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Preface

The Constitution of India provides the bedrock for the operation of democracy in the country, the overall framework for the functions and power of the State in India, and the government and its limitations with regard to the rights of the people.

This book: "**UPPCS Mains Special**" (GS 2nd Paper) by **Sam-Samayik Ghatna Chakra** is an endeavour to provide the basic understandings about the subject.

The book is written according to the syllabus of UPSC, UPSC and other state civil services examinations under the heads like – **Preamble, Union of States, Citizenship, Fundamental Rights, DPSPs, FDs, Union, States, Parliament, Judiciary etc.** It also includes the "**Social Justice**" and "**International Relations**".

The book is loaded with **model questions and answers** based on these chapter.

The book is written in manner that theory and mains questions & answers will be prepared together after reading each chapters.

The Civil Services aspirants will definitely get benefited with this book.

"Enjoy Reading."

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Topics Covered in this Unit

- * Historical Evolution
- * Making of the Constitution
- * Borrowed features from other Constitution
- * Salient Features of the Constitution

Historical Background

Evolution

- In order to know about the Indian Political structure, it becomes very important to know about the Indian Constitution.
- There are various Rules and Acts which were passed before Independence and played a vital role in shaping our constitution. Some of the important historical events are listed below:

Regulating Act of 1773

- It was the **first step taken by the British government to control and regulate the affairs of the East India Company in India.**
- It recognised, for the first time, the **political and administrative functions of the company.**
- It laid the foundation of central administration in India.
- It designated the Governor of Bengal as the **'governor-general of Bengal'**. The 1st such governor-general was **Lord Warren Hastings.**
- It provided for the **establishment of a Supreme Court at Calcutta (1774)** comprising one chief justice and three other judges.

Amending Act, 1781

- To rectify the defects of the Regulating Act of 1773, the British Parliament passed the Amending Act of 1781, also known as the **Act of Settlement or Declaratory Act, 1781.**
- The key provision of this act was to **demarcate the relations between the Supreme Court and the governor-general in council.**

- It settled the question of **jurisdiction of the Supreme Court.**

Pitt's India Act, 1784

- Indian affairs came under the **direct control** of the British government in Britain.
- **Distinguished the commercial and political functions of the company.**
- Allowed the court of directors to manage the commercial affairs and created a new body called **Board of Control (6 members)** to manage the political affairs. Thus, it established a system of dual government.
- **Empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India.**

Charter Act, 1813

- **It ended the monopoly of the East India Company (EIC) in India** except for the company's monopoly in "trade with China" and "trade in tea with India".
- Thus, trade with India for all commodities except tea was thrown open to all British Subjects. This lasted till 1833 when the next charter abolished the trading rights of the company.
- Charter Act 1813 for the **first time explicitly defined the constitutional position of the British territories in India.**

Charter Act, 1833

- It was the final step towards centralization.
- Governor-general of Bengal became the governor-general of India (Lord William Bentick was the first governor-general of India).

- Governor-general was vested with all civil and military powers.
- **It deprived the governor of Bombay and Madras of their legislative powers.**
- **The Laws made under the previous acts were known as regulations, while the laws made under this act were known as Acts.**
- It ended the activities of the EIC as a commercial body, making it a purely administrative body.
- Introduced law member (Macaulay) in governor general's council.
- Section 87 of the act provided that there will be no discrimination on the basis of caste, religion, class & birth place in context to appointments in govt. Service.

Charter Act, 1853

- Separated the legislative and executive functions of the governor general's council.
- Provided for the addition of six new members called legislative councillors to the council known as the Indian (Central) Legislative Council.
- **It introduced, for the first time, local representation in the Indian (Central) Legislative Council.**
- **Introduced an open competition for civil services.** The covenanted civil service was thus thrown open to the Indians also.

Government of India Act, 1858

- Also known as the Act for the good government of India.
- The rule of the company was replaced by the rule of the crown.
- **Changed the designation of the governor-general of India to that of Viceroy of India.**
- **Viceroy became the agent of the Crown.**
- This act abolished the dual government of the Pitt's India Act.
- This act also ended the Doctrine of Lapse.
- The Secretary of State was a member of the British Cabinet and was responsible ultimately to the British Parliament.
- Established a 15 member Council of India to assist the secretary of state for India.

Indian Councils Act, 1861

- Initiated the process of decentralization by restoring legislative power to Bombay and Madras. (These powers were taken away through charter Act, 1833).
- Introduced representative institutions in India by associating Indians with the law-making process.
- Viceroy nominated **some Indians as non-official member** of his expanded council. Three Indians nominated were - the Raja of Banaras, the Maharaja of Patiala and Sir Dinkar Rao.
- It empowered the viceroy to issue ordinances during emergency.
- Empowered the viceroy to frame the rules of business (the same power is given to president of India under Article 77).
- Statutory recognition to portfolio system.
- Establishment of new legislative councils for Bengal, NWFP and Punjab.

Indian Councils Act, 1892

- Though the majority of official members were retained, the non-official members of the Indian Legislative council were increased. Hence the members were nominated by the Bengal Chamber of commerce and the provincial legislative councils.
- The non-official members of the provincial council were to be nominated by certain local bodies such as universities, district boards and municipalities.
- Beginning of **representative system in India.**
- Council was vested with the power to discuss on budget & addressing the questions to the executive.

Indian Councils Act, 1909 (Morley-Minto Reform)

- An element of elections to the legislative councils introduced for the first time.
- At the provincial legislative councils, non-official members to be in majority.
- Introduction of **separate electorates (for Muslims).**
- It provided for the first time, an association of Indians with the executive council of the viceroys and governor. (Satendra Prasad Sinha became the first Indian to join the viceroy's executive council. He was appointed as the Law member).

Government of India Act, 1919 (Montague-Chelmsford Reforms)

- The British Government declared, for the first time, that its objective was the **gradual introduction of responsible Government in India**.
- Office of High Commissioner of India was created in London.
- Indian legislature became “**bicameral**” for the first time.
- Communal representation extended to Sikhs, Indian Christians and Europeans.
- Secretary of State for India now to be paid from British revenue.
- **Diarchy in provinces** by dividing subjects of administration between official members and elected members.
- It separated provincial budget from central budget.

Government of India Act, 1935

- Provided for the establishment of an **All-India federation** consisting of provinces and princely states as units. (Note- the princely states did not join and so federation didn't come into existence).
- Introduced responsible government in States.
- Residuary power was given to Viceroy.
- **Abolished diarchy in the provinces** and introduced ‘**provincial autonomy**’ in its place.
- Introduced responsible government in provinces.
- Introduced Bicameral legislature in six out of eleven provinces.
- Extended the provision of communal representation by providing separate electorates for depressed classes (Scheduled castes), women and labour/workers.
- Abolished the Council of India, established by the Government of India Act of 1858.
- The secretary of state for India was provided with a team of advisors.
- Established the Reserve Bank of India to control, the currency and credit of the country.
- Established the Federal Public Services Commission, Provincial Public Service Commissions and Joint Public Service Commission for two or more provinces.

- Provided for the establishment of a Federal Court, which was setup in **1937**.

Indian Independence Act, 1947

- Declared India as an Independent and Sovereign state from August 15, 1947.
- Provided for the creation of two independent dominions of India and Pakistan with the Right to secede from the British Commonwealth. (Governor-general of each dominion was to be appointed by king, on the advice of the Dominion Cabinet).
- Empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution and to repeal any act of the British Parliament including the independence act itself.
- Abolished the office of the secretary of state for India and transferred his functions to the secretary of state for common wealth affairs.
- It assigned dual function (i.e. Constituent and Legislative) to the Constituent Assembly formed in 1946.
- It declared this dominion legislature as a sovereign body granted freedom to the Indian princely states either to join the Dominion of India on dominion of Pakistan or to remain independent.

Borrowed Features from Other Constitution

- Indian constitution is a blend of various features which are borrowed from different constitutions throughout the world. This is what makes it the **most-distinct constitution in the world**. Few of the borrowed features are listed below:

Indian Constitution Borrowed Features

1.	British Constitution	Parliamentary form of government, Rule of law, Law making procedure, Single citizenship, institution of Speaker, and Bicameralism
2.	American Constitution	Fundamental Rights, Independence of judiciary, Judicial review, Impeachment of the president, Removal of SC & HCs judges and post of Vice-President.

3.	Canadian Constitution	Federal system with a strong central authority, residuary powers, Centre-State Relation.
4.	Irish Constitution	Directive Principles, Election of the President of India.
5.	Australian Constitution	Concurrent list; Freedom of trade and service within country.
6.	Weimar Constitution	Suspension of Fundamental Rights during Emergency provision.
7.	Soviet Constitution	Fundamental duties, idea of Justice
8.	Government of India Act, 1935	Office of the governor, Judiciary
9.	South African	Amendment of constitution.

Constitution of the United State of America

- Fundamental rights.
- Independence of Judiciary.
- Impeachment of President.
- Judicial Review.
- Removal of the Supreme Court and the High court Judges.
- Role of Vice president.
- The preamble to the Constitution.

Constitution of the United Kingdom

- The Parliamentary System.
- The Election procedure.
- Office of Comptroller and Auditor General.
- Writ jurisdiction of Courts.
- Civil services.
- The law – making procedure.
- Cabinet system.
- Martial Law
- Bicameralism
- Rule of law.
- System of single citizenship.

Constitution of Ireland

- Directive Principles of state policy.
- **The method of election of president (Electoral process of Presidential Election).**
- The nomination of members to Rajya Sabha.

Constitution of Australia

- Concurrent list.
- A joint sitting of 2 Houses of the Parliament.

- Provisions regarding trade and commerce and inter-course.

Constitution of Canada

- The federal system with a strong centre.
- Appointment of the state governor.
- Advisory jurisdiction of Supreme Court.
- Residuary Powers.

Other Constitutions

- **South Africa** – Procedure for the amendment of the Constitution and election of members of Rajya Sabha.
- **France** – Republic, Liberty, Equality and Fraternity.
- **Japan** – Procedure established by Law.
- **Former USSR** – Fundamental duties; Justice (Social, Economic and Political)
- **Germany** – Suspension of fundamental rights during emergency (Emergency Provisions).

From more than one Constitutions

1. **Australia and UK** – The parliamentary privileges.
2. **Australia and USA** – Public interest litigation.

Making of the Constitution

- The idea of a Constituent Assembly for India was put forward by **M.N. Roy** for the first time, a pioneer of the Communist Movement in India and an advocate of **radical democratism**.

- **Radical democracy** is a type of democracy that advocates the radical extension of equality and liberty.
- Radical democracy is concerned with a radical extension of equality and freedom, following the idea that democracy is an un-finished, inclusive, continuous and reflexive process.

- In 1935, **the Indian National Congress (NIC), for the 1st time**, officially demanded for a Constituent Assembly to frame the Constitution of India.

Evolution and Framing of Indian Constitution – Overview

1. In 1938, **Jawaharlal Nehru**, on behalf of INC declared that “the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of the adult franchise.
2. The demand was finally accepted in principle by the British Government in what is known as the

August offer of 1940.

3. In 1942, Sir Stafford Cripps, a member of the cabinet, came to India with a draft proposal of the British Government on the framing of an Independent Constitution to be adopted after World War-II.
4. The Cripps proposals were **rejected by the Muslim League**, which wanted India to be divided into two autonomous states with two separate Constituent Assemblies.
5. Finally a Cabinet mission was sent to India; while it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or Less satisfied the Muslim League.
6. It was under the **Cabinet Mission Plan of 1946** that the Constituent Assembly was constituted to frame a Constitution for India.
7. The Constituent Assembly, which was constituted for undivided India and held its first sitting on **December 09, 1946**.
8. It was elected through indirect election by the member of the **Provincial Legislative Assemblies** (Lower House only), according to the scheme recommended by the Cabinet Delegation. The features of this scheme were as follows:-
 - ▶▶ The provinces elected **292 members** while the princely states were allotted a maximum of **93 seats**.
 - ▶▶ The seats in each province were distributed among the three main communities Muslim, Sikh and General, in proportion to their respective population.
 - ▶▶ Members of each community in the **Provincial Legislative Assembly** elected their own representative by the method of **proportional representation** by means of single transferable vote.
 - ▶▶ The method of selection in the case of representatives of princely States were to be nominated by the head of the princely states. As a result of the Partition under the plan of June 3, 1947, a **separate Constituent Assembly was setup for Pakistan**.
 - ▶▶ The representatives of Bengal, Punjab, Sindh, North-West Frontier Province, Baluchistan and Sylhet – district of Assam (which had joined Pakistan by a referendum) ceased to be members of the Constituent Assembly of

India and there was a fresh election in the new provinces of West-Bengal and East-Punjab.

- ▶▶ Hence, when the Constituent Assembly re-assembled on Oct 31, 1947, the membership of the house was reduced to 299.

A Note on Objective Resolution

On December 13, 1946, Jawaharlal Nehru moved the historic “Objective Resolution” in the Assembly. It laid down the fundamentals and philosophy of the Constitutional structure. It read:

- This Constituent Assembly declares its firm and solemn resolve to **proclaim India as the Independent sovereign Republic** and to draw up for her future governance a constitution.
- Wherein the territories comprise British India, the territories that now form the Indian states and such other parts of India as are outside India and the states as well as other territories as are willing to be constituted into independent sovereign India, shall be a Union of them all.
- Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous units together with residuary powers and exercise all powers and functions of government and administration save and except such powers and functions as are vested in or assigned to the union or as are inherent or implied in the union or resulting there from.
- Wherein all power and authority of the sovereign Independent India, its constituent parts and organs of government are derived from the people.
- Wherein shall be guaranteed and secured to all the people of India **justice, social, economic and political, equality of status of opportunity before the Law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality**.
- Wherein adequate **safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes**.
- Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations.

- This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.
- This Resolution was unanimously adopted by the Assembly on **January 22, 1947**. It influenced the shaping of the constitution through all its subsequent stages. Its modified version forms the **Preamble of the present Constitution.**

Committees of the Constituent Assembly

● Major Committees

Name of Committees and their chairman are:

1. Union Powers Committee – Jawaharlal Nehru
2. Union Constitution Committee – Jawaharlal Nehru
3. Provincial Constitution Committee – Sardar Patel
4. Drafting Committee – Dr. B.R. Ambedkar
5. Advisory committee on Fundamental Right, Minorities and Tribal and excluded areas – Sardar Patel

Advisory committee had the following five sub-committees:

- a) Fundamentals Rights Sub-Committee – J.B. Kriplani
 - b) Minorities Sub-Committee – H.C. Mukherjee
 - c) North-East-Frontier Tribal Areas and Assam excluded & partially excluded areas Sub-Committee – Gopinath Bardoloi
 - d) Excluded and Partially excluded Areas (Other than those in Assam) Sub-Committee – A.V. Thakkar
 - e) North-west-Frontier Tribal Areas Sub-Committee
6. Rules of Procedure Committee – Dr. Rajendra Prasad
 7. States Committee (Committee for negotiating with states) – Jawaharlal Nehru
 8. Steering Committee – Dr. Rajendra Prasad

● Minor Committees

1. Finance and staff Committee – Dr. Rajendra Prasad
2. Credentials Committee – Alladi Krishnaswami Ayyar
3. House Committee – B. Pattabhi Sitaramayya.
4. Order of Business Committee – Dr. K.M. Munshi

5. Ad-hoc committee on the National flag – Dr. Rajendra Prasad.
6. Committee on the functions of the constituent Assembly-G.V. Mavalankar
7. Ad-hoc committee on Citizenship – S. Varadachari (Not an assembly member)
8. Committee on chief commissioner's provinces – B. Pattabhi Sitaramayya
9. Expert Committee on the financial provisions of the union constitution – Nalini Ranjan Sarkar.
10. Linguistic Provinces commission – S.K. dhar (Not- an Assembly member)
11. Special committee to examine the draft constitution- Jawaharlal Nehru.
12. Press-gallery committee - Usha Nath Sen

● Drafting Committee

Among all the committees of the Constituent Assembly the most important committee was the Drafting Committee that was entrusted with the task of proposing a draft of the new Constitution. It Consist of seven members. They were:

1. Dr. B.R. Ambedkar (Chairman)
2. N. Gopalaswamy Ayyangar
3. Alladi Krishnaswami Ayyar
4. Dr. K.M. Munshi
5. Syed Mohammad Saadullah
6. M. Madhava Rav (He replaced B.L. Mitter)
7. T.T. Krishnanmachari (he replaced D.P. Khaitan)

Criticism of the Constituent Assembly

The critics have criticised the Constituent Assembly on various grounds. These are as follows:

1. **Not a Representative Body** – Its members were not directly elected by people of India on the basis of universal adult franchise.
2. **Not a Sovereign Body** – It was created by the proposals of the British Government. Further they said that the Assembly held its sessions with the permission of the British government.
3. **Time Consuming** – According to the critics, the Constituent Assembly took unduly long time to make the constitution. They stated that the framers of the American Constitution took only four months to complete their work. In this context, Naziruddin Ahmad, a member of the Constituent

Assembly coined a new name for the Drafting Committee to show his contempt for it. He called it a “**Drifting Committee**”.

4. **Dominated by Congress – Granville Austin**, an American Constitutional expert, remarked ‘The Constituent Assembly was a one-party country. The Assembly was the Congress and the Congress was India.
5. **Lawyer-Politician Domination** – They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the constitution.
6. **Dominated by Hindus** – Lord Viscount Simon called it ‘a body of Hindus’. Similarly, Winston Churchill commented that the Constituent Assembly represented ‘only one major community in India’.

Salient Features of the Constitution

Every written constitution in the world has its own unique characteristics and no exception is the Indian Constitution. But the Indian Constitution has many prominent features that distinguish it from other Constitutions.

1. World’s Longest Written Constitution

- The Indian Constitution contains a Preamble, 395 articles and 12 schedules making it the world’s longest written Constitution. For e.g. – UK has un-written constitution, while US Constitution contains only seven articles.
- Since 1951, about 90 articles and more than 100 amendments have been added. However, since the articles are not added separately but as part of an existing article (e.g. Article 21A, 35A etc.) the total number of articles remains the same at 395.

2. Taken from various sources

- The Indian constitution was formed from multiple sources including the 1935 Government of India Act and other countries constitutions.

Feature of Indian Constitution	Borrowed from (Sources)
--------------------------------	-------------------------

Basic structure (federal scheme, Judiciary, governors, emergency powers, Public Service Commission.	Government of India Act 1935..
Fundamentals Rights	American Constitution
Directive Principle	Irish Constitution.
Cabinet form of government.	British Constitution.

- In addition to these various provisions have been adopted from the constitution of Canada, Australia, Germany, the U.S.S.R. and France.

3. Federal System with Unitary features

- The Indian Constitution includes all the federal characteristics of government such as dual government system (Centre and State), division of powers between the three state organs (executive, judiciary and legislature), Constitutional supremacy, independent judiciary and bicameralism (Lower and Upper house).
- The Indian Constitution is unique in that it includes many unitary features such as strong centre, all India services are common to the centre and the states, emergency provisions that can transform the Constitution into a unitary one if necessary, appointment of governors by the president on the advice of the centre, etc.
- Article 1, clearly states that India is a ‘**Union of States**’ rather than a federation of states. In India, the states did not come together to form a centre (or Union) like in the case of the USA which is the purest form of federation.
- Rather, for administrative convenience, it is the centre that created the states. Article 3 of the Indian Constitution makes Parliament the Sole authority to create new states clearly indicating that the Indian Constitution is of a unitary nature with certain federal characteristics.

4. Parliamentary form of government.

On the pattern of the British Parliamentary System

of government, the Indian Constitution has opted for the parliamentary form of government.

The key characteristics of the parliamentary form of government are:-

- Executives are the members of the legislature. Collective responsibility of the Council of ministers to the legislature.
- Rule of the majority party.
- Leadership of Prime Minister or Chief Minister the state.

5. Balance between the Sovereignty of Parliament and Judicial Supremacy

- A fine balance has been kept between Parliamentary Sovereignty and judicial supremacy by the Indian Constitution. The provisions of several articles (like Art - 13, 32, 131, 133 & 136 explicitly confer the power of judicial review on the Supreme Court) By its power of judicial review, it can declare any Parliamentary Laws as unconstitutional.
- On the other hand, the Parliament being the representative of the people's will has the authority to make laws, and it can also amend the major part of the constitution through its vested powers under Article 368.

6. Independent and Integrated Judicial System

- In India, unlike the United States where there is two-tier judiciary, a single judicial system prevails with the Supreme Court at the top Below it, the State High Courts and under a high court, there is District Courts and other subordinate Courts.
- It is the duty of all level of courts in India to enforce both central and state laws unlike in the US, Where federal courts adjudicate on federal matters and state courts on state matters.
 - a) Appointment of judges of Supreme Court and High Courts by Collegium system.
 - b) Removal of judges by Parliament through an impeachment procedure that is very difficult to pass.
 - c) Supreme Court judges salaries pensions and

allowances are charged on the Consolidated fund of India.

- d) Power to punish for its contempt.
- e) Ban on of SC judges practice after retirement.

7. Directive Principle of State Policy

- In Part IV of the Constitution, the Directive Principles of State Policy (DPSPs) aims to make India a welfare state. Therefore, Dr. B.R. Ambedkar calls the DPSPs as the Indian Constitution's novel feature.
- Their usefulness, however, lies in their moral obligation to apply their principles by the state in making laws. As such, the directive principles are fundamental to the country's governance.

8. Combination of Rigidity and Flexibility

The Indian Constitution strikes a fine balance between rigidity and flexibility when it comes to ease of modification. Article 368 lays down two types of.

- Some provisions may be amended by a special parliamentary majority, i.e. a 2/3rd majority of the members of each house present and vote and majority (i.e. more than 50%) of each House's total membership.
- Some other provisions can be amended by a special parliamentary majority and with half of the total states ratifying them. This ensures that with the widest possible majority, the Constitution is amended.
- In the manner of the ordinary legislative process, certain provisions of the constitution can be amended by a simple majority of Parliament. Such amendments are not within the scope of Article 368. There are many other features of the Indian Constitution such as Fundamental Rights, Fundamental Duties, Emergency Provisions, Universal Adult Franchise, etc. but the constitution's most important features that define and distinguish it from the other Constitutions of the world have been listed above.

घटना चक्र



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