

# **Understanding Constitutions: Their Definition, Necessity, and Historical Foundations**

## **What is a Constitution?**

A constitution is a fundamental set of principles or established precedents according to which a state or other organization is governed. These principles dictate the legal structure of the government, delineating the division of powers and responsibilities, the process of electing officials, the rights of citizens, and the overarching legal framework within which society operates.

At its core, a constitution serves as the supreme law of the land. It provides the foundation for the legal system, ensuring that laws are applied consistently and fairly. Constitutions can be written or unwritten, codified in a single document or spread across multiple statutes, judicial decisions, and conventions. They outline the structure of government, specifying the roles and powers of different branches and levels of government, and establish the basic rights and duties of citizens.

Constitutions can be written, like the United States Constitution, or unwritten, based on traditions and judicial decisions, as in the case of the United Kingdom.

# Constitution



## Constitutions

A constitution is a set of rules which lay down the powers and duties of the institutions of government and establish the rights and liberties of citizens.

“a set of rules and prescriptions establishing the legal framework in which governments operate”

*Max Belhoff*

**Generally – a constitution lays down what a government is allowed to do or not do!**

*(However, the language used, also makes them open to interpretation)*

## Codified v Uncodified

### **The US Constitution**

#### Advantages

- Defines people's liberties
- Safeguard against tyrannical government
- Public can access and understand easier.

#### Disadvantages

- Hard to agree on
- Inflexible (hard to change)
- Too much power to judges (new interpretations)

### **The UK Constitution**

#### Advantages

- Flexible - easily changed (no amendment process)
- Modern - constantly evolving
- Democracies can function without codified e.g. UK, NZ, Israel

#### Disadvantages

- Dangerous govt can exploit it
- Hard for public to understand
- Allows civil liberties to be overridden

## **The People's Shield**

In words of old, a promise made,  
A guiding star, that will not fade.  
A charter strong, for all to see,  
The people's voice, in liberty.

With ink and quill, our rights were sown,  
A nation's heart, its truth is known.  
A binding oath, through time it flows,  
In justice's name, the freedom grows.

Through storm and calm, it stands so tall,  
A beacon bright, for one and all.  
In every line, a hope to renew,  
The Constitution, ever true.

# **The Necessity of a Constitution**

## **1. Establishing Order and Stability:**

A constitution creates a stable framework for governance by defining the structure and powers of government institutions. This predictability helps maintain order and prevents arbitrary rule.

## **2. Foundation of Governance**

A constitution provides the legal framework within which a government operates. It sets out the powers and functions of various government branches, ensuring a clear separation of powers and checks and balances. This structure helps prevent the concentration of power in any single entity, thus safeguarding democracy and promoting good governance.

## **3. Limiting Government Power:**

Constitutions set limits on governmental powers to prevent tyranny and protect individual freedoms. By defining what the government can and cannot do, constitutions safeguard citizens' rights.

## **4. Protecting Rights and Freedoms:**

Constitutions enshrine fundamental rights and freedoms, such as freedom of speech, religion, and assembly. These protections are crucial for maintaining a free and democratic society.

### 5. Structure for Resolving Disputes:

Constitutions establish mechanisms to address conflicts between various branches of government, between the government and its citizens, and among the citizens themselves.

### 6. Promoting Legitimacy and Trust:

A well-crafted constitution promotes legitimacy and public trust in the government. When citizens believe that their rights are protected and that the government operates within a fair and just legal framework, they are more likely to support and participate in the political system.

### 7. Stability and Predictability

A constitution creates a stable and predictable legal environment. By establishing clear rules and procedures, it helps prevent arbitrary governance and provides a framework within which political and social disputes can be resolved peacefully.

## **Examples:**

The constitution plays a crucial role in resolving disputes between various branches of government and promoting legitimacy and trust within a society. This essay will explore these aspects with concrete examples from the United States, Bangladesh, and India.

### **The United States**

The Constitution of the United States, drafted in 1787 and ratified in 1788, is one of the oldest and most influential constitutions in the world. It has served as a model for many other nations due to its innovative structure and comprehensive system of checks and balances.

#### Dispute Resolution:

The U.S. Constitution establishes a clear separation of powers among the three branches of government: the Executive (President), the Legislative (Congress), and the Judicial (Supreme Court). This separation ensures that no single branch becomes too powerful and that each branch has the authority to check the others.

One of the most significant examples of constitutional dispute resolution is the landmark case of *Marbury v. Madison* (1803). In this case, the Supreme Court, under Chief Justice John Marshall, established the principle of judicial review, which allows the judiciary to invalidate laws and executive actions that violate the Constitution. This case resolved a fundamental dispute between the legislative and executive branches and set a precedent for the judiciary's role in interpreting the Constitution.

Another example is the impeachment process outlined in the Constitution. This process provides a mechanism for the Legislative Branch to address alleged misconduct by the President. The impeachment trials of Presidents Andrew Johnson, Bill Clinton, and Donald Trump exemplify this constitutional mechanism.

in action, illustrating how the Constitution facilitates the resolution of disputes within the highest levels of government.

### Promoting Legitimacy and Trust:

The U.S. Constitution has been instrumental in promoting legitimacy and trust in the American political system. By outlining a democratic framework and protecting fundamental rights, it ensures that citizens have a voice in governance and that their rights are safeguarded.

The First Amendment, which guarantees freedoms concerning religion, expression, assembly, and the right to petition, is a cornerstone of American democracy. This amendment fosters trust by ensuring that citizens can express their opinions and hold the government accountable without fear of retribution.

Moreover, the regular amendment process, though intentionally rigorous, allows the Constitution to adapt to changing societal values and norms, further maintaining its legitimacy. The addition of the 19th Amendment, which granted women the right to vote, and the Civil Rights Act, which enforced the constitutional rights of African Americans, are examples of how constitutional amendments and legislation have reinforced trust and legitimacy over time.

## **Bangladesh**

The Constitution of Bangladesh, adopted in 1972, is a relatively newer document but equally significant in its role in governance and societal trust.

### Dispute Resolution:

Bangladesh's Constitution establishes a parliamentary democracy with a clear separation of powers among the Executive, Legislature, and Judiciary. The judiciary's independence is crucial in resolving disputes between the other branches.

One notable example of constitutional dispute resolution is the Fifth Amendment case. In 2010, the Supreme Court of Bangladesh declared the Fifth Amendment, which had validated martial law proclamations and military rule from 1975 to 1979, unconstitutional. This decision reaffirmed the supremacy of the Constitution over military rule and underscored the judiciary's role in upholding constitutional principles.

The 16th Amendment, which aimed to empower Parliament to impeach judges, sparked significant controversy. The Supreme Court's 2017 verdict declaring the amendment unconstitutional highlighted the judiciary's critical role in protecting its independence and ensuring checks and balances among the branches of government.

#### Promoting Legitimacy and Trust:

The Constitution of Bangladesh embodies the aspirations and values of its people, promoting legitimacy and trust through its provisions on fundamental rights and democratic governance. The Preamble emphasizes nationalism, socialism, democracy, and secularism, reflecting the core values of the nation.

Article 27 of the Constitution guarantees equality before the law and equal protection. It fosters trust by ensuring that all citizens are treated fairly. Additionally, Article 39 guarantees freedom of thought and conscience, further promoting an environment of trust and legitimacy.

The establishment of the National Human Rights Commission, as per the Constitution, is another step towards promoting trust. This independent body is tasked with investigating human rights violations and ensuring that the government adheres to constitutional principles.



## **India**

The Constitution of India, adopted in 1950, is the longest written constitution of any sovereign nation. It lays down the framework for the political principles, procedures, and powers of government institutions.

### Dispute Resolution:

India's Constitution incorporates a federal structure with a strong central government, and a clear division of powers between the Union and State governments. The judiciary, particularly the Supreme Court of India, plays a crucial role in resolving disputes between different levels of government.

One of the most significant examples is the *Kesavananda Bharati v. State of Kerala* (1973) case. In this landmark judgment, the Supreme Court established the Basic Structure Doctrine, which asserts that certain fundamental features of the Constitution cannot be altered by amendments. This doctrine has been pivotal in resolving disputes over constitutional amendments and maintaining the core principles of the Constitution.

The frequent invocation of Article 356, which allows the central government to dismiss state governments, has been another area of dispute. The Supreme Court's judgment in the *S.R. Bommai v. Union of India* (1994) case set strict guidelines for the use of this article, ensuring that it is not misused for political purposes and upholding the federal balance envisioned by the Constitution.

### Promoting Legitimacy and Trust:

The Indian Constitution promotes legitimacy and trust through its comprehensive Bill of Rights and democratic framework. Fundamental Rights, enshrined in Part III of the Constitution, guarantee civil liberties such as freedom of speech, equality before the law, and protection against discrimination.

The Directive Principles of State Policy, though non-justiciable, guide the government in making policies aimed at social justice and economic welfare, promoting trust by showing the state's commitment to the well-being of its citizens.

The Right to Information Act (2005), stemming from the constitutional right to freedom of speech and expression, has significantly enhanced transparency and accountability in governance. By enabling citizens to access information about government actions and decisions, this Act has fostered greater trust in public institutions.

## Conclusion

The constitutions of the United States, Bangladesh, and India exemplify the crucial role that these documents play in resolving disputes between branches of government and promoting legitimacy and trust among citizens. By establishing a framework of checks and balances, protecting fundamental rights, and adapting to changing societal values, constitutions ensure stable and just governance. Through landmark judicial decisions and the protection of civil liberties, these constitutions not only resolve conflicts but also build a foundation of trust and legitimacy that is essential for the functioning of democratic societies.

## Theoretical Foundations

The theoretical underpinnings of constitutions can be traced to several key political philosophers and theories:

### 1. Social Contract Theory

Prominent philosophers like Thomas Hobbes, John Locke, and Jean-Jacques Rousseau developed the concept of the social contract. They argued that in a state of nature, individuals consent to form a society and establish a government to protect their rights and interests. The constitution represents this social contract, outlining the agreed-upon rules and principles that govern the relationship between the state and its citizens.

- **Thomas Hobbes:** In his work "Leviathan," Hobbes suggested that in the absence of a common power, individuals would live in a state of perpetual conflict. A sovereign power, established through a social contract, is necessary to maintain peace and security.
- **John Locke:** Locke, in his "Second Treatise of Government," argued that individuals have natural rights to life, liberty, and property. Governments are formed through a social contract to protect these rights, and the constitution serves as the foundational agreement that limits governmental power.
- **Jean-Jacques Rousseau:** Rousseau's "The Social Contract" emphasized the collective will of the people. He believed that sovereignty lies with the people, and the constitution should reflect the general will, ensuring that the government acts in the public interest.

### 2. Constitutionalism

Constitutionalism is the principle that government authority is derived from and limited by a body of fundamental law. It asserts that the government's power should be constrained by a constitution to prevent abuse and protect individual rights. This idea is closely linked to the concept of the rule of law, which holds that

laws should govern a nation, as opposed to arbitrary decisions by individual government officials.

### **3. Separation of Powers**

The theory of the separation of powers, advocated by political philosophers like Montesquieu, posits that dividing governmental powers among different branches prevents any one branch from becoming too powerful. Constitutions often institutionalize this separation, creating legislative, executive, and judicial branches with distinct functions and checks on each other's powers.

## **Historical Events and Examples**

### **1. The United States Constitution (1787)**

The drafting and adoption of the United States Constitution in 1787 is a seminal event in constitutional history. Following the American Revolution, the Articles of Confederation proved inadequate for governing the new nation. The Constitutional Convention was convened to address these issues, resulting in the creation of a new constitution that established a federal system with a strong central government while protecting individual liberties through the Bill of Rights.

- **Federalism:** The U.S. Constitution introduced the concept of federalism, dividing powers between the national government and the states. This structure allowed for a balance of power, ensuring that neither level of government could dominate the other.
- **Checks and Balances:** The Constitution incorporated a system of checks and balances among the three branches of government (legislative, executive, and judicial), ensuring that each branch could limit the powers of the others.
- **Bill of Rights:** The first ten amendments, known as the Bill of Rights, were added to the Constitution to guarantee fundamental rights such as freedom of speech, religion, and the press, and protections against arbitrary government actions.

## **2. The French Revolution and the Declaration of the Rights of Man and of the Citizen (1789)**

The French Revolution marked a turning point in the history of constitutions, emphasizing the principles of liberty, equality, and fraternity. The Declaration of the Rights of Man and of the Citizen, adopted in 1789, served as a foundational document for modern constitutionalism in France and beyond.

- **Liberty and Equality:** The Declaration proclaimed that "men are born and remain free and equal in rights," establishing the principle that all citizens are entitled to the same fundamental rights and freedoms.
- **Sovereignty:** It asserted that sovereignty resides in the nation and that laws should be an expression of the general will, reflecting Rousseau's ideas about popular sovereignty.
- **Protection of Rights:** The Declaration enshrined a range of civil and political rights, including freedom of speech, the right to property, and the presumption of innocence.

## **3. The South African Constitution (1996)**

The adoption of the South African Constitution in 1996 is a landmark event in the history of constitutional law, representing a transition from apartheid to a democratic system based on human rights and equality.

- **Human Rights:** The South African Constitution is renowned for its comprehensive Bill of Rights, which includes not only civil and political rights but also social and economic rights, such as the right to education, healthcare, and housing.
- **Reconciliation and Unity:** The Constitution aimed to heal the divisions of the past and establish a society based on democratic values, social justice, and fundamental human rights. It incorporated mechanisms for transitional justice, such as the Truth and Reconciliation Commission.

- **Separation of Powers and Checks and Balances:** The Constitution established a robust system of checks and balances, with a clear separation of powers among the legislative, executive, and judicial branches, and strong institutions to protect human rights and uphold the rule of law.

## **Conclusion**

Constitutions are essential for establishing the rule of law, protecting individual rights, and providing a stable framework for governance. The theoretical foundations laid by political philosophers and the historical examples of constitutional development underscore the importance of constitutions in shaping democratic societies. From the United States Constitution to the French Declaration of the Rights of Man and of the Citizen, and the South African Constitution, these documents have played pivotal roles in defining the principles and structures of modern governance, ensuring that government power is exercised within the bounds of law and in the service of the people.