

Constitution

We live in a state. There are some rules and regulations to run the state. These are recorded in written and unwritten form. A collection of a set of laws is called the constitution. The state is run according to the constitution. The constitution is like a looking glass or a mirror of the state. The rights and responsibilities of a citizen, the power of the ruler and how the relationship between a citizen and a ruler will be are clearly recorded in the constitution. Therefore, it is necessary for every citizen of the state to have a clear concept about the constitution. In this chapter, we will learn about the concept of the constitution, the importance of the constitution, the process of making the constitution, characteristics of various kinds of constitution, the history of making the Bangladesh constitution and its salient features and the various amendments.

Concept of the constitution and its importance

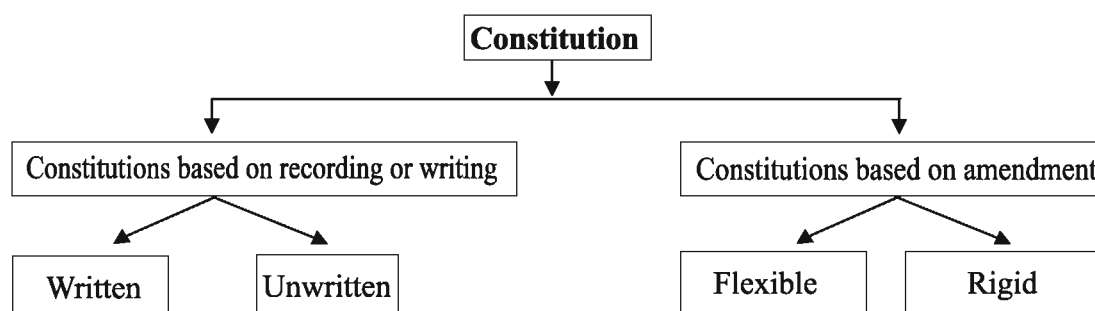
Constitution is the fundamental document of running a state. The collection of the rules by which a state is conducted is called constitution. How the government will be elected, how the legislative, executive and judiciary will be formed, what their form and power will be, what state conferred rights the citizens will enjoy and what the relation will be between the citizens and the government all these are stated in the constitution. The state cannot take any decisions regarding these things which go against the constitution. So constitution is called the driving force of the state. Aristotle, the father of political science, says, constitution is such a system of life that the state itself has chosen.

Process of making the constitution

There are different processes of making the constitution. The significant processes are discussed below:

1. **By approval:** In the past, almost every autocratic ruler used to govern the state according to his whims by depriving the people of their social, political and economic rights. This created anger and dissatisfaction among the people. To pacify the people and to recognize their rights, the ruler, at one stage made a constitution. For instance - in 1215 King John of England decreed a charter of rights called the Magna Carta. It has occupied a significant place in the British constitution.
2. **Through discussion:** The constitution can be drafted through discussion among the members of the constituent assembly formed with the object of drafting the constitution. The constitutions of India, Pakistan and the United States have been compiled in this way. The Bangladesh constitution was also drafted through discussion in the Constituent Assembly in 1972.
3. **Through revolution:** When the ruler does any work contrary to the interest and welfare of the people, a change of the autocratic ruler is brought about through a revolution and a new regime assumes power and makes a new constitution. The constitutions of Russia, Cuba and China have been made in this process.
4. **Through evolution:** In some cases, the constitution appears to exist through evolution. For instance, the constitution of Britain evolved gradually on the basis of custom and tradition. In this case, the constitution is not made by any person or organization, it develops gradually. That is why it is said that the British constitution has not been created, it has developed.

Pair work : Which is the best method of making a constitution? Explain your reasons.



1. **Classification of constitution on the basis of writing:** Constitution based on writing can be of two types. Namely: A. Written constitution, B. Unwritten constitution.

- a. **Written constitution:** Most of the subject matters of a written constitution are recorded in a document. For example, the constitutions of Bangladesh, India, Pakistan and the United States are written.
- b. **Unwritten Constitution:** Most of the rules in an unwritten constitution are not compiled in any document. This type of constitution is based on constitutional usage and manners and customs, traditional rules and conventions. For example, Britain's constitution is unwritten.

However, it is a fact that no constitution is completely written or unwritten. Some are more written and some are less written. That constitution which is mostly written is called a written constitution. And the constitution whose subject-matter is mostly unwritten is called unwritten constitution.

2. **Constitutions based on amendment:** There are two types of constitution based on amendment. For example: A. Flexible constitution, and B. Rigid constitution.
 - a. **Flexible Constitution:** The articles of a flexible constitution can easily be changed or amended. In this case, there is no need for any complication to change or amend the constitution. Parliament can amend any part of the constitution by a simple majority. The British constitution is a flexible constitution.
 - b. **Rigid Constitution:** The articles of a rigid constitution cannot easily be changed or amended. In case of changing or amending the constitution in this circumstance, a complicated process has to be undertaken. This type of constitution cannot be changed through a simple majority. Absolute majority, conference and voting are required. The US constitution is rigid.

Characteristics of a written constitution

The significant characteristics of a written constitution are described below:

1. **Clarity:** Because most of the sections in a written constitution are in a written form, it is clear and understandable to the people. Generally, the process of amendment is stated in the constitution and because of this it is not easy to change or amend it. However, society is constantly changing. A written constitution cannot keep pace with a changed society. That is why, it works as an obstacle to progress at times. Besides, at times, the people have to revolt in favor of amending the constitution.
2. **Stability:** As everything is written in this constitution a ruler cannot change or amend it according to his whims. Therefore, a written constitution can remain

stable under any circumstance. The people and the ruler are obliged to follow the written constitution.

3. **Suitable for federal government:** A written constitution is suitable for federal form of government. Through this constitution, the power sharing between states and central government is made in the federal system. It would not have been possible for such power sharing in the federal system if the constitution was not a written one. For example, power has been distributed between the states and the central government in India and the United States through a written constitution. It is worth mentioning that the written constitution is a precondition to the success of the federal system of government.
4. **Relations between the ruler and the people:** What the power of the ruler will be, what rights the citizens will enjoy are stated in a written constitution. As a result, the ruler and the people can have a clear idea about their own power and rights.

Group work: Describe one main quality of a written constitution.

Characteristics of an unwritten constitution

1. **It supports progress:** Society always strives for progress. On the other hand, an unwritten constitution can easily be changed by keeping pace with social progress. That is, it can easily adjust with the changed conditions in society. Therefore, an unwritten constitution supports progress. However, too much change can again create an obstacle to progress.
2. **It assists in urgent need:** Because an unwritten constitution is easily changeable, it can play an effective role in meeting urgent needs. However, a permanent policy and programme cannot be taken as a result of frequent change in the unwritten constitution. As a result, the system of government can become unstable.
3. **Little scope of revolution:** This constitution can easily be changed. Since an unwritten constitution can be changed, there is less scope of a revolution.
4. **Miscellaneous:** An unwritten constitution is not suitable in federal system of government. As most of the subject-matter of this constitution is not written, most people do not have a clear idea on matters of state governance.

Pair work: Highlight the notable differences between a written and an unwritten constitution.
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Characteristics of an ideal constitution: All countries in the world have their own constitutions. The more developed constitution a country has, the more developed is its governance. The following are the characteristics of an ideal constitution:

- 1) **Clear:** In an ideal constitution, most of the subject matters are written. The language of this constitution is easy, simple and lucid. That is why, an ideal constitution is clear and understandable to all.
- 2) **Concise:** An ideal constitution is concise. There is no place for unnecessary and irrelevant matters in an ideal constitution. The notable rules and regulations of governing the state are stated in this constitution.
- 3) **Fundamental rights:** The fundamental rights of a citizen are stated in an ideal constitution. As a result, the people become conscious about their rights.
- 4) **Reflection of public opinion:** An ideal constitution is created on the basis of public opinion. The demands and expectations of the people are reflected in this constitution. Besides, social manners, customs and traditions are reflected in this constitution.
- 5) **Balanced nature:** An ideal constitution is of balanced nature. It means, an ideal constitution lies between a flexible and a rigid constitution. That is, it is neither very flexible nor very rigid. As a result of this, an ideal constitution can keep pace with the social and political changes.
- 6) **Amendment process:** The amendment or change of any section in an ideal constitution is brought about in a constitutional process. That is, the amendment process is stated in this constitution. It is stated in an ideal constitution how a section of it should be amended.
- 7) **Basic principles of governance:** The basic principles of governance are stated in the ideal constitution. For example- in the Bangladesh constitution, Nationalism, Socialism, Democracy and Secularism have been inserted as basic principles of governance.
- 8) **Welfare oriented :** Philosopher Rousseau says, the laws which cannot bring welfare to people is not regarded as an ideal constitution. So, an ideal constitution should be welfare oriented.

Any constitution that has the above characteristics may be called an ideal constitution.

The Constitution of Bangladesh

After the independence of Bangladesh, a 34-member constitution drafting committee was formed in 1972 for drafting the constitution. Dr. Kamal Hossain was the chairman of that committee. The first session of this draft committee was held

on 17 April 1972. Working hard this committee prepared a draft constitution and it was presented at the Constituent Assembly. The draft of the constitution was placed and reviewed in the Constitution Assembly from 14th October to 4th November. After the conclusion of debate for and against by different members of the Constituent Assembly, the revised constitution was finally adopted by the Constituent Assembly on 4th November 1972 and it came into effect from 16 December 1972.

Characteristics of Bangladesh Constitution

Notable characteristics of the present constitution of Bangladesh are described below:

1. **Written document:** The constitution of Bangladesh is a written document. It has 153 Sections. It is divided into 11 parts. It has a preamble with seven schedules.
2. **Rigid:** The constitution of Bangladesh is rigid. This is because consent of a two-third majority of parliament members is required for making any changes or amendment to it.
3. **Basic principles of governance:** Nationalism, Socialism, Democracy and Secularism have been determined as basic principles of governance. In matters of governance, different authorities run their activities on the basis of the said principles.
4. **Fundamental right:** Constitution is the highest law of a state. As the rights we can enjoy as a Bangladeshi citizen are clearly stated in the constitution, their importance has increased. For example- right to live, right to move more, right to freedom of speech, freedom of thought and conscience, right to religion, right to property etc.
5. **Universal voting right:** In the constitution of Bangladesh, universal voting right is approved. Therefore, all citizens who are 18 years old have voting rights, whatever their caste, religion, race, gender, occupation may be.
6. **Republic :** According to the constitution, Bangladesh is a republican state. Here people are the owners of all the properties. Elected representatives of the people will administer the country.
7. **Parliamentary government:** The constitution of Bangladesh introduces parliamentary or cabinet form of government. The responsibility of running the executive is vested in the hands of the cabinet, led by the prime minister. In this system the cabinet is accountable to the legislature.
8. **Unicentric state:** Bangladesh is a unicentric state. Unlike the federal state, there is no provincial government here. The whole country is run by one central government.

- 9. Legislature:** The legislature of Bangladesh is a uni-cameral legislature. It is a sovereign lawmaking institution. Its name is "Jatiya Shangshad". At present it has 350 members and its duration is 5 years.
- 10. Highest law:** The constitution of Bangladesh is the highest or supreme law of the country. Because in any case of a conflict between a regular law and the constitution, the constitution prevails. Therefore if a law is conflicting with the constitution, it is inappropriate and out of order.
- 11. Freedom of Judiciary:** There is an independent and impartial judiciary in the constitution of Bangladesh.

Group Work: Is the constitution of Bangladesh an ideal one? Give reasons.

Amendments of the Constitution of Bangladesh:

After its making in 1972, the constitution of Bangladesh has been changed 16 times. The main characteristics of these amendments are as follows :

Amendment and year	Subject
First Amendment July 1973	<ul style="list-style-type: none"> ● Provision was made for trial of people accused of crime against humanity in the War of Liberation in 1971 and war crimes.
Second Amendment September 1973	<ul style="list-style-type: none"> ● Empowerment of president to declare 'State of Emergency' on the advice of the prime minister in times of internal trouble, fear of war or in times of humanitarian crisis.
Third Amendment November 1974	<ul style="list-style-type: none"> ● It ratifies the Land Boundary Agreement signed between Bangladesh and India. The signatories from both sides were Sheikh Mujibur Rahman and Indian Prime Minister Indira Gandhi.
Fourth Amendment January 1975	<ul style="list-style-type: none"> ● Presidential form of government was introduced in place of parliamentary form of government. ● Creation of the post of Vice President and formation of only one party through dissolution of all political parties.
Fifth Amendment April 1979	<ul style="list-style-type: none"> ● The Fifth amendment legalised all orders, promulgations and amendments to the constitution made by the military government after august 15, 1975. ● The basic state principles were changed. ● Bangladesh nationality was changed from Bangali to Bangladeshi.

Sixth Amendment July 1981	<ul style="list-style-type: none"> ● By introducing the Provision that the office of the Vice President is not an office of profit, election of Justice Abdus Sattar to the President was ensured.
Seventh Amendment November 1986	<ul style="list-style-type: none"> ● This amendment ratifies all acts, laws and martial law orders from 24th March 1982 to November 1986 since imposition of martial law by General Ershad.
Eighth Amendment July 1988	<ul style="list-style-type: none"> ● Islam was declared as the state religion and six benches of the High Court Division were set up outside Dhaka.
Ninth Amendment July 1989	<ul style="list-style-type: none"> ● Provision for electing the Vice President through direct voting of the people was made. ● Rules were made under which no person can hold office of President for more than two consecutive terms.
Tenth Amendment June 1990	<ul style="list-style-type: none"> ● The period of 30 reserved seats for women in parliament was increased to 10 years.
Eleventh Amendment August 1991	<ul style="list-style-type: none"> ● All measures taken by chief Justice Shahabuddin Ahmed as acting president were legalised and provision for his return to his post of chief justice was made.
Twelfth Amendment September 1991	<ul style="list-style-type: none"> ● Parliamentary system of government was restored in place of Presidential system of government. ● Post of Vice President was abolished.
Thirteenth Amendment March 1996	<ul style="list-style-type: none"> ● Non-party Caretaker government was incorporated to hold free and fair elections.
Fourteenth Amendment May 2004	<ul style="list-style-type: none"> ● 45 reserved seats for women. Provision was made to display portraits of the President and the Prime Minister in all government offices including designated institutions. ● Retirement age limit of judges of the Supreme Court, PSC Chairman and member has been increased.
Fifteenth Amendment July 2011	<ul style="list-style-type: none"> ● Dissolution of caretaker government system. ● Restoration of the four basic state principles of Nationalism, Democracy, Secularism and Socialism in the main Constitution of 1972. ● Alongside keeping Islam as the state religion, practice was ensured for activities of all religions. ● Provisions were made to raise reserved seats in parliament to 50.
Sixteenth Amendment September 2014	<ul style="list-style-type: none"> ● Removal of judges of the supreme court is restored to the parliament.

Group Work: Compare in brief the power of the President and the Prime Minister according to the fourth and twelfth amendment of the constitution.