

Indian Constitution

What is a constitution

In the words of B.R. Ambedkar, "Constitution is not a mere lawyer's document, it is a vehicle of Life, and its spirit is always the spirit of Age." The presence of a constitution has become extremely relevant in the modern-day world. It is extremely rare to find a country, particularly a democratic one, that functions without a constitution.

In every country, the interests of the citizens must always be given their due weight and must be protected from arbitrary actions of those in power. It is crucial for a country to have its sovereignty intact to have political stability. That is, the relationship between the states and the subjects and also among the subjects, and the subjects should be properly defined. A constitution is essentially a tool to ensure the political stability of a state.

A constitution is essentially the aggregate of the basic principles and laws of a political community, which is either a nation or a state, that determines the powers and duties of its government and the rights guaranteed to its citizens. It determines the structure and operation of government bodies and the political principles of the system.

If we want to make our society successful then we need a constitution. Let us take the example of a cricket match if we play cricket without any rules the bowler can throw the ball from the half-pitch, the batsman can say that I am not out even if a fielder catches the ball. Anything can happen because there are no rules in the game and it will be concluded that the game will not be over or maybe the players harm each other. So we can say that the game will not be successful.

Similarly, if a state does not have a constitution, there will be no rules and without rules, the society will become like a forest. And the people of the state will harm each other, one person may kill another, whatever the reason may be.

Types of constitution

The following are some of the different categories by which constitutions may be classified:

1. Written and unwritten

A constitution is usually codified in a single document or in different documents that can be collectively called the constitution. Most constitutions in the world are written, or codified in a single document. The Indian Constitution is a written constitution, i.e., it is codified into a single document.

Some nations have unwritten or uncoded constitutions, for instance, the Constitution of the United Kingdom. In the United Kingdom, historical constitutional documents, judicial precedents of constitutional significance, parliamentary statutes of constitutional status, and constitutional customs and conventions are what collectively represent its constitution.

2. Rigid and flexible

Constitutions that are rigid are extremely difficult to amend while flexible constitutions are not. The amendment procedure for rigid constitutions is not the same as amending an ordinary law. The Indian Constitution is considered to be balanced between both flexible and rigid. That is, the constitutional amendment procedure in India, though separate, is not too hard. It simply requires a two-thirds majority of all the votes in the parliament.

3. Unitary and federal

A constitution is categorised into unitary or federal based on how the government's powers are divided and the degree of centralisation of powers.

In unitary systems, the central government is supreme and all the powers of the lower governments are delegated to them by the central government.

In federal systems, on the other hand, there is a clear division of powers between the central government and the lower governments. The central government in a federal system cannot take away the powers of the lower governments.

The Indian Constitution designed the Indian political system to be quasi-federal, i.e., there is a clear division of powers between central and state governments, with the Central Government being visibly much more powerful.

4. Parliamentary and presidential

Most countries in the world either have parliamentary or presidential forms of government, which are decided by their constitutions.

In presidential governments, the executive branch is completely separate from the legislature, whereas in parliamentary governments, the executive branch is connected to the legislature.

The Indian Constitution has designed India to have a parliamentary form of government.

5. Prescriptive and procedural

Constitutions can also be classified into procedural and prescriptive on the basis of nature and purpose.

Procedural constitutions define the legal and political structures of government institutions and set out the limits of the government's power (nation building). An example of a procedural constitution is the Canadian Constitution, 1982. The Constitution of Canada does not envision a good society. It merely commits itself to settle disputes and policy issues.

Prescriptive constitutions do not touch upon the concept of nation-building. Prescriptive constitutions, on the other hand, emphasise the state's identity and goals. The South African Constitution, 1996 is an example of a prescriptive constitution. It is not necessary that a constitution should fit into any single category alone.

Many constitutions have both prescriptive and procedural features. The Indian Constitution seems to contain both prescriptive and procedural elements.

Functions of Constitution

- A constitution defines the geographical and extra-territorial boundaries of the nation or state.
- It also define and set criteria on who can be called a 'citizen' of that nation.

- Indian Constitution sets out the basic structure on which the Indian political system functions, which constitutes the secular nature of the constitution, separation of powers, federalism, democracy, a welfare state, etc
- Most constitutions also declare on whom the sovereignty of the political community rests. The Indian Constitution in its Preamble has declared that the sovereignty of India rests on its people.
- The constitution makers will show the basic principles declared in the constitution.
- the basic principles declared in the Indian Constitution are secularism, socialism, equality, etc.
- Some constitutions may also define the national flag, anthem, emblem, and symbols that represent the nation-state.
- Most constitutions declare certain basic or fundamental rights and duties of the citizens of the country.
- Constitutions define the different organs of the government, their composition, their powers, the relationship amongst them, etc. It designs the legislature, the executive, and the judiciary, and how they should operate.
- Most constitutions declare their nation-states as secular or as associated with a particular religion. The Indian Constitution has declared India to be a secular country. That is, the State does not favour any religion.
- The constitution-makers may also include certain developmental goals for the State to work towards for the welfare of its people. In Indian constitution we can see the Directive Principles.

Indian Constitutional history and development

Before the independence of 1947, India was divided into two main provinces;

- The British India which was further divided into 11 provinces.
- The second entity was the princely states which were ruled by the Indian princes under the subsidiary alliance policy.

During the course of Independence, the two entities were merged together to form the Indian Union.

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 in a series of statutes enacted by the British Parliament. Key among them was the Government of India Acts of 1919 and 1935.

The Government of India Act of 1919

The Government of India Act, 1919 introduced dyarchy, a system of dual government, in India. It divided the powers of the provincial government into two: the reserved and the transferred subjects. The reserved subjects were in the hands of the British, and the transferred subjects were left under the control of Indian ministers.

The primary purpose of this act was to expand native participation in the government. Key reforms of the Act were the establishment of a dual form of government with limited powers for the major provinces. Act established the position of a High Commissioner with residence in London to Represent India in the United Kingdom.

The Government of India Act of 1935

The government of India Act 1935 suggested a federation taking the provinces and Indian States as units. It was optional for the Indian states to join the federation. Most of the Indian states never gave their consent, so the federation never came in force.

Though the Indian states did not join the federation, the provisions of the act applied between the central Govt and Provinces. The division of legislative power between the union and states in the new constitution is mainly based on the above concept of 1935 act.

The 1935 Act also made three – fold division of power between centre and provinces namely, Federal List, Provincial List and Concurrent List. The same pattern was adopted in the constitution of India. (Union list, state list concurrent list)

Apart from this Indian constitution has been prepared after studying all known constitutions of the world. Most of the provisions are adopted from other constitutions.

Making of the Constitution/ (Constituent Assembly)

The idea of a constituent assembly/ Constitution of India was put forward for the first time by MN Roy.

In 1935, the Indian National Congress (INC), for the first time, officially called for a constituent assembly to frame a constitution for India.

In 1938, J Nehru made this emphatic statement regarding the constitution- 'The constitution of free India must be framed, without outside interference, by a constituent assembly elected on the basis of adult franchise'

The demand for a constituent assembly was accepted for the first time by the British through their 'August offer' of 1940. Eventually, a constituent assembly was established under the provisions of the Cabinet Mission plan.

Composition of the council

- It was constituted in 1946
- Some of the important aspects related to this are:
 - Total strength of the assembly: 389
 - 296 seats for British India and 93 seats to princely states
 - 292 seats allocated for British India were to be from eleven governor's provinces and four from Chief commissioner's provinces
 - Seats were allocated based in proportion to their respective population.
 - Seats allocated to each British province were to be decided among the three principal communities- Muslims, Sikhs and general
 - Representatives of each communities were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferrable vote
 - Representatives of princely states were to be nominated by head of these princely states

Remember: Some observations regarding the composition:

Partly elected and partly nominated

Indirect election by provincial assemblies who themselves were elected on a limited franchise

Though indirect mode of election, it included representatives from all sections of the society

Working of the constituent assembly

- First meeting was held on December 9, 1946
- Muslim league did not participate in the first meeting
- Temporary president in the first meeting: Dr Sachchidanand Sinha
- After elections were held- Dr Rajendra Prasad and HC Mukherjee were elected as the President and Vice-President of the Assembly respectively.
- Sir BN Rau was appointed as the constitutional advisor of the assembly
- Once the Mountbatten plan was passed even members of Muslim league who were part of Indian territory participated in the proceedings of the council
- Members of princely states who had stayed away from the proceedings initially also participated
- Constituent assembly held 11 sessions over two years, 11 months and 18 days
- Last session of the constituent assembly was held on January 24, 1950

Objectives resolution

It was moved by Nehru in December 1946

It laid down the fundamentals and philosophy of the constitutional structure

The resolution highlighted the following objectives:

- Free India will be nothing but a republic
- The ideal of social, political and economic democracy would be guaranteed to all people
- The republic would grant Fundamental rights
- The state would safeguard the rights of the minorities and backward classes
- Constituent assembly acted as the temporary legislature until a new one was to be constituted.

Some of the functions it performed at this stage were:

- Ratification of India's membership of the commonwealth
- It adopted the national flag
- It adopted the national anthem
- Adoption of National song
- Electing Dr Rajendra Prasad as the first President of India

Committees of the constituent assembly

Several committees were constituted to perform the various tasks associated with framing of the constitution. Some of the major and minor constituent assembly committees are given below:

Major committees

- Union Powers committee: presided by J Nehru
- Union Constitution committee: president by j Nehru
- Provincial constitution committee: Presided by S Patel
- Drafting committee: president by Dr BR Ambedkar
- Advisory committee on Fundamental Rights, minorities and Tribal and excluded areas- Presided by S Patel. It had following sub-committees:
 - FR sub-committee: JB Kripalani
 - Minorities sub-committee: HC Mukherjee

- North-East frontier Tribal Areas and Assam excluded and partially excluded areas sub-committee- Gopinath Bardoloi
- Excluded and partially excluded areas sub-committee: AV Thakkar
- Rule procedure committee: Dr Rajendra Prasad
- States committee for negotiating with states: J Nehru
- Steering committee: Dr Rajendra Prasad

Minor committees

- Committee on the functions of the constituent Assembly: GV Mavalankar
- Order of Business committee: Dr KM Munshi
- House committee: B Pattabhi Sitaramayya
- Ad-hoc committee on the National flag: Dr Rajendra Prasad
- Special committee to examine the draft constitution: Alladi Krishnaswami Ayyar

Drafting committee:

It was considered to be the most important committee of the constituent assembly

- It was chaired by Dr BR Ambedkar
- He played a pivotal role in drafting the constitution and also in passage of the constitution in the assembly
- The committee published the first draft of the constitution in February 1948. The second draft was published after incorporating changes suggested by the public in October 1948

Enactment and enforcement of the constitution

- Final draft of the constitution was introduced in the assembly in 1948
- After subsequent readings, the constituent assembly ***adopted, enacted and gave to themselves the constitution on November 26, 1949.***
- Some provisions of the constitution came into force on the above mentioned date.
- However, most provisions ***came into force on January 26th, 1950.*** This date is referred to in the constitution as the '***date of its commencement***'. This day is celebrated as 'Republic day' every year
- This day was chosen by the constitution-makers to pay homage to the 'Purna Swaraj' which started on January 26th, 1930.

Salient Features of Indian Constitution

The Constitution is the fundamental document which defines the position, powers and working of the three organs of states, namely the Executive, judiciary and the Legislature.

Indian Constitution is a cream of several constitutions of the world.

- Fundamental Rights and the Doctrine of Judicial Review in our constitution were adopted from U.S. Constitution.
- The Parliamentary System adopted from Britain
- Directive Principles adopted from Ireland
- Emergency are borrowed from Germany.
- Fundamental Duties USSR (Russia)

The lengthiest of all written constitution.

- Indian constitution is the lengthiest and the most detailed of all the written constitution.
- Originally the constitution contained 395 articles, 22 parts, and 8 schedules.
- At present there are 448 articles, 25 parts, 12 schedules.

Lays down structure of Central and State Governments.

- Indian constitution lays down the structure of the Central Government and of the State Government

Providing Single citizenship

- Though the Constitution of India provide for the dual policy, ie centre and states, it does not provide for dual citizenship.
- Constitution of India provides a single citizenship for the whole of India.
- Constitution of America provides for dual citizenship, Citizenship of America, and State citizenship.

Establishing Parliamentary System of Government

- The Constitution of India establishes a parliamentary form of Government both at the centre and the states.
- The parliamentary form envisaged in the Constitution of India is drafted on the basis of British model in toto (totally).
- In India the president is the constitutional head. The real executive power will be vested in Ministers.
- Ministers are elected by the people for a period of 5 years.
- The American Constitution provides for Presidential type of Government.
- There the president is the real executive and he will be elected by the people for a period of 4 years
- The members of his cabinet are not members of the Legislature. They are appointed by the American President and therefore responsible only to the President.

Fundamental Rights

- Part III of the Constitution (Art 12 to 35) gives a long list of Fundamental Rights.
- It deems to be the main feature of Democratic States
- The state cannot make a law which takes away or violates any of the fundamental rights of the citizens guaranteed in the part III.
- If any law violates any of the fundamental rights, the supreme court and High court can declare it as unconstitutional.
- Fundamental rights are known as the Magna carta of our constitution

Directive Principles of State Policy

- Part IV of the constitution deals with Directive Principles of State Policy
- Directive Principles are the guidelines to be followed by the government of India for the governance of the country.

- It imposes certain obligation on the state to promote welfare of the people and achieve economic democracy.

An independent Judiciary

- Indian constitution provides for the establishment of an independent and impartial judiciary with the power of judicial review (examine the constitutionality of any law).
- The courts are the custodian of the rights of citizens.

Fundamental Duties

- The constitution of India Provides for a Code of ten (now eleven, added through 2002 amendment) Fundamental Duties for citizens.
- These duties require the citizen to observe certain basic norms of democratic conduct and democratic behaviours.
- Duties are incorporated in the constitution through 42nd Amendment. (1976)

Nature of Indian Constitution (Indian Constitution is Federal or Unitary)

Constitution are of two types, Unitary and Federal

Essential elements of federal Constitution

- Distribution of powers – Powers of a State divided among the Central and State Govt.
- Supremacy of Constitution – Every power (legislative, executive, judicial) of the Union or State will be controlled by the Constitution.
- Rigidity – A federal constitution must be written. The amendment of the constitution must be complicated and difficult.
- Authority of the court – There should be an independent and impartial judiciary to interpret the constitution and guard the entrenched provisions of the constitution.

But our constitution is not truly federal boz of the following features,

- Appointment of Governors – The Governors of the state are appointed by the president and they are answerable to him. Governors are not elected by the people.
- President power to veto state laws – There are provisions in the Constitution which make it obligatory on the governor to send certain state laws for the assent of the President. The president has power to veto those state laws.
- Parliamentary power to form new states and alter boundaries of existing states – Parliament can increase or diminish the area of existing states and it may alter the boundaries of any state.
- Emergency Provisions – When proclamation of emergency is made (Art 352) the parliament can make laws with respect any mater enumerates in the State list.

So we can conclude Indian Constitution is a combination of Federal and Unitary. so, we can call it as a quasi – federal constitution.

Major Sources of Indian Constitution

Constitution of the United States

- Preamble
- Fundamental Rights
- Federal structure of government
- Electoral College
- Independence of the judiciary and separation of powers
- among the three branches of the government
- Judicial review
- President as Supreme Commander of Armed Forces
- Equal protection under law

British constitution /United Kingdom

- Parliamentary form of government
- The idea of single citizenship
- The idea of the Rule of law
- Writs
- Institution of Speaker and his role
- Lawmaking procedure
- Procedure established by Law

Canadian constitution

- A quasi-federal form of government —a federal system with a strong central government
- Distribution of powers between the central government and state governments
- Residual powers retained by the central government

Irish constitution (Ireland)

- Directive Principles of State Policy
- Nomination of members to Rajya Sabha
- Method of Election of President

French constitution

- Republic and the ideals of Liberty, Equality and Fraternity in the Preamble

Australian constitution

- Freedom of trade and commerce within the country and between the states
- Power of the national legislature to make laws for implementing treaties, even on matters outside normal Federal jurisdiction
- Concurrent List

Constitution of Soviet Union (USSR)/ Russia

- Fundamental Duties under Article 51-A
- A Constitutionally mandated Planning Commission to oversee the development of the economy

Constitution of South Africa

- Procedure for amendment

- Election of Rajya Sabha members

Constitution of Germany

- Emergency powers to be enjoyed by the Union
- Suspension of Fundamental Rights during emergency.

Constitution of Russia

- Fundamental Duties
- Idea of Social, Economic, and Political Justice in Preamble

Constitution of Japan

- Procedure Established by Law

Government of India Act 1935

- Federal Scheme
- Emergency Provisions
- Public Service Commissions
- Office of Governor
- Judiciary
- Administrative Details