

What Is a Constitution?

“A **constitution** is a set of fundamental principles or established precedents according to which a state or other organization is governed.”

-Wikipedia

Indian Constitution

The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the 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 sovereign country in the world, containing 444 Articles in 22 parts, 12 Schedules and 98 Amendments. The Constitution was adopted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950.

Preamble

- It Is An Introductory Statement Of Indian Constitution.
- It Is The Main Philosophy Of Constitution.



सत्यमेव जयते

CONSTITUTION OF INDIA

Preamble

WE THE PEOPLE OF INDIA, having
solemnly resolved to constitute India into a
Sovereign Socialist Secular Democratic Republic
and to secure to all its citizens

JUSTICE

Social, economics and political:

LIBERTY

of thought, expression, belief, faith and worship

EQUALITY

of status and of opportunity: and to
promote among them all

FRATERNITY

assuring the dignity of the individual and
the unit and integrity of the Nation

IN OUR CONSTITUENT ASSEMBLY

this twenty-sixth day of November, 1949, do

**HEREBY ADOPT, ENACT AND GIVE TO
OURSELVES THIS CONSTITUTION**

ARCHITECTS OF INDIAN CONSTITUTION



Pt. Nehru signing on the Constitution



BR Ambedkar : The Chief architect of Indian Constitution

Salient Features Of Indian Constitution

The Constitution of India has some outstanding features which distinguishes it from other constitutions. The framers of our constitution studied other constitutions, selected their valuable features and put them with necessary modifications in our constitution. They succeeded doing this. The fact that the constitution, for last 66 years, has been working satisfactorily is a testimony to its quality and utility.

A WRITTEN CONSTITUTION

The Constitution of India is a written constitution. It was framed by a Constituent Assembly which was established for the purpose in 1946.

There are two types of constitutions in the world. Most of them are written. The first modern written constitution was the American constitution. The British constitution is unwritten, consists of customs and conventions which have grown over the years.

The framers of our constitution tried to put everything in black and white.

LONGEST CONSTITUTION

The Constitution of India is the longest in the world. Originally it had 395 Articles divided into 22 parts and 8 Schedules. A number of amendments (98 so far), passed since its enforcement in 1950, have also become a part of the Constitution. Today it has 444 Articles divided into 22 parts and 12 Schedules.

The constitution of USA has 7 Articles, of China 138, Japanese 103, and Canadian 107 Articles.

A RIGID YET FLEXIBLE CONSTITUTION

Whether a constitution is rigid or flexible depends on the nature of amendments.

Some provisions of our Constitution can be amended by the Parliament with simple majority. The amendment of most other provisions of the constitution requires a special majority in both houses of the parliament. There are some other provisions of constitution which cannot be amended by the parliament alone. These different amendment procedures make our constitution partly flexible and rigid.

FUNDAMENTAL RIGHTS

The Constitution of India guarantees six fundamental rights to every citizen.

- ✓ Right to Equality.
- ✓ Right to Freedom.
- ✓ Right against Exploitation.
- ✓ Right to Freedom of Religion.
- ✓ Cultural and Educational Rights.
- ✓ Right to Constitutional Remedies.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution enumerates several Directive Principles of State Policy which are intended to be implemented by the Center and State Governments in due course. They are aimed at the promotion of the material and moral well-being of the people and to transform India into a Welfare State.

Some of the Directive Principles are:

- There should not be concentration of wealth and means of production to the detriment of common man.

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Some of the Directive Principles are:

- There should be equal pay for equal work for both men and women.

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Some of the Directive Principles are:

- Workers should be paid adequate wage.

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Some of the Directive Principles are:

- Weaker sections of the people, Scheduled Caste and Scheduled Tribe people should be given special care.

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Some of the Directive Principles are:

- The state should promote respect for international law and international peace.

FUNDAMENTAL DUTIES

Another salient feature of the Indian Constitution is the incorporation of the Fundamental duties of citizens. The 42nd amendment of 1976 added Article 51-A to the Constitution requiring all citizens to fulfill 10 duties. Failure to perform these duties does not carry any penalty, yet the citizens are expected to follow them. These are:

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

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- To cherish and follow the noble ideals which inspired our national struggle for freedom.

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- Uphold and protect the sovereignty, unity and integrity of India.

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- Defend the country and render national service when called upon to do so.

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- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

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- To value and preserve the rich heritage of our composite culture.

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- To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

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- To develop the scientific temper, humanism and the spirit of inquiry and reform.

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- To safeguard public property and to abjure violence.

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- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

SOVEREIGN SOCIALIST SECULAR

The Constitution declares India as a Sovereign, Socialist, Secular, Democratic, Republic. The words, 'Socialist' and 'Secular' were added in the Preamble of the Constitution by 42nd amendment in 1976.

Sovereign : It means absolutely independent; it is not under the control of any other state. Before 1947, India was not sovereign as it was under the British rule. Now it can frame its policy without any outside interference.

SOVEREIGN SOCIALIST SECULAR

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Socialist : It implies a system which will endeavour to avoid concentration of wealth in a few hands and will assure its equitable distribution. It also implies that India is against exploitation in all forms and believes in economic justice to all its citizens.

SOVEREIGN SOCIALIST SECULAR

The Constitution declares India as a Sovereign, Socialist, Secular, Democratic, Republic. The words, 'Socialist' and 'Secular' were added in the Preamble of the Constitution by 42nd amendment in 1976.

Secular : India is a country of several religions and each individual has fundamental profess any religion he likes. The state neither force its citizen to accept any specific religion nor discriminate on the basis of religion.

SOVEREIGN SOCIALIST SECULAR

The Constitution declares India as a Sovereign, Socialist, Secular, Democratic, Republic. The words, 'Socialist' and 'Secular' were added in the Preamble of the Constitution by 42nd amendment in 1976.

Democratic : Means, the power of the government is vested in the hands of the people. People exercise this power through their elected representatives who, in turn, are responsible to them. All the citizens enjoy equal political rights.

SOVEREIGN SOCIALIST SECULAR

The Constitution declares India as a Sovereign, Socialist, Secular, Democratic, Republic. The words, 'Socialist' and 'Secular' were added in the Preamble of the Constitution by 42nd amendment in 1976.

Republic : Means, the head of the State is not a hereditary monarch but a President who is indirectly elected by the people for a definite period.

PARLIAMENTARY DEMOCRACY

In India, there is a parliamentary form of government. The majority party in the *Lok Sabha* forms government. The government is run by the Prime Minister and other members of the Council of Ministers. The Cabinet exercises the executive powers and is responsible to the concerned legislature.

In Presidential form of government, the President is the executive head. In India, the President is only the nominal head.

FEDERAL GOVERNMENT WITH UNITARY BIAS

India is a federation, although the word 'federation' does not find a place in the whole text, the elements of federation are present in the Indian Constitution. There is constitutional division of powers between the centre and the states. There is also an independent judiciary. **The Supreme Court** arbitrates the disputes between the centre and the states. All these provisions make India a federation. But in Indian Federation, the centre is strong as compared to the states. The centre has more financial powers and the states largely depend upon it for their economic development.

JUDICIAL REVIEW

Another significant feature of the Indian Constitution is the provision for Judicial Review. This means that the Supreme Court of India is empowered to declare a law passed by the Indian Parliament as null and void if it is inconsistent with the Fundamental Rights.

In the case of the Acts passed by the State Legislatures, this power is vested with the concerned High Courts.

Indian Constitution

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.

Constitutional Law

- **The constitution of India reflects the idea of “Constitutionalism”-a modern and a modern and progressive concept historically developed by thinkers of liberalism- an ideology which has been recognised as one of most popular political ideology.**

Definition

- Definition and scope of Constitutional Law
- The starting point of studying Constitutional Law should be looking at the role of law and government in society and studying political philosophy in general
- How to reconcile individual freedom with social justice?
- Is the individual merely a tool in hands of state power?
- **Constitutional law considers relationship between the individual and the state seen from the legal point of view**

Definition of scope of constitutional law

- ‘ It is inherent in the special character of law, as a body of rules and procedures, that it shall apply logical criteria with reference to standards of universality and equity’, Thomspson, *Whigs and Hunters*
- Constitutional Lawyer would say, *Law concerns the structure and powers of the state*

Definition and Scope of Constitutional Law

- Constitutional Law should express a degree of consensus about the organs and procedures by which political decisions are taken
- Constitutional Law should reflect the value that people attach to human relations, to individual freedom under the law and to institutions such as Parliament, political parties, free elections and a free press

Definition and scope of Constitutional Law

- Critics
- Laws seen as a product of human decisions
- Sometimes wrong? Questionable? Reflecting political will
- Weaknesses and imperfections of human nature reasons for law
- Lord Acton
“Power tends to corrupt and absolute power tends to corrupt absolutely”.

What is Constitutional Law?

- **Flexible?** More than one definitions?
- Marshall, Constitutional Theory
- ‘Constitutional Law is the part of national law which governs the system of public administration and the relationships between the individual and the state’
- The problem of this definition in application to the UK
- Many rules, principles and practices under which the UK government operates do not have the force of law.

Definition and scope of Constitutional Law

- Constitutional Law:
- Problems with definition
- No waterproof definition of constitutional law and other branches of law (UK system does not have comprehensive codes) Human Rights: part of Constitutional Law, Freedom of Association (a labour law theme) part of Constitutional Law, part of criminal law and procedure could be absorbed by Constitutional Law

Definition and scope of Constitutional Law

- Constitutional Law deals with the legal foundations of the institutional hierarchy through which the state is governed.
- It deals with the composition, powers, procedures and immunities and relationship between the institutions of the state

Definition and scope of Constitutional Law

- There is no clear distinction between Constitutional and Administrative law
- Maitland defines administrative law as: “The law which determines the organisation, powers and duties of administrative authorities”
- It deals with the exercise and control of governmental power
- Administrative Law is more concerned with the work of official agencies in providing services and in regulating the activities of citizens

UK and the idea of constitutionalism

- Constitutionalism as a evolving doctrine is associated with the existence of written constitution from which the state's authority and legitimacy derives and which may limit the power of the state in order to protect the rights of individuals and minorities
- Constitutionalism: “the political authority should be bound by institutions that restrict the exercise of power”
- In Western Societies' A written constitution, a democratic parliament shape a culture of respect for the law by the state's organs and the system of courts that may protect groups and individuals against the abuse of power.
- In the UK there is absence of formal limits: example: the MP expenses scandal in 2009

What is Constitution?


- Formal sense:
- Constitution consists of laws, rules (conventions) and other practices that deal with
- The institutions of government
- The nature, extent and distribution of powers within those institutions
- The forms and procedures through which such powers should be exercised
- The relationship between the institutions of government and the individual citizen

Federal System

- 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.

Before the constitution

- **Sovereignty** (**supreme governing authority**) was thought to be held by one governing body (king, state, etc.).
- It was thought that governments had to be a **unitary** system (**only a national government has sovereignty**).

- 
- Under the Articles of Confederation, the states were part of a **Confederacy**, where they each had their own sovereignty.
 - Without a strong national government, the Articles fell apart.

Problem

- The Framers of the Constitution had a problem: **How to create a strong central government with sovereignty, without taking the sovereignty from the states?**
- The Answer: **FEDERALISM!!!!**

Federalism

- Def. Government System where authority is divided between two sovereign levels of government.
- The separation of powers between the National (Federal) Government and State Governments.
- Often referred to as levels of government

Why?

- The founding fathers feared a strong central government that would control the entire country. The federalist system was created to allow the states to maintain local control of the residents in them

Spheres of Power

- The federal system established by the Constitution divided power and responsibility:
 - Local issues were the province of the states (education, police protection)
 - National issues were the province of the Federal Government (war, currency)
 - Some policies overlapped (taxation

Powers

The Constitution divides powers between different levels of government. They fall into 3 categories:

Delegated/Enumerated/Expressed Powers

Reserved Powers

Concurrent Powers

Delegated Powers

- Powers given to the federal government in the constitution
- Include:
 - Coin Money
 - Regulate Interstate and foreign trade
 - Raise and maintain armed forces
 - Declare War
 - Govern U.S. Territories and admit new states
 - Conduct foreign relations

Implied Powers

- To enable Congress to perform their delegated powers, the Constitution contains the Necessary and Proper clause, often called the “Elastic Clause” (think elastic like a rubber band: it stretches and changes with the times) These powers are not listed in the constitution, but are implied by it.

Elastic Clause

- Article 1 Section 8 Clause 18 gives congress the power to “make all Laws which shall be necessary and proper for carrying into Execution...Powers vested by this Constitution in the Government of the United States....”
- This Necessary and Proper Clause, gives congress power to pass laws not listed in the Constitution if they are “necessary and proper” to execute other powers.
- Called the Elastic Clause

Reserved Powers

- Powers reserved to the state and local governments.
The federal government cannot interfere in the powers reserved for the states
- **10th Amendment**: “...powers not delegated... are *reserved* to the States.”
- Most of what government does in this country today is done by the states and their local governments!

Concurrent powers

- Powers that are shared by both the federal and state/local governments.
- Examples-
- Levy and collect taxes
- Borrow money
- Establish courts
- Claim private property for public use
- Define crimes and set punishments

Supremacy Power

“This Constitution and the Laws of the United States...shall be the supreme Law of the Land...”

- Article VI, Section 2

States that the Constitution is the highest law of the land, and that Federal Laws stand above state and local laws.



Fundamental Rights

Fundamental Rights are incorporated from Article 12 to 35 in the Third Chapter of the Indian Constitution. Rights are the basic facilities which we need for our growth. These are the claims of individual recognised by the society and enforced by the State. The existence of Democracy can't be imagined without Fundamental Rights in India because Rights are the pillars of Democracy.

Why these Fundamental Rights?

- These Rights are incorporated in the third Chapter of the Constitution of India.
- They afford a basis for the development of an Individual.
- The people and officials of India are ought to enjoy these rights.

Nature of Fundamental Rights

- Fundamental rights are equal for all.
- Rights are justiciable – Article 32
- Fundamental rights are not absolute.
- They limit the authority of the central and state governments.
- Fundamental rights distinguish between citizens and foreign nationals.
- They can be suspended during emergency.
- Parliament can amend Fundamental rights.

Right to Equality

- ❑ Equality before law Article-14 provides that «the state shall not deny to any person equality before law or the equal protection of law within the territory of India ».
- ❑ Prohibition of Discrimination, Article-15
- ❑ Equality of opportunity Article-16
- ❑ Abolition of untouchability Article-17
- ❑ Abolition of titles Article-18

Right to Freedom

➤ **Freedom of speech and expression Article-19**

- Freedom of Press – Article-361 A has been inserted according to which the press has been given the power to publish an account of the proceedings of the Indian Parliament and states legislatures.
- Right to information is linked to the freedom of speech and expression granted in Article 19 in the constitution.
- ☐ Freedom to assemble peacefully without Arms.
- ☐ Freedom to form associations and unions.
- ☐ Freedom to move freely throughout the territory of India.
- ☐ Freedom to reside and settle in any part of the territory of India.
- ☐ Freedom to practise any profession or to carry on any occupation,trade or business.

➤ **Protection in respect of conviction of an offence Article-20**

➤ **Protection of life and personal liberty Article-21**

➤ **Right to education Article-21 A**

➤ **Protection against arrest and detention against certain cases Article-22**

Right against Exploitation

- Prohibition of traffic in human beings and forced labour Article 23: This article prohibits the traffic in human beings and forced labour.
- Prohibition of compulsory services Article-23 : under this article the state can force people to do compulsory service for public purposes.
- Prohibition of Child Labour Article-24: Children below the age of fourteen years will not be allowed to work in factories, mines or in other dangerous places so that their health is not adversely affected.

Right to religious freedom

- Freedom to profess and propagate any religion, Article-25
- Freedom to manage religious affairs, Article-26
- Freedom not to pay taxes for the promotion of any particular religion, Article-27
- No religious instructions in government educational institutions, Article-28(1)
- In private educational institutions religious education not against the will, Article-28(3)



Cultural and educational rights

- Protection against interest of minorities, Article-29(1)
- Freedom to get admission in educational institutions, Article-29(2)
- Right to minorities to establish educational institutions, Article-30(1)
- No discrimination while giving grants-Article-30(2)

Right to constitutional remedies

- Article-31(1), provides that a citizen can approach the supreme court of India by due process of law for the implementation of the Fundamental Rights included in Chapter 3 of the constitution.
- Article-32(2), the Supreme court of India has the right to issue writs in the nature of the Habeas Corpus, Mandamus, Prohibition, etc.
- Article-32(3), The Indian Parliament can empower any court to issue notice within its jurisdiction without infringing or influencing the powers of the Supreme Court of India.
- Article-32(4), the state cannot suspend the right to constitutional remedies except in cases provided in the Indian Constitution.

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Parliamentary form of Govt.

- **Meaning of the word 'Parliament'** -- is a word derived from the French expression *parlement* which means 'speaking', and Latin word '*parliamentum*' which means '*talking*'. It has come to mean 'meeting for discussion'.
- **Different Names of Legislature:** In India Parliament is known as *Sansad*. Other nations have their own names viz. Diet in Japan, Congress in US, Knesset in Israel.

Basic characteristics

India has borrowed this nomenclature from England and has adopted what is called as 'Westminster model of parliamentary system' but Indian *Sansad* has its **unique set of characteristics** such as

1. Union Parliament is non-sovereign
2. Representation to both the Houses is given on the basis of population
3. Provision of joint sitting of both the Houses
4. Provision of nomination in both the Houses

Composition

Basic Principle of Composition:

Bicameralism means that Parliament/ Legislature shall have two houses, one representing people and other representing units of federation (states) to ensure the federal system of government.

Components:

- Lok Sabha (The House of People/ Lower House)
- Rajya Sabha (Council of States/ Upper House)
- President is an integral part of Parliament

Functions

- **Legislative:** Supreme law-making body – can make laws on any subject included in the Union List or Concurrent List, on residuary subjects. During the Proclamation of Emergency, can make laws on the subjects given in the State List
- **Executive:** Exercise control over the executive through different devices/mechanisms – by asking questions, and through motions such as adjournment, censure, call attention and no-confidence, cut-motion etc.
- **Financial:** Passes the Union Budget, and Vote on Account (if Budget is not passed in the beginning of new financial year)
- **Judicial:** Impeach President and Judges of Supreme Court and High Court, Comptroller and Auditor General of India, Chief Elections Commissioner
- **Constituent:** Can amend the constitution
- **Electoral:** Can elect President and Vice-President

Role of Parliament-in nutshell

- To form or end the Government
- To represent the electorate
- To legislate
- To hold the Government accountable for its actions
- To monitor the expenditure of public funds
- To be a forum for debate
- To be a forum for the expression of grievances
- To call for Information

