adopted.
- **22 July 1947:** **National flag** adopted.
- **15 August 1947:** Achieved independence. India split into the **Dominion of India** and the **Dominion of Pakistan**.
- **29 August 1947:** Drafting Committee appointed with **B. R. Ambedkar** as its Chairman. The other 6 members of committee were Munshi, **Muhammed Sadulla**, **Alladi Krishnaswamy Iyer**, **N. Gopalaswami Ayyangar**, **Khaitan** and **Mitter**.
- **16 July 1948:** Along with **Harendra Coomar Mookerjee**, **V. T. Krishnamachari** was also elected as second vice-president of Constituent Assembly.
- **26 November 1949:** The Constitution of India was passed and adopted by the assembly.
- **24 January 1950:** Last meeting of Constituent Assembly. The Constitution was signed and accepted. (with 395 Articles, 8 Schedules, 22 Parts)
- **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.)

G. V. Mavlankar was the first Speaker of the **Lok Sabha** (the lower house of Parliament) after India turned into a republic.

Facts about Indian Constitution:

1. Father of the Indian Constitution, Dr Ambedkar Was Ready to Burn It:

On 2 September 1953 while debating how a Governor in the country should be invested with more powers, Dr Ambedkar argued strongly in favour of amending the Constitution.

2. The Constitution Was Originally Written in Hindi and English.

The original copies of the Indian Constitution were written in Hindi and English. Each member of the Constituent Assembly that drafted the Constitution, signed two copies of the constitution, one in Hindi and the other in English

3. The English Version Has 117,369 Words.

There are a total of 117,369 words in the English version of the Constitution of India which contains 444 articles in 22 parts, 12 schedules and 115 amendments.

4. It Is the Longest Constitution in the World.

With so much of writing, the Indian Constitution is the longest of any sovereign country in the world. In its current form , it has a Preamble, 22 parts with 448 articles, 12 schedules, 5 appendices and 115 amendments.

5. The Constitution Wasn't Typed or Printed.

Both the versions of the Constitution, Hindi and English, were handwritten. It is the longest handwritten constitution of any country on earth.

6. It Was Handwritten by Prem Behari Narain Raizada:

The original Constitution of India was handwritten by Prem Behari Narain Raizada in a flowing italic style with beautiful calligraphy.

The Constitution was published in Dehradun and photolithographed by the Survey of India.

7. Each Page Was Decorated by Artists from Shantiniketan:

The original Constitution is hand-written, with each page uniquely decorated by artists from Shantiniketan including Beohar Rammanohar Sinha and Nandalal Bose.

8. The Original Copies Are Stored in Special Cases:

The original copies of the Indian Constitution, written in Hindi and English, are kept in special helium-filled cases in the Library of the Parliament of India.

9. The Constitution Declares India a Sovereign, Socialist, Secular and Democratic Republic:

The Preamble to the Constitution declares India to be a sovereign, socialist, secular democratic republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity of the individual and unity and integrity of the nation.

10. Assures Its Citizens Justice, Equality and Liberty, and Endeavours to Promote Fraternity:

The fundamentals of the Indian Constitution are contained in the Preamble which guarantees its citizens social, economic and political Justice; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity, and to promote among them all Fraternity assuring the dignity of the individuals

11. 9 December 1946: The Constituent Assembly Met for the First Time:

The Constituent Assembly was the first Parliament of Independent India.

Dr Sachchidananda Sinha was the first president (temporary Chairman of the Assembly) of the Constituent Assembly when it met on 9 December 1946.

12. The Constituent Assembly, which first met on 9 December 1946, took precisely 2 years, 11 months and 18 days to come up with the final draft.

13. When the draft was prepared and put up for debate and discussion, over 2000 amendments were made before it was finalised.

14. 26 November 1949: The Final Draft Was Ready:

The Constituent Assembly sat for a total of 11 sessions. The 11th session was held between 14-26 November 1949. On 26 November 1949, the final draft of the Constitution was ready.

15. 24 January 1950: Signing of The Constitution On 24 January 1950, 284 members of the Constituent Assembly signed the Indian Constitution at the Constitution Hall, now known as the Central Hall of Parliament, in New Delhi.

16. 26 January 1950: The Constitution Was Legally Enforced Passed by the Constituent Assembly on 26 November 1949, it came into effect on 26 January 1950. The date 26 January was chosen to commemorate the declaration of Purna Swaraj (complete Independence) of 1930.

17. 26 January 1950: The National Emblem of India Was Adopted The National Emblem was adopted on 26 January 1950 – the day India was declared a republic with its Constitution coming into effect. A representation of Lion Capital of Ashoka was initially adopted as the emblem of the Dominion of India in December 1947. The current version of the emblem was officially adopted on 26 January 1950, the day India became a republic.

18. Constitution of India: A 'Bag of Borrowings' The Indian Constitution is often called a 'bag of borrowings'. It is called so because it has borrowed provisions from the constitutions of various other countries. However, it is much more than a mere copy of other constitutions.

19. Based on a Series of Statutes Enacted by the British Parliament Prior to the Constituent Assembly that convened in 1948 to draft the Indian Constitution adopted in 1950 and still in force to date,

the fundamental law of India was mostly embodied on a series of statutes enacted by the British Parliament.

20. Borrowings From The French Constitution The Ideals of Liberty, Equality, Fraternity Come from the French Constitution. These words appear in the Preamble to the Constitution of India. Many other nations have also adopted the French slogan of "liberty, equality, and fraternity" as an ideal.
21. Borrowings From The USSR The concept of the five year plans in The Indian Constitution was borrowed from the Constitution of Union of Soviet Socialist Republics.
22. Borrowings From Japan The laws governing our Supreme Court and the concept of "procedure established by Law" were adopted from the Constitution of Japan.
23. Borrowings From Weimar Constitution of Germany India borrowed the concept of suspension of fundamental rights during Emergency rule was taken from the Weimar Constitution of Germany.
24. Borrowings From The US Constitution The Preamble of the Indian Constitution was inspired by the US Constitution's Preamble. Both the Preambles begin with "We the People".
25. Basic Structure of the Constitution Stands on the Government of India Act, 1935 The Government of India Act 1935 was originally passed in August 1935 and is said to be the longest Act of (British) Parliament ever enacted by that time. The 1935 Act was the second installment of constitutional reforms passed by British Parliament for implementing the ideal of responsible government in India.
26. Amended Only 94 Times in Over 60 Years Amended only 94 times in the first 62 years, the Constitution of Indian has stood the test of time. As of January 2019, there have been 103 amendments to the Constitution of India since it was first enacted in 1950.

Salient Features of the Constitution of India:

The Constitution of India is a unique constitution. It is the largest written liberal democratic constitution of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity. Since its inauguration on 26th January 1950, the Constitution India has been successfully guiding the path and progress of India.

The salient features of the Constitution of India can be discussed as follows:

(1) Written and Detailed Constitution:

The Constitution is a wholly written document which incorporates the constitutional law of India. It was fully debated and duly enacted by the Constitution Assembly of India. **It took the Assembly 2 years, 11 months and 18 days to write and enact the Constitution.**

Indian Constitution is a very detailed constitution. **It consists of 395 Articles divided into 22 Parts with 12 Schedules and 94 constitutional amendments.** It is a constitution of both the Centre and states of Indian Union. It is indeed much **bigger than the US Constitution** which has only 7 Articles and the French Constitution with its 89 Articles.

(2) Self-made and Enacted Constitution:

Indian Constitution is a constitution made by the people of India acting through their duly elected and representative body—the Constituent Assembly that was organised in December 1946. Its first session was held on 9th December, 1946. It passed the Objectives Resolution on 22 January, 1947.

Thereafter, it initiated the process of constitution-making in the right earnest and was in a position to finally pass and adopt the constitution on 26th November, 1949. The constitution became fully operational with effect from 26th January 1950. We celebrate this day as our Republic Day. The Constitution of India is thus a self-made and duly enacted constitution.

(3) Preamble of the Constitution:

The Preamble to the Constitution of India is a well drafted document which states the philosophy of the constitution. It declares India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation. The Preamble is the key to the constitution.

(4) India is a Democratic Socialist State:

Although, right from the beginning the Indian Constitution fully reflected the spirit of democratic socialism, it was only in 1976 that the Preamble was amended to include the term 'Socialism'. India is committed to secure social, economic and political justice for its entire people by ending all forms of exploitation and by securing equitable distribution of income, resources and wealth. This is to be secured by peaceful, constitutional and democratic means.

(5) India is a Secular State:

India gives special status to no religion. There is no such thing as a state religion of India. This makes it different from theocratic states like the Islamic Republic of Pakistan or other Islamic countries. Further, Indian secularism guarantees equal freedom to all religions. The Constitution grants the Right to Religious Freedom to all the citizens.

(6) India is a Democratic State:

The Constitution of India provides for a democratic system. The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights. On the basis of these rights, the people freely participate in the process of politics. They elect their government.

Free fair and regular elections are held for electing governments. For all its activities, the government of India is responsible before the people. The people can change their government through elections. No government can remain in power which does not enjoy the confidence of the people. India is world's largest working democracy.

(7) India is a Republic:

The Preamble declares India to be a Republic. India is not ruled by a monarch or a nominated head of state. India has an elected head of state (President of India) who wields power for a fixed term of 5 years. After every 5 years, the people of India indirectly elect their President.

(8) India is a Union of States:

Article I of the Constitution declares, that "India that is Bharat is a Union of States." The term 'Union of State' shows two important facts:

- (i) That Indian Union is not the result of voluntary agreement among sovereign states, and
- (ii) that states of India do not enjoy the right to secede from the Union. Indian Union has now 28 States and 7 Union Territories.

(9) Mixture of Federalism and Unitarianism:

While describing India as a Union of States, the Constitution provides for a federal structure with a unitary spirit. Scholars describe India as a 'Quasi-Federation' (K.C. Wheare) or as 'a federation with a unitary bias, or even as 'a Unitarian federation.'

Like a federation, the Constitution of India provides for:

- (i) A division of powers between the centre and states,
- (ii) A written, rigid and supreme constitution,
- (iii) Independent judiciary with the power to decide centre-state disputes and
- (iv) Dual administration i.e. central and state administrations. However, by providing a very strong centre, a common constitution, single citizenship, emergency provisions, common election commission, common all India services etc. the Constitution clearly reflects its unitary spirit.

India is a federation with some Unitarian features. This mixture of federalism-Unitarianism has been done keeping in view both the pluralistic nature of society and the presence of regional diversities, as well as due to the need for securing unity and integrity of the nation.

(10) Mixture of Rigidity and Flexibility:

The Constitution of India is rigid in parts. Some of its provisions can be amended in a difficult way while others can be amended very easily. In some cases, the Union Parliament can amend some parts of the Constitution by passing a simple law.

Article 368, of the Constitution provides for two special methods of amendment:

- (i) Most of the provisions of the Constitution can be amended by the Union Parliament by passing an Amendment Bill by a majority of total membership and 2/3rd majority of members present and voting in each of its two Houses.
- (ii) For the amendment of some specified parts, a very rigid method has been provided. Under it, first the Union Parliament passes the Amendment Bill by a majority of total membership and 2/3rd majority of members present and voting in each house, and then it goes to the State Legislatures for ratification. The Amendment gets passed only when it is approved by not less than one half of the several states of the Union.

Thus the Constitution of India is partly rigid and partly flexible.

(11) Fundamental Rights:

Under its Part III (Articles 12-35), the Constitution of India grants and guarantees Fundamental Rights to its citizens. It is called the Indian Bill of Rights. Initially, 7 Fundamental Rights were granted but after

the deletion of the Right to Property from the list of Fundamental Rights (44th Amendment Act 1979) their number came down to six.

The Six Fundamental Rights are:

(i) Right to Equality:

It provides for Equality before Law, End of Discrimination, Equality of Opportunity, Abolition of untouchability and Abolition of Titles.

(ii) Right to Freedom:

It incorporates six fundamental freedoms -freedoms of speech and expression, freedom to form associations, freedom to assemble peaceably without arms, freedom to move freely in India, freedom of residence in any part, and freedom of adopting any profession or trade or occupation. It ensures personal freedom and protection in respect of conviction for certain offences.

The Constitution lays down that the freedom of life and liberty cannot be limited or denied except in accordance with the procedure established by law. Now under Art 21A Right to Education for the children between the ages of 6-14 years has been granted. Art. 22 guarantees protection against arbitrary arrest and detention.

(iii) Right against Exploitation:

This Fundamental Right prohibits sale and purchase of human beings, forced labour (begaar) and employment of children in hazardous jobs and factories.

(iv) Right to Freedom of Religion:

The grant of this right involves the freedom of conscience, religion and worship. Any person can follow any religion. It gives to all religions freedom to establish and maintain their religious institutions. No person can be compelled to pay any tax for the propagation of any religion. The state cannot levy a tax for any religion and constitution prohibits the imparting of religious instructions in schools and colleges.

(v) Cultural and Educational Rights:

Under this category the Constitution guarantees the rights of the minorities to maintain and develop their languages and cultures. It also confers upon them the right to establish, maintain and administer their educational institutions.

(vi) Right to Constitutional Remedies (Art. 32):

This fundamental right is the soul of the entire Bill of Rights. It provides for the enforcement and protection of Fundamental Rights by the courts. It empowers the Supreme Court and High Courts to issue writs for the enforcement of these rights.

(12) National Human Rights Commission (NHRC) and State Human Rights Commission and Protection of Human Rights:

With a view to protect the human rights of all the people the Protection of Human Rights Act, 1993 was passed by the Union Parliament. Under it the National Human Rights Commission was established. It is headed by a former Chief Justice of India. It acts as an independent commission with a status of a civil court. It works for preventing the violations of human rights of the people.

(13) Fundamental Duties of the Citizens:

In its Part IVA (Article 51 A) the Constitution describes the following Fundamental Duties of a citizen.

Note-The Fundamental Duties are, however, not enforceable by the courts.

(14) Directive Principles of State Policy:

Part IV of the Constitution dealing with the 'Directive Principles of State Policy' provides one of the most striking features of the Indian Constitution. The Directive Principles are instructions to the state for securing socio-economic developmental objectives through its policies. These are to be implemented by both the Union for the States.

(15) Bi-Cameral Union Parliament:

The Constitution provides for a Bicameral Legislature at the Union level and names it as the Union Parliament.

Its two Houses are:

The Lok Sabha and the Rajya Sabha. The Lok Sabha is the lower, popular, directly elected house of the Parliament. It represents the people of India.

Its maximum strength stands fixed at 550. Presently Lok Sabha has 545 members. The people of each state elect representatives in proportion to their population

Members of the Lok Sabha are directly elected by the people of India. **All men and women of 18 years or above of age whose names are registered in the voters lists vote in elections for electing the members of Lok Sabha** .Every voter of 25 years or above of age is eligible to contest elections to the Lok Sabha.

The tenure of the Lok Sabha is 5 years. But the President acting under the advice of Prime Minister can dissolve it earlier also.

The Rajya Sabha is the upper and, indirectly elected second House of Parliament. It represents the states of the Indian union. Its maximum membership can be 250.

Presently, the Rajya Sabha has 245 members. Out of these 233 members are elected by all the State Legislative Assemblies and 12 are nominated by the President from amongst eminent persons from the fields of Art, Science and Literature. Rajya Sabha is a quasi-permanent house. Its 1/3rd members retire after every two years. Each member has a tenure of six years. Orissa has 10 seats in the Rajya Sabha.

Of the two houses, of Parliament, the Lok Sabha is a more powerful House. It alone has financial powers. The Union Council of Ministers is collectively responsible before the Lok Sabha..

(16) Parliamentary System:

The Constitution of India provides for a parliamentary system of government at the Centre as well as in every state of the Union. The President of India is the constitutional head of state with nominal powers. The Union Council of Ministers headed by the Prime Minister is the real executive. Ministers are essentially the members of the Union Parliament.

For all its policies and decisions the Council of Ministers is collectively responsible before the Lok Sabha. The Lok Sabha can remove the Ministry by passing a vote of no-confidence. The Cabinet, in fact the Prime Minister has the power to get the Lok Sabha dissolved by the President.

(17) Adult-Suffrage:

Another feature of the Constitution is that it provides for universal adult suffrage. All men and women enjoy an equal right to vote. Each adult man and woman above the age of 18 years has the right to vote. All registered voters get the opportunity to vote in elections.

(18) Single integrated State with Single Citizenship:

India is the single Independent and Sovereign integrated state. Presently it has 28 states and 7 Union Territories. All citizens enjoy a common uniform citizenship. They are entitled to equal rights and freedoms, and equal protection of the state.”

(19) Single Integrated Judiciary:

The Constitution provides for a single integrated judicial system common for the Union and the states. The Supreme Court of India works at the apex level, High Courts at the state level and other courts work under the High Courts.

There are 21 State High Courts working in all parts of India. Orissa High Court has been in existence since 1948 and it is located at Cuttack. The Supreme Court is the highest court of the land. It controls and runs the judicial administration of India.

(20) Independence of Judiciary:

The Indian Constitution makes judiciary truly independent. It is clear from the following facts:

- (a) Judges are appointed by the President,
- (b) Only persons with high legal qualifications and experience are appointed as judges,
- (c) Judges of the Supreme Court cannot be removed from office except through an extremely difficult process of impeachment.
- (d) The salaries of the judges are very high,
- (e) The Supreme Court has its own staff. Indian judiciary has an autonomous organisation and status. It works as an independent and powerful judiciary.

(21) Judicial Review:

The Constitution is the supreme law of the land. The Supreme Court acts as the guardian protector and interpreter of the Constitution. It is also the guardian of the Fundamental Rights of the people. For this purpose it exercises the power of judicial review. By it, the Supreme Court determines the constitutional validity of all laws made by the legislatures. It can reject any law which is found to be unconstitutional.

(22) Judicial Activism:

Currently, Indian judiciary has been becoming more and more active towards the performance of its social obligations. Through Public Interest Litigation system (PIL) as well as through a more active exercise of its powers, the Indian judiciary has been now very actively trying to secure all public demands and needs due to them under the laws and policies of the state.

(23) Emergency Provisions:

The Constitution of India contains special provisions for dealing with emergencies.

It recognises three types of possible emergencies:

(1) National Emergency (Article 352) an emergency resulting from war or external aggression or threat of external aggressions against India or from armed rebellion within India or in any of its part;

(2) Constitutional Emergency in a State (Article 356) an emergency resulting from the failure of constitutional machinery in any state; or some states and

(3) Financial Emergency (Article 360) an emergency resulting from a threat to financial stability of India.

The President of India has been empowered to take appropriate steps for dealing with these emergencies. During the period of an emergency, the powers of the President, actually of the PM and the Union Council of Ministers Cabinet increase tremendously. President can take all steps deemed essential for meeting an emergency. These are called emergency powers of the President.

(24) Special Provisions relating to Scheduled Castes and Scheduled Tribes:

With a view to protect the interests of people belonging to Scheduled Castes and Scheduled Tribes, the Constitution lays down certain special provisions. It provides for reservation of seats in the legislatures for the people belonging to Scheduled Castes and Scheduled Tribes. President can nominate in Lok Sabha not more than two members of the Anglo-Indian Community in case he is of the opinion that this community is not adequately represented in the House.

(25) Provisions regarding Language:

The official language of the Union shall be Hindi in Devnagri script. But along with this, it also provides for the continuance of English language. A state legislature can adopt the language of the province as its official language.

English continues to be the language of the Supreme Court and the High Courts. The Constitution gives a directive to the Union to develop Hindi and popularise its use.

In its Eighth Schedule, the Constitution recognises [22 modern Indian Languages](#) — Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Nepali, Manipuri, Konkani, Sanskrit, Sindhi, Tamil, Telgu, Urdu, Bodo, Dogri, Maithli and Santhali.

(26) A Constitution Drawn from several Sources:

In formulating the Constitution of India, the founding fathers used several sources. The values and ideals of the national movement guided their path. The national movement influenced them to adopt secularism as the ideal. Some provisions of Government of India Act 1935 were used by them and several features of foreign constitutions influenced them, and were adopted by them.

Preamble of the Indian Constitution:

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.

- **Sovereign:** The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
- **Socialist:** The term means the **achievement of socialist ends through democratic** means. It holds faith in a mixed economy where both private and public sectors co-exist side by side.
 - It was added in the Preamble by 42nd Amendment, 1976.
- **Secular:** The term means that all the religions in India get equal respect, protection and support from the state.
 - It was incorporated in the Preamble by 42nd Constitutional Amendment, 1976.
- **Democratic:** The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election.
- **Republic:** The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.

Objectives of the Indian Constitution

- The Constitution is the supreme law and it helps to **maintain integrity in the society** and to **promote unity among the citizens** to build a great nation.
 - The main objective of the Indian Constitution is to **promote harmony throughout the nation.**
- The factors which help in achieving this objective are:
 - **Justice:** It is necessary to maintain order in society that is promised through various provisions of **Fundamental Rights** and **Directive Principles of State Policy** provided by the Constitution of India. It comprises three elements, which is **social, economic, and political.**
 - **Social Justice** – Social justice means that the Constitution wants to create a society without discrimination on any grounds like caste, creed, gender, religion, etc.
 - **Economic Justice** – Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living.
 - **Political Justice** – Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities.
 - **Equality:** The term ‘Equality’ means no section of society has any special privileges and all the people have given equal opportunities for everything without any discriminations. Everyone is equal before the law.

- **Liberty:** The term 'Liberty' means freedom for the people to choose their way of life, have political views and behavior in society. Liberty does not mean freedom to do anything, a person can do anything but in the limit set by the law.
- **Fraternity:** The term 'Fraternity' means a feeling of brotherhood and an emotional attachment with the country and all the people. Fraternity helps to promote dignity and unity in the nation.
- **Importance of Objectives:** It provides a way of life. It includes **fraternity, liberty, and equality** as the notion of a happy life and which can not be taken from each other.
 - Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity.
 - Without equality, liberty would produce the supremacy of the few over the many.
 - Equality without liberty would kill individual initiative.
 - Without fraternity, liberty would produce the supremacy of the few over the many.
 - Without fraternity, liberty and equality could not become a natural course of things.

Status of Preamble

- The preamble being part of the Constitution is discussed several times in the Supreme Court. It can be understood by reading the following two cases.
 - **Berubari Case:** It was used as a reference under **Article 143(1)** of the Constitution which was on the implementation of the Indo-Pakistan Agreement related to the Berubari Union and in exchanging the enclaves which were decided for consideration by the bench consisting of eight judges.
 - Through the **Berubari case**, the Court stated that 'Preamble is the key to open the mind of the makers' but it can not be considered as part of the Constitution. Therefore it is not enforceable in a court of law.
- **Kesavananda Bharati Case:** In this case, for the first time, a bench of 13 judges was assembled to hear a writ petition. The Court held that:
 - The **Preamble of the Constitution** will now be considered **as part of the Constitution**.
 - The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.
 - So, it can be concluded that preamble is part of the introductory part of the Constitution.

- In the 1995 case of **Union Government Vs LIC of India** also, the Supreme Court has once again held that Preamble is the integral part of the Constitution but is not directly enforceable in a court of justice in India.

Amendment of the Preamble

- **42nd Amendment Act, 1976:** After the judgment of the Kesavanand Bharati case, it was accepted that the preamble is part of the Constitution.
 - As a part of the Constitution, preamble can be amended under **Article 368** of the Constitution, but the **basic structure** of the preamble can not be amended.
 - Because the structure of the Constitution is based on the basic elements of the Preamble. As of now, the preamble is only amended once through the **42nd Amendment Act, 1976**.
- The term ‘Socialist’, ‘Secular’, and ‘Integrity’ were added to the preamble through 42nd Amendment Act, 1976.
 - ‘Socialist’ and ‘Secular’ were added between ‘Sovereign’ and ‘Democratic’.
 - ‘Unity of the Nation’ was changed to ‘Unity and Integrity of the Nation’.

Fact:

Article 394 of the Constitution states that Articles 5, 6, 7, 8, 9, 60, 324, 367, 379 and 394 came into force since the adoption of the Constitution on 26th November 1949 and the rest of the provisions on 26 January 1950.

The concept of Liberty, Equality, and Fraternity in our Preamble was adopted from the French Motto of the French Revolution.

Fundamental Rights:

Fundamental rights are those rights which are essential for intellectual, moral and spiritual development of citizens of India. As these rights are fundamental or essential for existence and all-round development of individuals, they are called 'Fundamental rights'. These are enshrined in Part III (Articles 12 to 35) of the **Constitution of India**.

There are **six** fundamental rights recognised by the Indian constitution-

1. Right to **equality** (Articles. 14-18)
2. Right to **Freedom** (Articles. 19-22)
3. Right Against Exploitation (Articles. 23-24)
4. Right to **Freedom of Religion** (Articles. 25-28)
5. Cultural and Educational Rights (Articles. 29-30), and
6. Right to **Constitutional remedies** (Articles. 32-35)

1. The **right to equality** includes equality before the law, the prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, equality of opportunity in matters of employment, the abolition of untouchability and abolition of titles.
2. The **right to freedom** includes **freedom of speech and expression**, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation.
3. The **right against exploitation** prohibits all forms of **forced labour**, child labour and trafficking of human beings. Children under age of 14 are not allowed to work.
4. The **right to freedom of religion** includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.
5. The **Cultural and educational Rights** preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.
6. The **right to constitutional remedies** is present for enforcement of fundamental rights.

Fundamental Duties:

The list of 11 Fundamental Duties under article 51-A to be obeyed by every Indian citizen are given below-

S.No	11 Fundamental Duties
1.	Abide by the Indian Constitution 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. This duty was added by the 86th Constitutional Amendment Act, 2002

Importance of Fundamental Duties-

S.No	Importance of Fundamental Duties
1.	They remind Indian Citizens of their duty towards their society, fellow citizens and the nation
2.	They warn citizens against anti-national and anti-social activities
3.	They inspire citizens & promote a sense of discipline and commitment among them
4.	They help the courts in examining and determining the constitutional validity of a law
5.	They are enforceable by law.

Directive Principles of State Policy:

The **Directive Principles of State Policy of India** (DPSP) are the guidelines or 15 [principles](#) given to the federal institutes governing the State of [India](#), to be kept in citation while framing laws and policies. These provisions, contained in [Part IV](#) (Article 36–51) of the [Constitution of India](#), are not enforceable by any court, but the principles laid down there in are considered in the governance of the country, making it the duty of the State^[1] to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the [Directive Principles given in the Constitution of Ireland](#) which are related to [social justice](#), [economic welfare](#), [foreign policy](#), and legal and administrative matters.

Directive Principles are classified under the following categories:

1. Economic and socialistic,
2. Political and administrative,
3. Justice and legal,
4. Environmental,
5. Protection of monuments,
6. Peace and security.

OR

What are the 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.

Classification Directive Principles of State Policy –

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-

- **Socialistic Principles,**
- **Gandhian Principles** and,
- **Liberal-Intellectual Principles.**

The details of the three types of DPSPs are given below:

DPSP – Socialistic Principles	
Definition: They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:	
Article 38	Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities
Article 39	Secure citizens: <ul style="list-style-type: none">• Right to adequate means of livelihood for all citizens• Equitable distribution of material resources of the community for the common good• Prevention of concentration of wealth and means of production• Equal pay for equal work for men and women• Preservation of the health and strength of workers and children against forcible abuse• Opportunities for the healthy development of children
Article 39A	Promote equal justice and free legal aid to the poor

Article 41	In cases of unemployment, old age, sickness and disablement, secure citizens: <ul style="list-style-type: none"> • Right to work • Right to education • Right to public assistance,
Article 42	Make provision for just and humane conditions of work and maternity relief
Article 43	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
Article 43A	Take steps to secure the participation of workers in the management of industries
Article 47	Raise the level of nutrition and the standard of living of people and to improve public health
DPSP – Gandhian Principles	
Definition: These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:	
Article 40	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
Article 43	Promote cottage industries on an individual or co-operation basis in rural areas
Article 43B	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
Article 46	Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation

Article 47	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
Article 48	Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

DPSP – Liberal-Intellectual Principles

Definition: These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

Article 44	Secure for all citizens a uniform civil code throughout the country
Article 45	Provide early childhood care and education for all children until they complete the age of six years
Article 48	Organise agriculture and animal husbandry on modern and scientific lines
Article 49	Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance
Article 50	Separate the judiciary from the executive in the public services of the State
Article 51	<ul style="list-style-type: none"> • Promote international peace and security and maintain just and honourable relations between nations • Foster respect for international law and treaty obligations • Encourage settlement of international disputes by arbitration

What are the new DPSPs added by the 42nd Amendment Act, 1976?

42nd Amendment Act, 1976 added four new Directive Principles in the list:

S.No	Article	New DPSPs
1	Article 39	To secure opportunities for the healthy development of children
2	Article 39A	To promote equal justice and to provide free legal aid to the poor
3	Article 43A	To take steps to secure the participation of workers in the management of industries
4	Article 48A	To protect and improve the environment and to safeguard forests and wildlife

Facts about Directive Principles of State Policy:

1. A new DPSP under **Article 38** was added by the 44th Amendment Act of 1978, which requires the State to minimise inequalities in income, status, facilities and opportunities.
2. The 86th Amendment Act of 2002 changed the subject-matter of **Article 45** and made elementary education a fundamental right under **Article 21A**. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of 14 years.
3. A new DPSP under **Article 43B** was added by the 97th Amendment Act of 2011 relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
4. The Indian Constitution under **Article 37** makes it clear that ‘DPSPs are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.’

What is the conflict between Fundamental Rights and DPSPs?

With the help of four court cases given below, candidates can understand the relationship between Fundamental Rights and Directive Principles of State Policy:

Champakam Dorairajan Case (1951)

Supreme Court ruled that in any case of conflict between [Fundamental Rights](#) and DPSPs, the provisions of the former would prevail. DPSPs were regarded to run as a subsidiary to Fundamental Rights. SC also ruled that Parliament can amend Fundamental Rights through constitutional amendment act to implement DPSPs.

Result: Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.

Golaknath Case (1967)

Supreme Court ruled that Parliament cannot amend Fundamental Rights to implement Directive Principles of State Policy.

Result: Parliament enacted the 24th Amendment Act 1971 & 25th Amendment Act 1971 declaring that it has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. 25th Amendment Act inserted a new Article 31C containing two provisions:

- No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)22 and (c)23 shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).
- No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

Kesavananda Bharti Case (1973)

Supreme Court ruled out the second provision of Article 31C added by the 25th Amendment Act during Golaknath Case of 1967. It termed the provision ‘unconstitutional.’ However, it held the first provision of Article 31C constitutional and valid.

Result: Through the 42nd amendment act, Parliament extended the scope of the first provision of Article 31C. It accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31.

Minerva Mills Case (1980)

Supreme Court held the extension of Article 31C made by the 42nd amendment act unconstitutional and invalid. It made DPSP subordinate to Fundamental Rights. Supreme Court also held that ‘**the Indian**

Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.'

Supreme Court's rulings following the case were:

- Fundamental Rights and DPSPs constitute the core of the commitment to social revolution.
- The harmony and balance between Fundamental Rights and Directive Principles of State Policy is an **essential feature of the basic structure** of the Constitution.
- The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights.

Conclusion: Today, Fundamental Rights enjoy supremacy over the Directive Principles. Yet, Directive Principles can be implemented. The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.

Parliamentary System in India:

India has a parliamentary system of Government. Article 74 and Article 75 deal with the parliamentary system at the centre and Articles 163 and 164 deals with the states. There are multiple features of the Parliamentary system and various advantages over the Presidential system.

Parliamentary System in India

The democratic system of government can be divided into the parliamentary and the presidential system based on the relationship between the executive and the legislature. In a parliamentary system, executive is a part of legislature, which implements the law and plays an active role in framing it as well.

The parliamentary government is also called as the Cabinet government due to concentration of executive powers in the cabinet. **Articles 74 and 75 deals with the parliamentary system at the centre and Article 163 and article 164 deals with the Parliamentary system at the states.**

Elements and Features of Parliamentary System are:

1. **Nominal and Real Head:** The head of the state holds a ceremonial position and is the nominal executive. For example, the President.
2. In India, the head of government is the Prime Minister who is the real executive. Article 75 of the Indian constitution provides for a Prime Minister to be appointed by the president. According to Article 74, the Prime Minister headed council of ministers would aid and advise the President in the exercise of his functions.
3. **Executive is a Part of Legislature:** The Executive forms a part of the legislature. In India, the person should be a member of parliament to become a member of the executive. However, the constitution provides that a person can be appointed as a minister for a period of not more than six consecutive months if he is not a member of the parliament, after which the person ceases to be a minister.
4. **Majority Party Rule:** The party which wins majority seats in the elections of the Lower House forms the government. In India, the President invites the leader of the majority party in Lok Sabha to form the government. The President appoints the leader as the Prime Minister and the other ministers are

appointed by the President on the advice of the Prime Minister. The President may invite a coalition of parties to form the government, in case, no party has got majority.

5. **Collective Responsibility:** The council of ministers are collectively responsible to the parliament. The lower house of parliament has an ability to dismiss a government by getting the no confidence motion passed in the house. In India, the government survives till the time it enjoys support of the majority of members in the Lok Sabha. Thus, Lok Sabha is empowered to introduce no-confidence motion against the government.
6. **Prime Minister as the Centre of Power:** In India, the Prime Minister is the real executive. He is the head of the government, the council of ministers and the ruling government. Thus, he has to play a significant and important role in the working of the government.
7. **A Parliamentary Opposition:** No government in the parliament can get hundred percent majority. The opposition plays an important role in checking the arbitrary use of authority by the political executive.
8. **Independent Civil Service:** The civil servants advice and implement decisions of the government. Civil servants hold permanent appointments based on merit-based selection process. They ensure continuity of employment even when the government changes. The civil service also ensures efficiency in execution of duties and responsibilities.
9. **Bicameral Legislature:** Most of the countries following parliamentary system, including India, have bicameral legislature. The members of the Lower House of all these countries are elected by the people. The Lower House can be dissolved, in case, the term of the government is over or there is no scope of government formation due to lack of majority in house. In India, the President can dissolve the Lok Sabha on recommendation of the Prime Minister.
10. **Secrecy:** The members of the executive in this system have to follow the principle of secrecy in matters such as proceedings, executive meetings, policymaking etc. In India, the ministers take oath of secrecy before entering their office.

Advantages of Parliamentary System:

The parliamentary system has the following advantages over the presidential system:

1. Represents Diverse Group: The parliamentary form of government provides opportunity to various ethnically, racially, linguistically and ideologically diverse groups to share their views in framing of laws and policymaking. Countries, such as India, which have high level of diversity enables accommodation by providing political space to various diverse sections of the society.

2. Better Co-Ordination Between Legislature and Executive:

The executive is a part of the legislature. As the government enjoys the support of majority of members in the lower house, the tendency of disputes and conflicts decreases. It makes easy for the government to pass the legislation in the parliament and implement them.

3. Prevents Authoritarianism: In a parliamentary system, the tendency of authoritarianism decreases as the power is vested in the council of minister rather than a single individual. The parliament can remove the government through no-confidence motion.

4. Responsible Government: The parliament can check the activities of the executive as the latter is responsible to the former. In a presidential system, the president is not responsible to the legislature. The members of the parliament can ask question, move resolutions, and discuss matters of public importance to pressurize the government. Such provisions are not available in Presidential system.

5. Availability of Alternate Government: The lower house of the parliament can introduce and pass a no-confidence motion. In such a situation, the head of the state invites the leader of the opposition party to form the government. In the United Kingdom, the opposition forms a shadow cabinet for the cabinet of the government, so that they can become ready for the role.

Federal System:

In federal systems, political authority is divided between two autonomous sets of governments, one national and the other subnational, both of which operate directly upon the people. Usually a constitutional division of power is established between the national government, which exercises authority over the whole national territory, and provincial governments that exercise independent authority within their own territories. Of the eight largest countries in the world by area, seven—Russia, Canada, the United States, Brazil, Australia, India, and Argentina—are organized on a federal basis. (China, the third largest, is a unitary state.) Federal countries also include Austria, Belgium, Ethiopia, Germany, Malaysia, Mexico, Nigeria, Pakistan, Switzerland, the United Arab Emirates, and Venezuela, among others.

The main federal features of the Indian Constitution are as follows:

1. Written Constitution:

The Indian Constitution is a written document containing 395 Articles and 12 schedules, and therefore, fulfils this basic requirement of a federal government. In fact, the Indian Constitution is the most elaborate Constitution of the world.

2. Supremacy of the Constitution:

India's Constitution is also supreme and not the hand-made of either the Centre or of the States. If for any reason any organ of the State dares to violate any provision of the Constitution, the courts of laws are there to ensure that dignity of the Constitution is upheld at all costs.

3. Rigid Constitution:

The Indian Constitution is largely a rigid Constitution. All the provisions of the Constitution concerning Union-State relations can be amended only by the joint actions of the State Legislatures and the Union Parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and voting in the Parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one-half of the States.

4. Division of Powers:

In a federation, there should be clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. This requisite is evident in the Indian Constitution.

The State List consisted of 66 subjects, including, inter-alia public order, police, administration of justice, public health, education, agriculture etc. The Concurrent List embraced 47 subjects including criminal law, marriage, divorce, bankruptcy, trade unions, electricity, economic and social planning, etc.

5. Independent Judiciary:

In India, the Constitution has provided for a Supreme Court and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law as unconstitutional or ultra Vires, if it contravenes any provisions of the Constitution. In order to ensure the impartiality of the judiciary, our judges are not removable by the Executive and their salaries cannot be curtailed by Parliament.

6. Bicameral Legislature:

A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. The Constitution of India also provides for a bicameral Legislature at the Centre consisting of Lok Sabha and Rajya Sabha.

While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by the State Legislative Assemblies. However, all the States have not been given equal representation in the Rajya Sabha.

7. Dual Government Polity:

In a federal State, there are two governments—the national or federal government and the government of each component unit. But in a unitary State there is only one government, namely the national government. So, India, as a federal system, has a Central and State Government.

What makes India a federal country?

India a federal country because of the following reasons:

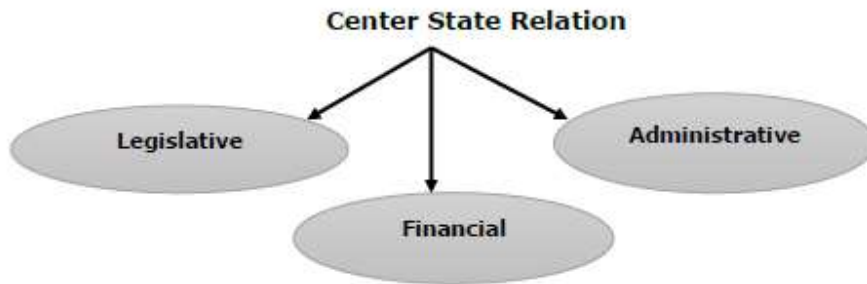
- There are levels of governments—Central Government, State Government and Local Government.

- Each level of government administers over the same region, but they have their own jurisdiction in matters of administration, taxation and legislation.
- The Government at each level derives its power from the Constitution of the country. Thus, the Central Government cannot easily dilute the powers of the State or Local Governments.
- The basic principles of the Constitution and the rights given to the people cannot be changed by only one tier of the Government. It requires the consent of governments at both levels.
- Both levels of the Government can collect taxes from the people according to the guidelines of the Constitution of the country.
- The Indian Constitution contains three lists which contain subjects in which the Union and the State Governments may form laws. Only central government can make laws in the Union List and state government in the state list. Subjects related to the interests of both Central and State Governments are included in the concurrent list.

Centre state relation:

Introduction-

- Articles 245 to 263 of Part XI and Articles 268 to 293 of Part XII describe three types of Center-State relations i.e. Legislative, Administrative, and Financial.



(i) Legislative Relations-

- Articles 245 to 255 describe Legislative relations.
- Article 245 (1) states that Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- Article 245 (2) states that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
- Article 246 states that the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I (i.e. Union List) and List III (i.e. Concurrent List) of the Seventh Schedule.
- Article 248 states that the Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.
- Further, Article 250 states that notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.



(ii) **Administrative Relations-**

- Articles 255 to 263 describe Legislative relations.
- Article 256 states that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- Article 257 (1) states that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- Article 258 (2) states that a law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorize the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.
- Article 261 (3) states that final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.
- Article 262 (1) states that Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- Article 262 (2) states that notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

(iii) **Financial Relations-**

- Articles 268 to 293 describe Financial relations.
- Article 268 describes the **Duties** levied by the Union but collected and appropriated by the States.
- Article 269 describes the **Taxes** levied and collected by the Union but assigned to the States.
- Article 270 describes the **Taxes** levied and distributed between the Union and the States.

Amendment of the Constitutional Powers and Procedure:

Introduction-

The Constitution of India provides for its amendment in order to adjust itself to the changing conditions and needs. **Article 368 in Part XX of the Constitution** deals with the powers of Parliament to amend the Constitution and its procedure.

Body-

The **procedure for the amendment** of the Constitution as laid down under Article 368 is as follows:

- An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in **either House of Parliament** and not in the state legislatures.
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- The bill can be introduced **either by a minister or by a private member** and does not require prior permission of the president.
 - The bill **must be passed in each House by a special majority**, that is, a majority of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
 - Each House must pass the bill separately. In case of a disagreement between the two Houses, there is **no provision for holding a joint sitting** of the two Houses for the purpose of deliberation and passage of the bill.
 - If the bill seeks to amend the **federal provisions** of the Constitution, it must also be ratified by the legislatures of **half of the states by a simple majority**.
 - After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is **presented to the President for assent**.
 - The President must give his assent to the bill. He can **neither withhold his assent to the bill nor return** the bill to the Parliament for reconsideration.
 - After the President's assent, the **bill becomes an Act** (i.e., a Constitutional Amendment Act) and the Constitution stands amended in accordance with the terms of the Act.

Emergency Provisions in Indian Constitution:

The Indian Constitution gives President the authority to declare three types of emergencies: national emergency, state emergency, and financial emergency. Emergency provisions in India are borrowed from Weimar Constitution of Germany.

Constitution of India envisages emergency of following three types:

- 1. Article 352- National emergency**
- 2. Article 356-Emergency in state (president's rule)**
- 3. Article 360- Financial emergency**

1. Article 352- National Emergency:

- Under article 352, if the president is satisfied that there exists a grave situation, wherein the security of the country is threatened on the grounds of wars, external aggression or armed rebellion, he can proclaim emergency to that effect.
- Emergency can be declared over the complete territory of India or any part thereof.
- President can declare emergency only on the written advice of the cabinet
- A special majority is required to approve an emergency resolution.
- Once approved, emergency shall operate for a maximum period of not more than six months.
- Lok Sabha has the power to disapprove the operation of national emergency at any time, if not less than 1/10th members of Lok Sabha in writing to the speaker, if house is in session, or to the president, then speaker or president as the case may be, shall convene a special session of Lok Sabha within 14 days and if such a resolution is passed, president shall revoke national emergency.

2. Article 356-Emergency in state (president's rule):

- On Executive- State government is dismissed and the executive power of the state is exercised by the centre.
- On Legislature- State legislature does not function to legislate; state legislative assembly is either suspended or dissolved.
- On Financial relation- There is no impact on the distribution of financial resources between centre and the state.

3. Article 360- Financial Emergency:

Under article 360- If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect. This emergency is never imposed in India.

Local self-Government:

The **Constitution** of **India** also recognized it and the Article 40 of the Directive Principles of State Policy lays down that -“The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of **self-government**”.

Types of Local-Self Government:

Mention the three type of local self governing

- Panchayati raj or gram panchayat.
- Block samiti.
- Zila parishad.

The **Government** of **India** Act of 1919 made **Local Self Government** a subject of responsibility for the popular ministry and this gave an impetus to the **Government** of **Local** bodies. A beginning in responsible **Government** was made in the provinces by **introducing**, a diarchic system of **Government**.

Why do we need Local-Self Government-?

Local self government is required because problems at the **local** level are best solved by **local governments**. Problems like drainage, road maintenance, maintaining records of birth and death etc cannot be properly dealt with by central and state **governments**.

Responsibilities of Local-Self Government-

Local authorities are multi-purpose bodies responsible for delivering a broad range of services in relation to roads; traffic; planning; housing; economic and community development; environment, recreation and amenity services; fire services and maintaining the register of electors.

Disadvantage of Local-Self Government-

- There is no proper distribution of power. ...
- Insufficient funds- this problem hinders the actual **purpose** of self government due to limited financial powers.
- Indirect election to the panchati raj allows for corrupt practices.

Enforcement of the Constitution:

26 January 1950: The **Constitution** Was Legally **Enforced**

Passed by the Constituent Assembly on 26 November 1949, it came into effect on 26 January 1950. The date 26 January was chosen to commemorate the declaration of Purna Swaraj (complete Independence) of 1930.