

# Indian Polity and Constitution

## Introduction

Polity refers to the basic structure of the state that has been extensively defined in the constitution and also has been framed by the laws, rules and procedures not covered by the constitution. The word polity comes from the Greek word “polis”, which means state or a city, in a broader context: the type, nature, constitutional and extra constitutional provisions of the Indian state, the structure of the state.

It deals with a wide range of topics such as development of constitution, citizenship, fundamental rights, directive principles, the executive, the president, prime minister and council of ministers, judiciary, state governments, local governments, election system etc. The constitution is a fundamental law of a country which reflects the fundamental principles on which the government of that country is based. It lays down the framework and principal functions of various organs of the government, as well as the modalities of interaction between the government and its citizens. India has an elaborate written constitution which was formulated by a constituent assembly.

## Constitution of India

The Constitution is an instrument which makes the government work. It is the supreme law of India. It lays down the basic principles, establishes the structure, procedures, powers and duties of the citizens. The Indian Constitution is the longest written constitution of any sovereign country in the world containing more than 444 articles in 25 parts, 12 schedules and more than 97 amendments. The constitution was adopted by the constituent assembly on 26th November 1949 and came into effect on 26th January 1950. The words ‘socialist’ and ‘secular’ were added to the definition in 1976 by a constitutional amendment known as the mini constitution. The day of adoption of the constitution is celebrated as Republic Day.

## Constitutional developments

The British came to India as traders in the early 17<sup>th</sup> century. They formed the East India Company and secured a charter from Queen Elizabeth (who was a shareholder of the company) to organise and send trading expeditions to the East Indies. Till the second half of the 18<sup>th</sup> century the company continued to be primarily a trading concern. However, after the disintegration of the

Mughal Empire, the company took full advantage of chaotic conditions, and established itself as the master of the subcontinent. It acquired the *Diwani* of Bengal with the victory at the battle of Plassey in 1764. This began the territorial sovereignty of the East India Company.

In the meantime, the British crown enacted several charters and acts to regulate the company. The company was obliged to transfer its powers to the British crown, which assumed direct control over the administration under government of India act 1858. After 1858, the British government enacted several acts for the governance of India, but most of these failed to satisfy the aspirations of the Indians and they continued to agitate for a greater share in the administration.



*The Indian National Congress was started in 1885 at Bombay (now Mumbai).*

In 1935, the Indian National congress made a demand that the people should have the right to frame their own constitution without outside interference. Earlier MN Roy in 1927 and Jawaharlal Nehru in 1933 had demanded a constituent assembly elected on the basis of adult franchise. This demand was not met by the British government until the 2<sup>nd</sup> World War. In 1940, Britain accepted that Indians should themselves frame a new constitution. In July 1947, the British parliament passed the Indian independence act, 1947, which provided for the transfer of power from the British government into Indian hands on 15<sup>th</sup> August 1947. On the midnight of 14-15 August 1947, a special session of the Constituent Assembly assumed two functions, that of formulation of constitution and that of a law-making body.

## Framing of the constitution

The Constitution of India was framed by a Constituent Assembly set up under the Cabinet Mission Plan of 1946. The assembly consisted of 389 members representing provinces, states and chief commissioner provinces and Baluchistan. The assembly held its first meeting on December 9, 1946 and elected Dr Sachinananand Sinha, the oldest member of the assembly, as president. The constituent assembly appointed 22 committees to formulate the constitution.



*Dr. Ambedkar is known as the 'Father of the Indian Constitution'.*

On the basis of the reports of these committees, a Draft of the constitution was prepared by a seven-member drafting committee under the chairmanship of Dr B.R. Ambedkar. Though the major part came to force on January 26, 1950, the provisions relating to citizenship, elections, provisional parliament and temporary and transitional provisions came into force with immediate effect from November 1949.

The Constitution of India was not completely an original document, the framing committee having freely borrowed good features from other constitutions. However, while adopting those features, they made necessary modifications that would be suitable for Indian conditions and avoided their defects. The constitutions which exercised profound influence on the Indian constitution were those of UK, USA, Ireland and Canada.

## Objectives of the Indian Constitution

The objectives of the constitution were outlined in the objective resolution moved by Nehru in December 1946 and unanimously adopted by the constituent assembly on January 22, 1947.

The main principles were:

1. Resolve to proclaim India as an independent sovereign republic.
2. To establish a democratic union with an equal level of self government for all constituent parts.
3. All power and authority of the union government and governments of constituent parts are derived from the people
4. To guarantee and secure for all people of India justice, socio-economic and political; equality of status, of opportunity and before law; freedom of thought, expression, belief, faith, worship, vocation, association and action.
5. Adequate safeguards for minorities, backward and tribal areas.
6. To maintain the integrity of the territory of the republic and its sovereign rights on land, sea and air according to justice and law of civilised nations.
7. To secure for India its rightful and honoured place in the world
8. To contribute to the promotion of world peace and the welfare of mankind.

## Preamble



The Constitution of India is preceded by a preamble which i) indicates the source from which it derives authority, and ii) states the objective which the constitution seeks to achieve.

## Citizenship

The constitution of India provides for single citizenship. All persons residing in different parts of the country enjoy Indian citizenship (article 5). There is no separate citizenship of states. According to the constitution, the following three categories of persons are entitled to citizenship

1. Person domiciled in India
2. Refugees who migrated to India from Pakistan
3. Indians living in other countries

### **Amendment of citizenship act**

In 1986, the citizenship act was amended and acquisition of citizenship by persons coming to India as refugees from Bangladesh, Sri Lanka and other countries was made difficult. In December 2003 the citizenship act 1955 was amended to facilitate the reacquisition of the Indian citizens and former Indian citizens. However, the act made the acquisition of Indian citizenship and naturalisation more stringent to prevent illegal migrants from becoming eligible for Indian citizenship.

Every person who is a citizen of a commonwealth country, by virtue of that citizenship enjoys the status of commonwealth citizenship in India. The Indian citizenship act 1955 empowers the central government to make provisions on the basis of reciprocity for enforcement of all or any of the rights of a citizen of India on the citizens of UK, Australia, Canada, Sri Lanka, New Zealand, and other Commonwealth countries.

### **Dual citizenship to People of Indian Origin (PIOs)**

In December 2003, a new law was passed which permits the people of Indian origin residing in 16 countries, Australia, Canada, Finland, France, Greece, Ireland, Israel, Italy, the Netherlands, New Zealand, Portugal, Cyprus, Sweden, Switzerland, UK and USA, to have dual citizenship status. This will enable them to participate in certain economic activities in India.

### **Significance of citizenship**

The significance of citizenship lies in the fact that all fundamental rights enshrined in the constitution are available to citizens alone. Further, only citizens can vote in state and national elections.

### **Fundamental rights**

The constitution guarantees elaborate fundamental rights to Indian citizens. These are contained in part III of the constitution. These rights are vital for the development of the individual to promote his/her dignity and welfare. However, the government is authorised to impose reasonable restrictions on the rights. But whether these restrictions are reasonable or not is to be decided by the courts.

### **Need and importance of fundamental rights**

The fundamental rights protect the rights and liberties of the people against encroachment by the government and impose limitation upon all powers of the legislative as well as the executive wings, notwithstanding their representative character. The main objective of the inclusion of fundamental rights in the constitution is to see that power is not misused against the people by the Government. These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are upheld so as to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights, and impose negative obligations on the state not to encroach on individual liberty in its various dimensions.

### **Fundamental rights in India**

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and educational rights
6. Right to constitutional remedies

### **The writs**

There are five types of writs that can be issued by the Supreme Court or the High Courts for the protection of the fundamental rights of the Indian citizens

1. **Habeas corpus:** this writ is issued in the form of an order calling upon a person who has detained another person to bring that person before court to let it know under what authority he has been detained.
2. **Mandamus:** this writ is an order by a superior court commanding a person or a public authority to do or forbear to do something in the nature of public duty.
3. **Prohibition:** this writ is issued by the Supreme Court or a High Court to an inferior court forbidding it to continue proceedings in a case in excess of its jurisdiction.
4. **Certiorari:** this writ is issued by a superior court to an inferior court or body exercising judicial or quasi-judicial powers, to remove a suit from such inferior court or body and adjudicate upon the validity of the proceedings.
5. **Quo warrant:** this writ is issued by a court to prevent a person from holding an office to which he is not entitled.

### **Suspension of fundamental rights**

When the president makes a proclamation of emergency under the article 352, the freedoms guaranteed under article 19 are automatically suspended.



*The Indira Gandhi government invoked a national level Emergency in 1975 which lasted till 1977*

## **Fundamental duties**

The Constitution outlines the fundamental duties of the Indian citizen, which were incorporated in the Constitution by the 42nd amendment act in 1976. The fundamental duties are as follows:

1. To abide by the constitution and respect its ideals and institutions, the national flag and national anthem
2. To cherish and follow the noble ideals which inspired our national struggle for freedom
3. To uphold and protect the sovereignty, unity and integrity of India
4. To defend the country and render national service when called upon to do so
5. To promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional diversities, to renounce practices derogatory to the dignity of women
6. To value and preserve rich heritage of our composite culture
7. To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures
8. To develop a scientific temper



9. To safeguard public property and to abjure violence
10. To strive towards excellence in all spheres of individual and collective activity
11. Right to education should provide the individual with a sense of social responsibility.

## **The Directive Principles of State Policy**

The directive principles of state policy, which embody the ambitions and aspirations of the framers of the constitution are contained in part IV of the constitution. The directive principles provide the social and economic base of the democracy. These principles are not enforceable through courts and are merely directives which the government has to keep in mind while forming a policy.

Some important directive principles are:

1. Economic or socialist. These principles aim at providing social and economic justice and ushering in a welfare state.
2. Gandhian principles: these principles are the embodiment of Gandhian programme for reconstruction
3. Liberal principles

## **The President of India**

The president is the executive head of the state. The constitution vests all the executive powers of the union government in him. He exercises these powers either directly himself or through officers subordinate to him. Whilst the President of India is a constitutional executive head, the real executive authority of the union is exercised by the Prime Minister and his council of ministers.

The office of the Prime Minister has been created by the constitution and is appointed by the president.

## **The Indian Parliament**



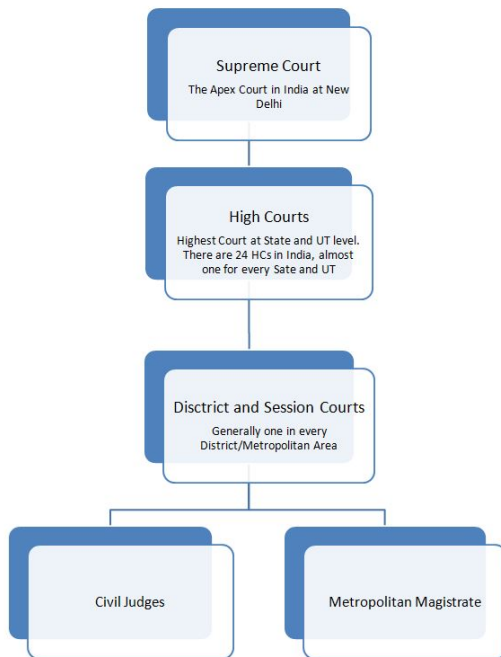
*The Lok Sabha and Rajya Sabha together make decisions over formation of new laws and Constitutional Amendments.*

The Parliament is the union legislature of India. It consists of the President and 2 Houses: Lok Sabha (house of the people) and Rajya Sabha (council of states).

**Lok Sabha:** The popular house of the Indian Parliament. It consists of representatives elected by people on the basis of universal adult franchise through secret ballot. The maximum strength of Lok Sabha has been fixed at 552- of which 550 are elected and 2 are nominated from amongst the Anglo-Indian Community.

**Rajya Sabha:** The Rajya Sabha is the upper house of parliament. It consists of representatives of the states. The maximum strength of Rajya Sabha is 250. Out of this 238 represent the states and the remaining 12 are nominated by the president. The nominees are the persons who have distinguished themselves in the field of literature, art, science, social service and so on.

## **Judiciary**



The Indian constitution has ensured the independence of the judiciary through a number of measures. The legislature is not involved in the process of appointment of judges. The judges have a fixed tenure. They hold office until the age of retirement. The judiciary is financially not dependent on legislature or executive. A judge can only be removed through impeachment.

## Structure of judiciary

The constitution of India provides for a single integrated judicial system. This means that unlike some other federal countries of the world, India does not have separate state courts. The structure of judiciary is pyramidal in India with the Supreme Court at the top, High courts below them and district and subordinate courts at the lowest level.

## Indian federalism

On the basis of relations between the central government and the units, the governments are classified as unitary and federal. In a unitary system of government, all powers are concentrated in the centre, which can delegate them to the units. On the other hand, in a federal system, powers are divided between the centre and states by the constitution. The federal features of constitution include:

1. A written constitution which defines the structure, organisation and powers of the central as well as the state governments.
2. Supremacy of the constitution, which implies that both the centre and state are subordinate to the constitution
3. A rigid constitution, which can be amended only through a special procedure
4. An independent judiciary which acts as the guardian of the constitution
5. A clear division of powers between the centre and states.

The constitution also contains a number of nonfederal features such as:

1. The creation of a very strong centre
2. The absence of separate state constitutions
3. The right of parliament to amend major portions of the constitutions by itself
4. The creation of a single citizenship for all
5. Unequal representation to the states in Rajya Sabha
6. The right to parliament to change the name, territory or boundary of states without their consent
7. The presence of all India services which hold key positions in the centre as well as states
8. Appointment of Governor of States by the President of India
9. The granting of extensive powers to the president to deal with various kinds of emergencies

10. The right of Parliament to legislate on state subjects on the recommendation of the Rajya Sabha
11. The presence of a single judiciary with the Supreme Court at the apex
12. The same election machinery to conduct elections in the states as well as centre
13. The creation of office of comptroller and auditor general to look after the accounts of the centre as the states
14. The exclusive right of Parliament to propose amendments to the constitution
15. The establishment of zonal councils to secure cooperation among the states

On account of the presence of a large number of non-federal features in the Indian constitution, India is often described as a quasi-federal country.

### **Constitutional amendments**

The Indian constitution makes provisions for its amendment, but the procedure is neither very rigid nor very flexible. There are three different procedures for the amendment of various provisions:

1. Certain provisions of the constitution can be amended by the parliament by simple majority.
2. Some provisions can be amended by parliament by a two-third majority and also require approval of legislatures.
3. A major portion of the constitution can be amended by a two third majority in parliament. This must also be the clear-cut majority of the total membership of the house.

The Indian constitution has been amended more than 100 times by now. The latest amendment pertains to the Goods and Services Tax (GST) which was implemented in India following the

enactment of the 101st Constitution Amendment Act, 2016 on 8th September, 2016 and subsequent notifications.

## **Civil services**

The constitution provides for three categories of civil services in the country- all India services, central service and state services. The all India services are common to centre and state (IAS, IPS, IFS etc.). The responsibility of the recruitment of civil servants at the union and state levels has been entrusted to the Union Public Service Commission (UPSC). The composition of UPSC is determined by the president.

The main functions of the UPSC are:

1. To conduct examinations for the appointment to services under the union
2. To advise the President in matters relating to the methods of recruitment to civil services
3. To advise the President with regard to the claim of person regarding cost incurred by him during execution of his duties
4. To advise the President with the regard to compensation in respect of injuries sustained by a person while serving the government
5. To discharge such other functions in respect of services of the union or other local authority which it may be assigned by the Parliament.

## **Key functionaries**

**Comptroller and Auditor General of India:** Appointed by the President, he carries out the auditing and accounting duties of the union

**Attorney General of India:** Attorney-general is the highest legal officer of the union government and renders legal assistance. He is appointed by the President of India. He is the chief legal advisor of the Government of India.

**Election Commission:** The constitution provides for an independent Election Commission to manage all governmental elections, and to ensure free and fair elections to the parliament and state legislatures and to the offices of Prime Minister and President.

Main functions of the Election Commission include:

1. The preparation of electoral rolls before each election
2. The delimitation of constituencies
3. The recognition of various political parties and allotment of election symbols to these parties
4. The preparation of code of conduct
5. Advising the President regarding disqualification of members of parliament
6. The conduct of election to Parliament
7. The appointment of election officers
8. The preparation of roster for central broadcasts
9. Keep voters list up to date
10. To issue identity cards to voters

## **Official language**

The constitution declared Hindi as the official language of India. However, it initially permitted the use of English for official purposes for a period of 15 years since the commencement of Constitution. The Parliament was allowed to use English even after this period. Through the official

language act (amendment) 1967 it was provided that the use of English would continue indefinitely.

## **India as a secular and democratic state**

The constitution implies that India is a secular state. This means that the state and religion are separate and that the state does not discriminate among citizens on the basis of religion. The constitution of India makes it a truly secular state.

## **Panchayati Raj**

Panchayati raj is an important feature of the Indian political system which ensures direct participation of people at the grass roots level. Though panchayats have been in existence since ancient times, they suffered a setback during British times. After India obtained independence the framers of the Indian Constitution decided to give importance to Panchayats and directed states to organise village panchayats. There are 3 components of the panchayat system:

1. **Village panchayats** : this is lowest rung of the three tier system and consists of elected representatives.
2. **Block and panchayat samiti** : the block is the intermediary unit of the system
3. **Zila parishad** : it is the top level part of the three tier structure and is also known as district development council.

## **Schedules of the Indian Constitution**

The constitution has 12 schedules which provide details about the territories of states and union territories, salaries and allowances of various officials, the forms of oath or affirmation to be taken by various officials, allotment of seats in Rajya Sabha, division of power between centre and state.

## **Indian foreign policy**



The basic principles of the foreign policy of India were evolved during the British rule itself. At the Haripura session of congress in 1938, a resolution was passed asserting that the people of India desire to live in peace and friendship with their neighbours and all other countries; they wish to remove all causes of conflict between various states to establish world peace on an enduring basis; they also expressed opposition to imperialism and exploitation of people. The principles of foreign policy were further elaborated by Jawaharlal Nehru in his speech on September 2, 1946. The foreign policy aims at maintaining world peace and liberalisation of trade while protecting the local people.

### **Election Commission**

The Election Commission of India is an autonomous constitutional authority responsible for administering election processes in India. The body administers elections to the Lok Sabha, the Rajya Sabha, various state Legislative Assemblies in India, and the offices of the President and Vice-President of India.

### **Summary**

The Indian Constitution is first and foremost a social document, and is aided by Fundamental Rights & Directive Principles of State Policy, acting together, as its chief instruments and its conscience, in realising the goals set by it for all the people.