

INDIAN CONSTITUTION

MODULE-1

Definition of Constitution

A constitution is the basic design of the structure and powers of the government and the rights and duties of its citizens.

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. These rules together make up, i.e. *constitute*, what the entity is. When these principles are written down into a single collection or set of legal documents, those documents may be said to comprise a written constitution. Or The document containing laws and rules which determine and describe the form of the government, the relationship between the citizens and the government, is called a Constitution.

Some rules that are made by the legislatures (also known as Lok sabha/Rajya Sabha in India), for their own country, are called “Law”. We need Laws in Society so our society can regulate and work properly. They are designed to protect us and our property and to ensure that everyone in society behaves the way that the community expects them too.

Laws tell us what to expect as a consequence of our actions. Laws have been the glue that has kept society together. Without laws there would be complete anarchy.

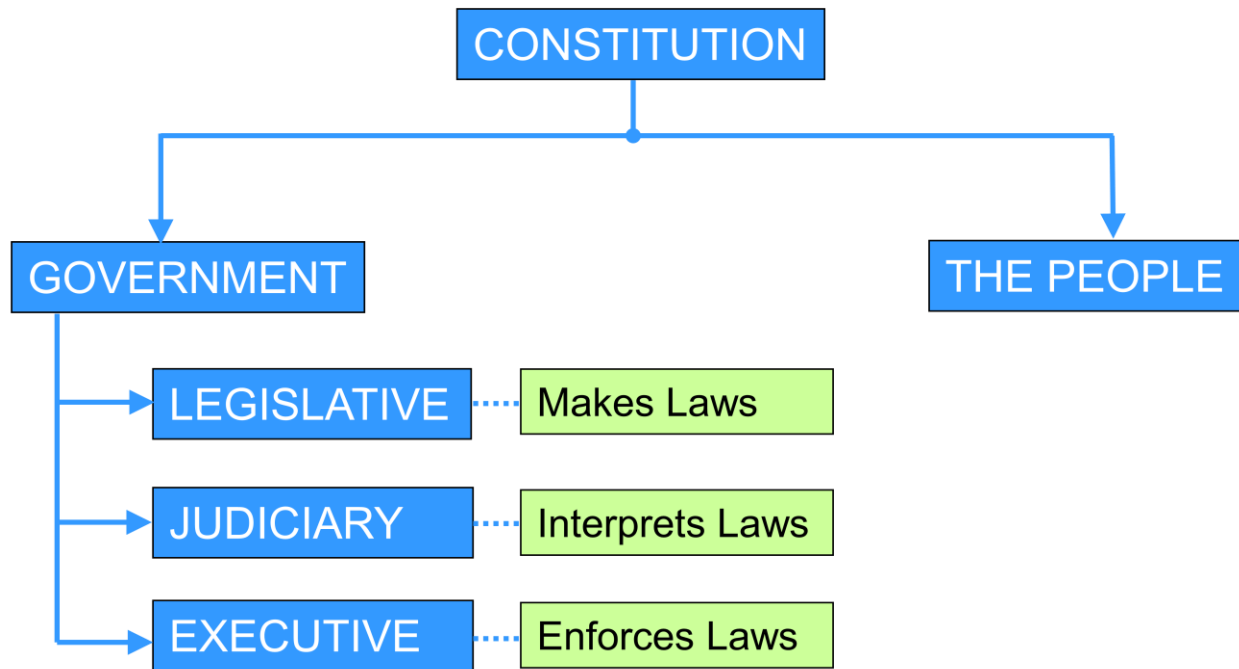
Definition Of Constitution From Eminent Personalities

- according to patrick henry “the constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government.”
- according to lord bruce: “constitution is the aggregate of laws and customs under which the life of the state goes on”.
- according to c.f strong: “a constitution may be said to be the collection of principles according to which the powers of government, the rights of government and the relation between the two are adjusted”.
- according to aristotle: “constitution is the way of life the state has chosen for itself”.
- according to k.c wheare, hood phillips and gilchrist: “the term ‘constitution is used to denote all written and unwritten principles regulating the administration of the state”.

In General-The Constitution is the supreme law of the land. All other laws have to conform to the Constitution. The constitution contains laws concerning the government and its relations with the people

A constitution is concerned with 2 main aspects:-

- a) The relation between the different levels of government and
- b) Between the government and the citizens.



Different elements of constitution are described as follows:-

1. **Preamble (1)** - The Preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document.
2. **Parts (25)** – The individual Articles of the Constitution are grouped together into the following Parts:
 1. Part I – Union and its Territory
 2. Part II – Citizenship.
 3. Part III – Fundamental Rights.
 4. Part IV – Directive Principles of State Policy.
 5. Part IVA – Fundamental Duties.
 6. Part V – The Union.
 7. Part VI – The States.

8. Part VII – States in the B part of the First schedule (Repealed).
9. Part VIII – The Union Territories
10. Part IX – The Panchayats.
11. Part IXA – The Municipalities. (Part IXB – The Cooperative Societies -not effective yet)
12. Part X – The scheduled and Tribal Areas
13. Part XI – Relations between the Union and the States.
14. Part XII – Finance, Property, Contracts and Suits
15. Part XIII – Trade and Commerce within the territory of India
16. Part XIV – Services Under the Union, the States.
17. Part XIVA – Tribunals.
18. Part XV – Elections
19. Part XVI – Special Provisions Relating to certain Classes.
20. Part XVII – Languages
21. Part XVIII – Emergency Provisions
22. Part XIX – Miscellaneous
23. Part XX – Amendment of the Constitution
24. Part XXI – Temporary, Transitional and Special Provisions
25. Part XXII – Short title, date of commencement, Authoritative text in Hindi and Repeals
26. 3. Article (1-450) - It is subcategory of different Parts in the constitution which contains detail information of the subject or the Title which an Article represents.
27. 4. Amendments (97) - Amendment of the Constitution of India is the process of making changes to the nation's fundamental law. Changes to the Indian constitution are made by the federal parliament. The procedure is laid out in Part XX, Article 368, of the Constitution.
28. 5. Schedules (12) - Schedules are lists in the Constitution that categorize and tabulate bureaucratic activity and policy of the Government.

29. 6. Appendices (2) - They are extension to the constitution.

30. 7. Fundamentals Rights (Part III- Article12-35) - The word fundamental suggests that these rights are so important that the Constitution has separately listed them and made special provisions for their protection. The Fundamental Rights are so important that the Constitution itself ensures that they are not violated by the government.

Need of Constitution

The first function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society.

The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted.

The third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may ever trespass them.

The fourth function of a constitution is to enable the government to fulfill the separations of a society and create conditions for a just society.

The History of Constitution of India.

The constitution was drawn from a number of sources. Mindful of India's needs and conditions, its framers borrowed features of previous legislation such as the [Government of India Act 1858](#), the [Indian Councils Acts of 1861](#), [1892](#) and [1909](#), the Government of India Acts [1919](#) and [1935](#), and the [Indian Independence Act 1947](#). The latter, which led to the creation of India and Pakistan, divided the former Constituent Assembly in two. Each new assembly had sovereign power to draft and enact a new constitution for the separate states

British Raj(1858AD-1947AD)- This period of the British Raj was the time when the Constitution of India took shape. The main stages of its evolution were:

- I. **The Act for the Better Government of India (1858)**- This put India directly under the control of the British government. It set up the office of the Secretary of State, member of the British parliament, who would be in charge of Indian government. In India, the Governor-General, working under the Secretary of State, led the administration.
- II. **Indian Councils Act (1861)**- A separate legislative council was set up to assist the Governor-General in making laws. Indians could be appointed to the council, but only on the discretion of the Governor-General.

- III. **Indian Councils Act (1892)**- As a result of Indian demands, the sizes of the executive and legislative councils were increased. More Indians were appointed to these Councils, and the principle of election was introduced.
- IV. **Indian Councils Act (1909)**- This act increased the sizes of the councils again, and also gave the legislative council the power to discuss certain matters and to ask questions. More people were elected to the councils.
- V. **Government of India Act (1919)**- *This introduced 'diarchy' (partial responsible government) at the provincial level. Elected Indians were given charge of some areas of government (e.g., industry, education) at the provincial level.*
- VI. **Government of India Act (1935)**- This introduced 'provincial autonomy': responsible government at the provinces with elected Indians in charge of the administration, and responsible to the elected legislatures. A federal government was proposed, though it did not come into effect. At the centre, 'diarchy' was introduced.
- VII. **Indian Independence Act (1947)**- The British gave up control of the Government of India to two dominions - India and Pakistan. For the time being till the constitution was made, both of them would be governed in accordance with the Government of India act 1935.

Constitution of India(1950AD)- The Constitution was enacted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950.

The date 26 January was chosen to commemorate the **Purna Swaraj declaration of independence of 1930**. With its adoption, the Union of India officially became the modern and contemporary Republic of India and it replaced the Government of India Act 1935 as the country's fundamental governing document.

Timeline of formation of the Constitution of India

- **6 December 1946:** Formation of the Constitution Assembly (in accordance with French practice).
- **9 December 1946:** The first meeting was held in the constitution hall (now the **Central Hall of Parliament House**). The 1st person to address was **J. B. Kripalani**, **Sachchidananda Sinha** became temporary president. (Demanding a separate state, the Muslim League boycotted the meeting.)
- **11 December 1946:** The Assembly appointed **Rajendra Prasad** as its president, **H. C. Mukherjee** as its vice-chairman and **B. N. Rau** as constitutional legal adviser. (There were initially 389 members in total, which declined to 299 after **partition**. Out of the 389 members, 292 were from government provinces, 4 from chief commissioner provinces and 93 from princely states.)

- **13 December 1946:** An 'Objective Resolution' was presented by [Jawaharlal Nehru](#), laying down the underlying principles of the constitution. This later became the Preamble of the Constitution.
- **22 January 1947:** Objective resolution unanimously adopted.
- **22 July 1947:** [National flag](#) adopted.
- **15 August 1947:** Achieved independence. India split into the [Dominion of India](#) and the [Dominion of Pakistan](#).
- **29 August 1947:** Drafting Committee appointed with [B. R. Ambedkar](#) as its Chairman. The other 6 members of committee were Munshi, [Muhammed Sadulla](#), [Alladi Krishnaswamy Iyer](#), [N. Gopalaswami Ayyangar](#), Khaitan and Mitter.
- **16 July 1948:** Along with [Harendra Coomar Mookerjee](#), [V. T. Krishnamachari](#) was also elected as second vice-president of Constituent Assembly.
- **26 November 1949:** The Constitution of India was passed and adopted by the assembly.
- **24 January 1950:** Last meeting of Constituent Assembly. The Constitution was signed and accepted. (with 395 Articles, 8 Schedules, 22 Parts)
- **26 January 1950:** The Constitution came into force. (The process took 2 years, 11 months and 18 days - at a total expenditure of ₹6.4 million to finish.)

In 1950, final session of constituent assembly unanimously elected Dr. Rajendra Prasad as the first president of Independent India after which constitution of India became operational.

1. The constituent assembly ratified the India's membership of the Commonwealth in May 1949.

2. It adopted the national flag on July 22, 1947.

3. It adopted the national anthem on January 24, 1950. 4. It adopted the national song on January 24, 1950.

5. It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.

- **In brief, it took constituent assembly 2 years, 11 months and 17 days to finalize the constitution of India.**
- **Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules**

The constitution is nothing but a legal document and the Indian constitution is the supreme law of India. It explains the various players who are in authority in the country, their power and limits of their power. It also defines the fundamental rights and duties of citizens. World's largest constitution presently having 448 articles in 25 parts and 12 scheduled. But it had 395 articles in 22 parts and 8 schedules in commencement time.

Salient Features of Indian Constitution

1. Longest Written Constitution

The Indian Constitution is one of the longest constitutions in the world and it is also very detailed. There are 12 schedules and 448 articles in our Constitution. The Indian Constitution has incorporated various articles by taking inspiration from the various constitutions around the world.

2. Sovereign, Democratic, Secular, Socialist & Republic

The Preamble of our Constitution provides India to be a Sovereign, Socialist, Secular, Democratic and Republic Country.

sovereignty: the term “sovereignty” as applied to states implies ‘supreme, absolute, and uncontrollable power by which any state is governed, and which resides within itself, whether residing in a single individual or a number of individuals, or in the whole body of the people’.

secularism: it is mandatory to incorporate this term to promote peace between various communities in our country. secularism promotes the development and unity of various religions.

democracy: democracy provides people with the power to govern. the main reason for incorporating democracy is to provide freedom to the people to choose their own representatives and to save them from the tyrant leaders.

socialist: the system of socialism promotes equality among people and ensures the welfare of people.

republic: the term republic provides the people power to elect their own representatives. it ensures there would be no hereditary rulers and also ensures that the election would be happening in our country.

3. Parliamentary form of government

The Bicameral Legislature system is followed in our country. **The parliamentary system is based on the principle of co-operation and co-ordination between the legislative and executive organs**

4. Combination of Flexibility and Rigidity

The Indian Constitution is not very difficult to amend, as the Constitution of The U.S.A. It has gone through 103 amendments so far but there are certain steps to be satisfied before bringing in the amendment. Thus the Indian Constitution is a unique blend of rigidity and flexibility.

5. Single Citizenship

There is no separate citizenship for the States and the Centre like in various federal countries like the U.S.A. There is single citizenship provided to our citizens. Single citizenship allows the persons to enjoy equal rights in various aspects across the country.

6.Bi – Cameral Union government

The Indian constitution provides a bicameral legislatures at centre consisting of **Rajya Sabha (Council of States)** and **Lok Sabha (House of the People)**

7. Independent Federal Judiciary

The Judiciary ensures the proper functioning of the constitution and the enforcement of various provisions of the Constitution. The Constitution makers ensured that Judiciary has to be independent so that it will not be biased. The Supreme court is considered as the watchdog of democracy.

8. Fundamental Rights and Duties

Part III of the Indian Constitution guarantees six fundamental rights to all the citizens

The Part IV-A of the Constitution specifies the eleven Fundamental Duties

9. Directive Principles of State Policy (DPSP)

The Directive Principles are meant for promoting the idea of social and economic democracy (Welfare state)

10. Single Election Commission

11. State Languages

12. Emergency Provisions

Emergency provisions to enable the President to meet any extraordinary situation effectively. (Art 352. 356. 360)

Preamble of the Constitution

The Preamble to Constitution of India is guidelines to guide people of the nation, to present the principles of the Constitution, to indicate the source from which the document derives its authority, and meaning. **Preamble defines the basic structure of constitution. It is the soul and key of every constitution. Preamble is an introduction or preface to the constitution**

Acc to N.A. Palkhivala – “Preamble is an identity card of the constitution” Every constitution begins with a preamble. The constitution of India begins with a preamble which specifies the nature of the Indian state. Preamble was adopted by constituent assembly on 26th Nov 1949. (Later amendments made)

“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, economic 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 unity 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”**

- **Sovereign**: The word ‘sovereign’ implies that India is neither a dependency nor a dominion of any other nation, but an independent state
- **Socialist**: The Indian brand of socialism is a ‘democratic socialism’ and not a ‘communistic socialism’ (Mixed Economy)
- **Democratic**: The term ‘democratic’ is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.
- **Republic**: Therefore, the term ‘republic’ in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.

- **Justice**: The term ‘justice’ in the Preamble embraces three distinct forms– social, economic and political
- **Liberty**: The term ‘liberty’ means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.
- **Equality**: The term ‘equality’ means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
- **Fraternity**: Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship.

Union and its Territory

Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.

Article 1:

Describes India, that is, Bharat as a ‘Union of States’. The Constituent Assembly had to adopt a mix of both (‘India, that is, Bharat’) The country is an integral whole and divided into different states only for the convenience of administration

According to Article 1, the territory of India can be classified into three categories:

- 1. Territories of the states**
- 2. Union territories**
- 3. Territories that may be acquired by the Government of India at any time.**

At present, there are 28 states and 9 union territories. The states are the members of the federal system and share a distribution of powers with the Centre.

- Article-1 describes India as a ‘Union of States’. Dr. B.R. Ambedkar said that the Indian federation was a “Union” because it was indissoluble, and no State had a right to separate from the Indian Union. The country is one integral unit beside the fact that it consists of different states for the convenience of administration.

- The phrases ' Union of India' and 'Territory of India' has to be differentiated. The Union of India includes only the States enjoying the Status of being members of the federal system and sharing the powers with the Union.
- The territory of India includes not only the States but also the Union Territories and such other territories as may be acquired by India in future. First Schedule of the Constitution has specified states and the Territories both.

Article 2:

grants two powers to the Parliament: (a) the power to admit into the Union of India new states; and (b) the power to establish new states.

Article 3:

Article 3 deals with the internal re-adjustment of the territories of the constituent states of the Union of India

Article 3 authorizes the Parliament to: (a) form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state; (b) increase the area of any state; (c) diminish the area of any state; (d) alter the boundaries of any state; and (e) alter the name of any state

It states that the Parliament may by law form a new State by separation of a territory from any State or by uniting two or more States completely or in parts or by uniting any territory to a part of any State. It deals with the following:

- Formation of new States
- Alteration of areas of States
- Boundaries or names of existing States

Thus Parliament can increase or diminish the area of any State or can alter the boundaries or names of any State. Parliament follows the following procedures in this regard.

Step-1: Either House of the Parliament, only on the recommendation of the President, can introduce a Bill giving effect to any or all the changes stated above.

Step-2: If such a bill affects the boundary or name of a State, then the President will refer the Bill to the concerned State Legislature before introducing it in the Parliament for their opinion.

Step-3: If the State Legislature fails to express an opinion within the given time limit then it is deemed that it has expressed its views. Parliament is not bound to accept or act upon the views of the State Legislature even if State has submitted their views within the time period.

In the case of Union Territories, it is not necessary to seek the views of Legislatures of Union Territories before such Bill.

Article 4:

itself declares that laws made for admission or establishment of new states and formation of new states and alteration of areas, boundaries or names of existing states are not to be considered as amendments of the Constitution under Article 368. This means that such laws can be passed by a simple majority and by the ordinary legislative process.

Citizenship

Citizenship is the status of a person recognized under law as being a legal member of a sovereign state or belonging to a nation. In India, Articles 5 – 11 of the Constitution deals with the concept of citizenship. The term citizenship entails the enjoyment of full membership of any State in which a citizen has civil and political rights. **Single citizenship: The citizens in India owe allegiance only to the Union.** There is no separate citizenship for the States and the Centre like in various federal countries like the U.S.A. There is single citizenship provided to our citizens. Single citizenship allows the persons to enjoy equal rights in various aspects across the country.

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on January 26, 1950:

- (a) Persons domiciled in India
- (b) Persons migrated from Pakistan
- (c) Persons migrated to Pakistan but later returned
- (d) Persons of Indian origin residing outside India.

Article 5: Citizenship at the commencement of the Constitution

This article talks about citizenship for people at the commencement of the Constitution, i.e., on November 26th, 1949. Under this, citizenship is conferred upon those **persons who have their domicile in Indian territory and –**

1. Who was born in Indian territory; or
2. Whose either parent was born in Indian territory; or
3. Who has ordinarily been a resident of India for not less than 5 years immediately preceding the commencement of the Constitution.

Article 6: Citizenship of certain persons who have migrated from Pakistan

Any person who has migrated from Pakistan shall be a citizen of India at the time of the commencement of the Constitution if –

1. He or either of his parents or any of his grandparents was born in India as given in the Government of India Act of 1935; and
2. (a) in case such a person has migrated before July 19th, 1948 and has been ordinarily resident in India since his migration, or

(b) in case such as a person has migrated after July 19th, 1948 and he has been registered as a citizen of India by an officer appointed in that behalf by the government of the Dominion of India on an application made by him thereof to such an officer before the commencement of the Constitution, provided that no person shall be so registered unless he has been resident in India for at least 6 months immediately preceding the date of his application.

Article 7: Citizenship of certain migrants to Pakistan

This article deals with the rights of people who had migrated to Pakistan after March 1, 1947, but subsequently returned to India.

Article 8: Citizenship of certain persons of Indian origin residing outside India

This article deals with the rights of people of Indian origin residing outside India for purposes of employment, marriage, and education.

Article 9

People voluntarily acquiring citizenship of a foreign country will not be citizens of India.

Article 10

Any person who is considered a citizen of India under any of the provisions of this Part shall continue to be citizens and will also be subject to any law made by the Parliament.

Article 11: Parliament to regulate the right of citizenship by law

The Parliament has the right to make any provision concerning the acquisition and termination of citizenship and any other matter relating to citizenship.

CITIZENSHIP ACT, 1955

The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution.

The Citizenship Act, 1955 is the legislation dealing with citizenship. This has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, and the Citizenship (Amendment) Act, 2005.

Acquisition of Citizenship (Types)

1. Birth

- ✓ **Citizenship by birth**

2. Descent : A person born outside India

- ✓ **A person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period**

3. Registration

- ✓ **The Central Government may, on an application, register as a citizen of India any person**

4. Naturalisation

- ✓ **The Central Government may, on an application, grant a certificate of naturalisation to any person**

5. Incorporation of territory

- ✓ **If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India.**

Loss of Citizenship

1. By Renunciation

Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. If any citizen of India who is also a national of another country renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen. When a male person ceases to be a citizen of India, every minor child of his also ceases to be a citizen of India. However, such a child may within one year after

attaining full age become an Indian citizen by making a declaration of his intention to resume Indian citizenship.

2. By Termination

When an Indian citizen voluntarily acquires the citizenship of another country, his Indian citizenship automatically terminates.

3. By Deprivation

It is a compulsory termination of Indian citizenship by the Central government, if:

- (a) The citizen has obtained the citizenship by fraud:**
- (b) The citizen has shown disloyalty to the Constitution of India:**
- (c) The citizen has unlawfully traded or communicated with the enemy during a war;**
- (d) The citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and**
- (e) The citizen has been ordinarily resident out of India for seven years continuously**

