

# CONSTITUTION AND TYPES

## What is a Constitution?

- A constitution is a basic law of the land which establishes the relations between various organs of the government and also defines the nature and polity of that country. The polity defines the basic structure of law and the rights and obligations of both the state and the citizens.
- On the other hand, 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.

## Importance of Constitution:

- To maintain the smooth functioning of modern welfare state, there is a need of a set of codified rules which determines or will determine the form of government, the relationship between the citizens and government in order to sustain and flourish.
- It is the constitution which establishes these relationships and lays down the objectives of the state which it has to achieve. It also describes the rights and duties of the citizens and also limit the powers of the government(s).
- It facilitates the minimal coordination among the members of a society by specifying who has the power to make decisions in a society and also decides how the government will be constituted.
- Thus, a constitution is considered to be the basis for the governance of the country both in terms of goals and objectives as well as their structures and functions.

**Functions of a constitution:** The constitution whether written or unwritten, is a political structure having several functions:

- **Expression of Ideology:** It reflects the ideology and philosophy of a nation state. For example: the ideology of Indian Constitution is based on a socialist and secular social system. On the other hand, the U.S.A. follows the ideal of a capitalist social order.
- **Expression of Basic Law:** Constitution present basic laws which could be modified or replaced through a process called extra-ordinary procedure of amendment. There is a special law also which usually focuses upon the rights of the citizens, for instance, rights concerning language, speech, religion, assembly, the press, property and so on.
- **Organizational framework:** It provides organizational framework for the governments. It defines the functions of the legislature, executive and judiciary, their inter-relationship, restrictions on their authority etc.
- **Levels of Government:** Constitution generally explains the levels of different organs of the government. Whether it is federal, quasi-federal or unitary, will be described by the constitution. They delineate the power levels of national and provincial governments.

- **Amendment provision:** As it would not be possible to foretell all possibilities in future with great degree of accuracy, there must be sufficient provisions for amendment of the constitution. It should contain a set of directions for its own modifications. The system might collapse if it lacks in scope for modification. An inherent capacity to change according to changing times and needs, help any system to survive and improve.

### Types of Constitution:

Broadly speaking, constitution can be of:

#### Two types based on the nature of document:

- **Written:** Written in the form of a book or a series of documents combined in the form of a book which is consciously framed and enacted. It is formulated and enacted by a constituent assembly or a council or a legislature whose members are elected by the people for whom the constitution is being written.
- **For Example:** Indian Constitution (the longest constitution), Constitution of America etc.
- **Unwritten:** It is not committed of systematic writing by a particular constituent assembly, rather, evolved or developed due to a number of customs, usages, parliamentary acts and traditions.
- For example, the British constitution has evolved on the basis of all these over a period of many centuries.

#### Two types based on the nature of polity:

- **Unitary:** Establishes single authority without dividing powers among separate entities. However, there may be other legislative and executive authorities under a unitary constitution but they enjoy only delegated powers and not constitutionally granted powers.
- **For Example:** British Constitution which only recognizes the British Parliament and the central government without having any state type legislatures or government.
- **Federal:** It shares powers between two distinct entities namely, federal or the union government and the state governments without having inferior to each other as both derive its powers directly from the constitution.
- Countries with large population, geographical size, social, cultural and linguistic diversities generally adopt federal form of constitution to allow autonomy of governance to the constituent states. For example, the US, Canadian, Australian Constitutions are federal constitutions.

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# CONSTITUTIONAL DEVELOPMENT

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The origin and growth of the Indian Constitution has its roots in Indian history during the British period. The British came to India in the 17th century as traders. From 1773 onwards, various Acts were passed by the British Government for the governance of India. None of them, however satisfied Indian aspirations mainly because they were imposed by the alien rulers.

**Amending Act, 1781:** (i) Settled the question of jurisdiction of Supreme Court; and (ii) Supreme Court to apply personal law of the defendant.

**Regulating Act, 1773:** (i) First attempt by the British Parliament to regulate the affairs of the Company; (ii) Provided for centralisation of Administration of Company's territories in India; (iii) Governor of Bengal became Governor General for all British territories in India; (iv) Governor General and Council of 4 members was appointed for Bengal; (v) Court of Directors of 24 members was to be elected for 4 years, with one-fourth members retiring every year; (vi) Bombay (Maharashtra) and Madras (Tamil Nadu) Presidency subordinated to Bengal Presidency; (vii) Supreme Court to be set up at Calcutta; and (viii) Company's Servants forbidden from accepting bribes or doing private trade.

**Pitt's India Act, 1784:** (i) Transferred the Indian affairs of the Company into the hands of the British Government; (ii) Abolished dual system of governance. Court of Directors consisting of 24 members to look after commercial functions; (iii) Board of Control consisting of 6 Parliamentary Commissioners was constituted to control civil, military and revenue affairs of India; (iv) Court of Directors had to comply with the orders and directions of the Board; (v) Strength of Governor-General's Council reduced to 3; (vi) Control of Governor-General-in-Council on Bombay and Madras Presidency enlarged and made effective; and (vii) First effective substitution of Parliamentary Control over East India Company.

**Act of 1786:** Governor-General to be the Commander-in-Chief of Indian Forces.

**Charter Act, 1793:** (i) Company given monopoly of trade for 20 more years (ii) Expenses and salaries of the Board of Control to be charged on Indian Revenue; and (iii) Governor-General could over-ride his Council.

**Charter Act, 1813:** (i) Company deprived of its trade monopoly in India except in tea and opium trade with China; (ii) All Englishmen could trade with India subject to certain restrictions; (iii) Rules and procedures made for use of Indian revenue; and (iv) A sum of Rs. 1 lakh earmarked annually for education.

**Charter Act, 1833:** (i) End of Company's trade monopoly even in tea and opium with China; (ii) Company was asked to close its business at the earliest; (iii) Governor-General of Bengal to be Governor-General of India; (iv) Govt. of Madras and Bombay deprived of legislative powers; (v) A fourth member, Law Member, added to Council of Governor-General; (vi) Government Service was thrown open to the people of India; (viii) All laws made by Governor General Council, henceforth to be known Acts and 'not regulations; (viii) Provision made for appointment of Law Commission for codification of laws; and (ix) Slavery was to be abolished.

**Charter Act, 1853:** (i) Expanded life of the Company for an outspread period; (ii) For the first time a separate legislative machinery consisting of 12-member Legislative Council was created; (iii) Law member was made a full member of the Executive Council of the Governor-General. Six additional members added for legislative purposes; and (iv) recruitment of Civil Services was based on open annual competitive examination.

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**Government of India Act, 1858:** (i) Rule of company in India ended and that of the Crown began; (ii) System of double government ended. Court of Directors and Board of Control abolished; (iii) Secretary of State for India was created. He was assisted by a 15-member Council (India Council). He was to exercise the powers of the Crown; (iv) Secretary of State to be a member of the British Cabinet; (v) Secretary of State governed India through the Governor General; (vi) Governor-General was to be called the Viceroy and was the direct representative of the Crown in India; and (vii) A unitary and highly-centralised administrative structure was created.

**Indian Councils Act, 1861:** (i) Policy of Association of Indians in legislation started; (ii) Portfolio system was introduced; (iii) For legislation; Executive Council of Viceroy was enlarged by 6 to 12 members composed of half non-official members. Thus foundations of Indian Legislature was laid down; (iv) Legislative powers of the Presidency Government deprived in 1833 were restored; and (v) Viceroy could issue ordinances in case of emergency.

**Indian Councils Act, 1892:** (i) Though the majority of official members was retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils, while the non-official members of the Provincial Council were to be nominated by certain local bodies such as universities, district boards, municipalities. Beginning of representative system in India; and (ii) Council to have the power to discuss budget and of addressing questions to the Executive.

**Indian Councils Act, 1909:** Also known as the Morley-Minto Reforms -- (i) Introduced for the first time, an element of elections to the Legislative Councils; (ii) At the Provincial Legislative Councils, non-official members to be in majority; and (iii) Introduction of separate electorates (for Muslims).

**Government of India Act, 1919:** Popularly known as Montague-Chelmsford Reforms -- (i) The idea of "Responsible Government" stressed; (ii) Office of the High Commissioner of India was created in London; (iii) Indian Legislature became "bicameral" for the first time; (iv) communal representation extended to Sikhs; (v) Secretary of State for India now to be paid from British revenue; and (vi) Diarchy in provinces by dividing subjects of administration between official members and elected members.

**Dyarchy:** It meant Dual Government. The Provincial subjects of administration were to be divided into two categories -- "Transferred" and "Reserved" subjects. The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council. The reserved subjects were to be administered by the Governor and his Executive Council without any responsibility to the Legislature.

**Devolution Rules:** Subjects of administration were divided into two categories -- "Central" and "Provincial". Subjects of all-India importance (like Railways, Finance) were brought under the category of Central, while matters relating to the administration of the provinces were classified as provincial.

**Government of India Act, 1935:** (i) Provided for the establishment of an All-India Federation consisting of the British Provinces and the Princely States.

The joining of Princely States was voluntary. The Federation part of the scheme could not be implemented; (ii) Dyarchy was introduced at the Centre. Provincial autonomy replaced Diarchy in Provinces. They were granted separate legal identity. Responsible governments were set up in States under Prime (Chief) Ministers elected by Legislatures; (iii) Governor had special responsibilities (or discretion) in several matters; (iv) It made a three-fold division of powers -- Federal, Provincial and Concurrent Lists. Residuary powers were to be with the Governor-General; (v) The India Council of Secretary of State for India was abolished; (vi) Principle of separate electorate was extended further to include Anglo-Indians Indian Christians and Europeans also; and (vii) A Federal Court was to be constituted with a Chief Justice and 10 other Judges. This was set up in 1937.

**Indian Independence Act, 1947:** This Act did not lay down any provision for the administration of India but merely stated that from the "appointed date (Aug. 15, 1947), in place of India as defined in the Government of India Act, 1935, there would be two independent Dominions to be known as "India" and Pakistan", and the Constituent Assembly of each Dominion would have unlimited powers to frame and adopt any Constitution, and to repeal any Act of the British Parliament.





## MAKING OF THE CONSTITUTION

The idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy.

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.

The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces and four from the four chief commissioners' provinces, one from each.

Each province or princely state (or group of states in case of small states) were to be allocated seats in proportion to their respective population. Roughly, one seat was to be, allotted for every million population.

Seats allocated to each British province were to be decided among the three principal communities-Muslims, Sikhs and The representatives of each commune general (all except Muslims and Sikhs), in proportion to their population.

The representative of each community 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 transferable vote.

The representatives of princely states were to be nominated by the heads of the princely states.

It is thus clear that the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise.

### *Drafting Committee*

It consisted of seven members. They were:

1. Dr B R Ambedkar (Chairman)
2. N Gopalaswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr. K M Munshi
5. Syed Mohammad Saadullah
6. N Madhava Rau (He replaced B L Mitter who resigned due to ill-health)
7. T T Krishnamachari (He replaced D P Khaitan who died in 1948)

Dr B R Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading). The Assembly had a general discussion on it for five days (till November 9, 1948).

The second reading (clause by clause consideration) started on November 15, 1948 and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly.

The third reading of the draft started on November 14, 1949.

The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules.



# TYPES OF POLITICAL SYSTEM

A political system is the set of formal legal institutions that constitute a “state.” There are seven types of political systems namely as follows:

- 1) **Democracy** - Democracy is a system of government in which the citizens exercise power directly or elect representatives from among themselves to form a governing body, such as a parliament. Democracy is sometimes referred to as rule of the majority. India, the US, the UK, France, Australia, Brazil, South Africa, Japan etc. are the democratic countries.

## Features -

The democracy consists of four key elements (a) A political system choosing and replacing the government through free and fair elections; (b) The active participation of the people, as citizens, in politics and civic life; (c) Protection of the human rights of all citizens, and (d) A rule of law, in which the laws and procedures apply equally to all citizens.

- Other features of democracy are as follows:

- a) Popular sovereignty
- b) Political freedom & equality
- c) Protection of minority rights
- d) Independence of judiciary
- e) Presence of civil & socio-economic rights
- f) Legal equality & rule of law etc.

- 2) **Dictatorship** - Dictatorship is a form of government where a country is ruled by one person or political entity, and exercised through various mechanisms to ensure that the entity's power remains strong. Nazi Germany, Soviet Union under Stalin's rule, Napoleonic France, Pol Pot regime in Cambodia, North Korea under Kim Jong-Il & Kim Il Sung, Zimbabwe under Robert Mugabe, Uganda under Idi Amin etc. are examples of the dictatorship.

## Features -

- It comes into existence by force.
- Nearly every aspect of the public and private behaviour of citizens is regulated.
- Such systems generally employ political propaganda to decrease the influence of proponents of alternative governing systems.
- It is characterized by arbitrary, unaccountable & irresponsible role of the dictator.
- The distinction between the state & the government is absent.

- 3) **Monarchy** - A monarchy is a form of government in which a group, usually a family called the dynasty, embodies the country's national identity and one of its members, called the monarch, exercises a role of

Sovereignty. Saudi Arabia, Brunei, Denmark, Sweden, the UK, Morocco etc. have Monarchical form of political system.

#### Features -

- The actual power of the monarch may vary from purely symbolic (crowned republic), to partial and restricted (constitutional monarchy), to completely autocratic (absolute monarchy). The UK is a Constitutional Monarchy; whereas the King of Saudi Arabia is an absolute Monarch. The monarchs of Cambodia, Japan, and Malaysia “reign, but do not rule” although there is considerable variation in the degree of authority they wield.
  - Traditionally and in most cases, the monarch’s post is inherited and lasts until death or abdication, but there are also elective monarchies where the monarch is elected.
- 4) **Theocracy** - It is a form of government in which God or a deity is recognized as the king or immediate ruler, and his laws are taken as the statute-book of the kingdom, these laws being usually administered by a priestly order as his ministers and agents. Hence, it is a system of government by a sacerdotal order, claiming a divine commission; also, a state so governed. The Holy See (Vatican City), Iran, Saudi Arabia, Central Tibetan Administration etc. are the examples of theocracies.

#### Features -

- In a pure theocracy, the civil leader is believed to have a personal connection with the civilization’s religion or belief. For example, Moses led the Israelites, and Muhammad led the early Muslims.
  - An ecclesiocracy is a situation where the religious leaders assume a leading role in the state, but do not claim that they are instruments of divine revelation. The papacy in the Papal States occupied a middle ground between theocracy and ecclesiocracy, since the pope did not claim he was a prophet who received revelation from God and translated it into civil law.
  - While secular governments have some aspects of life that are not influenced by religion, theocratic governments seek guidance from higher powers to cover all aspects of life, including law, punishment, education and marriage.
- 5) **Totalitarian** - Totalitarianism is a political system in which the state recognizes no limits to its authority and strives to regulate every aspect of public and private life wherever feasible, without any respect for human rights.

In an authoritarian regime a single power holder an individual dictator, a committee or a small group of political elite monopolizes political power. The authoritarian state is only concerned with political power and as long as that is not contested it gives society a certain degree of liberty. In contrast, a totalitarian regime attempts to control virtually all aspects of the social life, including the economy, education, art, science, private life, and morals of citizens. The totalitarian government seeks to completely control the thoughts and actions of its citizens. It also mobilizes the whole population in pursuit of its goals. The Nazi Germany, USSR under Joseph Stalin, China under Mao, North Korea are examples of the totalitarian states.

#### Features -

- A distinctive feature of totalitarian governments is an elaborate ideology, a set of ideas that gives meaning and direction to the whole society, often involving a one-party state, a dictator and a personality cult.
- Totalitarian regimes stay in political power through such techniques as propaganda, state control of the mass media, educational system, economy, political repression, capital punishment, restriction of speech, and.



Mass surveillance.

- 6) **Republic** - A republic is a sovereign state or country which is organized with a form of government in which power resides in elected individuals representing the citizen body and government leaders exercise power according to the rule of law. In modern sense, the term republic is commonly referred to a government which excludes a monarch. The term 'republic' in our Constitution indicates that India has an elected head called the President. He is elected indirectly for a fixed period of five years. Ancient Athens, Sparta, Roman Republic, Mahajanpadas in Ancient India, the US, France, Islamic Republic of Iran are some of the examples of the republic states.

**Features -**

- In the republican form of government, the political sovereignty is vested in the people and not in a single individual like a king.
  - All the public offices are open to every citizen without any discrimination & there is absence of any privileged class.
- 7) . **Anarchism** - Anarchism advocates self-governed societies based on voluntary institutions. These are often described as stateless societies. It can be taken as institutions based on non-hierarchical free associations. Anarchism holds the state to be undesirable, unnecessary, and harmful



# TYPES OF GOVERNMENT

Modern democratic governments can be classified into parliamentary, presidential & semi-presidential forms on the basis of nature of relations between the executive and the legislative organs of the government.

- 1) **Parliamentary system** - It is the form of government in which the executive is responsible to the legislature for its policies and acts. Cabinet is the nucleus of this system hence it is also called as the 'Cabinet system'. The Cabinet (the real executive) is responsible to the legislature & stays in office so long as it enjoys its confidence hence it is also called as the responsible government. It is described as 'Westminster model' of government after the location of the British Parliament. This system is present in the UK, Germany, Denmark, Sweden, Japan, India etc.
- 2) **Presidential system** - In this form, the executive is not responsible to the legislature for its policies and acts. The executive is constitutionally independent of the legislature in respect of its term of office. Hence, the Presidential system is also known as non-executive or non-responsible or fixed executive system of government. Such system is present in the USA, Brazil, Russia, Sri Lanka etc.
- 3) **Semi-presidential system** - In a semi-presidential the President exists alongside a Prime Minister & a cabinet. It differs from a parliamentary republic in that it has a popularly elected head of state, who is more than a purely ceremonial figurehead. In contrast to the presidential system, the cabinet is responsible to the legislature, which may force the cabinet to resign through a motion of no confidence. There are two separate subtypes of semi-presidential system, namely premier-presidential system and president-parliamentary system. France, Russia, Mongolia, Madagascar etc. have the semi-presidential system.

## 1) Features of the Parliamentary System

- A) In the Parliamentary system, the political party which secures majority seats in the Lower House forms the government. The leader of that party is appointed as the Prime Minister & other ministers are appointed on the advice of the Prime Minister.
- B) The nominal and real executives are different. The President is the nominal executive (titular executive) while the Prime Minister is the real executive. The President is head of the State, while the Prime Minister is head of the government.
- C) The principle of collective Responsibility is the bedrock principle of parliamentary government. The ministers are collectively responsible to the Parliament.
- D) The ministers operate on the principle of secrecy of procedure and cannot divulge information about their proceedings, policies and decisions. They take the oath of secrecy before entering their office.
- E) The ministers are members of both the legislature and the executive. Hence there is a double membership. This means that a person cannot be a minister without being a member of the Parliament.
- F) The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation



Of the prime minister and he can advise the President to dissolve the lok sabha before the expiry of its term and fresh elections.

### Parliamentary System

Merits	Demerits
1. Harmony between legislature and executive	A. Unstable government
2. Responsible government	B. No continuity of policies
3. Prevents despotism	C. Against separation of powers
4. Wide representation	D. Government by amateurs

### 2) Features of the Presidential System

- A)** The President is both the head of the State and the head of government. As the head of State, he occupies a ceremonial position. As the head of government, he leads the executive organ of government.
- B)** The doctrine of separation of powers is the basis of the presidential system. The legislative, executive and judicial powers of the government are separated and vested in the three independent organs of the government.
- C)** The President is elected by an electoral college for a fixed tenure. He cannot be removed by the legislature except by impeachment for a grave unconstitutional act.
- D)** President governs with the help of a cabinet. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him, are responsible only to him & not to the legislature.
- E)** President and his secretaries are not responsible to the legislature for their acts. They neither possess membership in the legislature nor attend its sessions.
- F)** The President cannot dissolve the Lower House of the legislature.

### Presidential System

Merits	Demerits
1. Stable government	A. Conflict between legislature and executive
2. Definiteness in policies	B. Non-responsible government
3. Based on separation of powers	C. May lead to autocracy
4. Government by experts	D. Narrow representation

### 3) Features of the Semi-Presidential System

- A)** Semi-presidential systems may sometimes experience periods in which the President and the Prime Minister are from differing political parties. This is called cohabitation.
- B)** Under the premier-presidential system, the prime minister and cabinet are exclusively accountable to parliament. The president chooses the prime minister and cabinet, but only the parliament may remove them from office with a vote of no confidence. The president does not have the right to dismiss the prime minister or the cabinet.
- C)** Under the president-parliamentary system, the prime minister and cabinet are dually accountable to the president and the assembly majority. The president chooses the prime minister and the cabinet but must have the support of the parliament majority for his choice. In order to remove a prime minister or the whole cabinet from power, the president can dismiss them or the assembly can remove them by a vote of no confidence. This form of semi-presidential system is much closer to pure presidential system.

# TYPES OF ELECTORAL SYSTEM

A voting system or electoral system consists of the set of rules followed for a vote to be considered valid, and sets out how votes are cast, counted and aggregated to yield a final result of an election or a referendum. Adoption of a particular system by a country depends on various factors including historical evolution, size, type of voters, considerations of stability, nature of population, etc. Some of the most common electoral systems are as follows:

## A) Plurality System (First-Past-the-Post System)

- In this system country is divided into single member territorial constituencies, usually of equal size. Voters select a single candidate, usually marking against the candidates' name. A candidate who receives the highest number of votes, may be less than even half the votes polled, is declared the winner.
- This system is easy to operate and establishes a clear link between representatives and constituencies. It also allows governments to be formed that have a clear mandate from the electorate, of course, on the basis of plurality of support amongst the electorate.
- However, a number of shortcomings are pointed out in this system. The system wastes many votes, those cast for losing candidates. It undermines the legitimacy of government in so far as governments often enjoy only minority support. In this system some social groups like minorities may remain under-represented.
- In spite of these limitations this system is quite popular in a number of countries including the UK and India.

## B) The Majority System

- The majority system requires that a person declared winner in a single member constituency wins by a clear majority that is getting more than 50 per cent votes. This can be obtained by two methods:

### 1) Second Ballot System:

- In this system there are single candidate constituencies and single choice voting, as in the first past the post system. To win on the first ballot, a candidate needs an overall majority of the votes cast. If no candidate gains a first ballot majority, a second run-off ballot is held between the leading two candidates. This system is popular in France.

### 2) Alternative Vote System:

- In this system there are single member constituencies. There is preferential voting. Voters rank the candidates in order of preference i.e. 1 for their first preference, 2 for their second preference, and so on. Winning candidates must gain minimum 50 per cent of all the votes cast. Votes are counted according to the first preference.
- If no candidate secures 50 per cent in first preference, the candidate with least number of votes is eliminated and her votes are redistributed according to the second (or subsequent) preferences. This continues until one candidate has a majority. This method is used in Australia and some other countries and for elections of President and Vice-President in India.



### C) The Proportional Representation System

- The term proportional representation is used to designate various electoral devices based on the principle that parties should be represented in an Assembly or Parliament in direct proportion to their overall electoral strength, their percentage of seats equalling their percentage of votes.
- It is claimed that under this system any party, interest or group would secure representation in proportion to the support, it has among the electors. This is achieved by two systems:

#### 1) Single Transferable Vote System:

- In this system there are multi member constituencies. Parties may put forward as many candidates as there are seats to fill in each constituency. Electors vote preferentially, as in the alternative vote system. Candidates are elected if they achieve a quota. This is the minimum number of votes needed to elect, the stipulated number of candidates, calculated according to the following formula as explained below:

$$\text{Quota} = \frac{\text{Total Number of Votes Polled}}{\text{Total Number of Seats to be filled up} + 1} + 1$$

- The votes are counted according to first preference. If not all the seats are filled, the candidate securing least number of votes is eliminated and the votes are redistributed according to second preference, and so on, until all the seats have been filled. This system is used to elect members of Rajya Sabha and Legislative Councils in India.

#### 2) Party List system:

- In this system either the entire country is treated as a single constituency, or, it is divided into a number of large multimember constituencies. Parties compile lists of candidates in descending order of preference and the list is presented to voters. Electors vote for parties, not for candidates.
- Parties are allocated seats in direct proportion to the votes they gain in the election. They fill these seats from the party list. A minimum percentage (for example 5 per cent fixed in Germany) can be fixed to exclude small parties. This is the only potentially pure system of proportional representation, and is therefore, fair to all parties. However, its operation in big countries is very difficult.

Since framers of the Constitution in general followed the British model, they preferred the plurality or first past the post system for elections to both Lok Sabha and State Legislative Assemblies. To make the office of President a real representative of national opinion majority system with transferable vote was adopted. As the Rajya Sabha was meant to be a representative House of States and not of people or constituencies, system of proportional representation was favoured.

While in general, these systems have been working well, there is a view that first past the post system has shortcomings which need to be looked into. It is pointed out that in India not only various parties and groups either remain unrepresented or under-represented in spite of significant support among voters as a whole but also parties getting just 30 per cent or so of the polled votes are able to emerge as majority parties and form government.

# **SALIENT FEATURES OF INDIAN CONSTITUTION**

Originally having 395 Articles divided into 22 parts and 8 schedules, a lengthiest constitution of the world with systematic elaboration on every topic. At present, it contains 448 Articles with 12 schedules as a result of various amendments (101 till so far, GST Amendment).

- A. Longest written constitution:** The constitution of India is said to be the longest written constitution in the world because, it contains:
- Separate provisions for states and centre and their inter-relationship.
  - The borrowed provisions from several sources and several other constitutions of the world.
  - The separate provisions for scheduled castes, scheduled tribes, women, children, and backward regions.
  - It contains the detailed list of individual rights, directive principles of state policy and details of administration procedures which were laid down to make the constitution an easy handy.
- B. Unique blend of rigidity and flexibility:** A Constitution may be called rigid or flexible on the basis of its amending procedure.
- Some parts can be amended by ordinary law making procedure while certain provisions can be amended only when a Bill for that purpose is passed in each house of Parliament by a majority of the total membership of that house and by a majority of not less than two-third of the members of that house present and voting.
  - Some amendments are also required to be ratified by the legislatures of not less than one-half of the states before being presented to the President for assent.
- C. India as a sovereign, socialist, secular, democratic and republic:** India is governed by its people through their representatives elected on the basis of universal adult franchise (Government of the people, by the people and for the people).
- India as a sovereign means it manages its internal and external affairs freely without any external forces. However, it continues to be a member of the commonwealth of Nation with the British Monarch as its head.
  - The term socialist is added by the 42nd Amendment in 1976, means achievement of socialist goals through democratic, evolutionary and non-violent means. However, India follows the mixed model of socialist and capitalist economy.
  - By secular means it recognizes all religions equally without having any state religion which is a part of the basic structure.
  - By republic means head of the state (President) is elected one and not the monarch.
- D. Parliamentary System of Government:** Theoretically, Parliament controls the functioning of the Council of Ministers; hence it is called Parliamentary system.
- Here executive is responsible to the legislature and remains in power as long as it enjoys the confidence of the legislature.



- The President of India, who remains in office for five years, is the nominal, titular or constitutional head (Executive).
  - The Prime Minister is the real executive and head of the Council of Ministers who is collectively responsible to the lower house (Lok Sabha).
- E. Single Citizenship:** Unlike Federation, where citizen enjoys dual citizenship of both State and Union, India has a single citizenship provided by the union and recognized by all the states across India.
- F. Universal Adult Franchise:** The Indian Constitution establishes political equality in India through the method of universal adult franchise which functions on the basis of 'one person one vote'. Every Indian who is 18 years of age or above is entitled to vote in the elections, irrespective of caste, sex, race, religion or status.
- G. Independent and Integrated Judicial System:** The judiciary system is kept free from the influence of the executive and the legislature. As an integrated system, India has the Supreme Court as the apex court below which High Courts come. The High Courts in turn supervise the lower courts.
- H. Fundamental Rights, Fundamental Duties and Directive Principles of State Policy:** Fundamental Rights are not absolute but are subject to the limitations which are expressly defined by the constitution itself and are enforceable in the court of law.
- The DPSPs are the guidelines to be followed by the states regarding governance and are not enforceable in the court of law.
  - The Fundamental Duties, added by the 42nd Amendment are moral conscience which ought to be followed by the Citizens.
- I. A Federation with a strong centralizing tendency:** India is an indestructible Union with destructible states means it acquires a unitary character during the time of emergency. Hence, some experts say it as a quasi federal in nature.
- J. Balancing Parliamentary supremacy with Judicial Review:** An independent judiciary with the power of judicial review is a prominent feature of our constitution. The harmonization which our Constitution has effected between Parliamentary Sovereignty and a written Constitution with a provision for Judicial Review is an important achievement of the framers of our Constitution.

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KHAN SIR



# SOURCES OF THE INDIAN CONSTITUTION

The sources of Indian Constitution include the imaginative aspirations of the nationalist leaders, the actual working of the Government of India Act, 1935, and the experience gained from the actual working of some of the Constitutions of important countries of the world.

## Seminal Sources

- A. Constituent Assembly Debate:** Drawn from the Cabinet Mission Plan, having members including distinguished lawyers, intellectuals and patriots who took 2 years, 11 months and 18 days to prepare the constitution.
- B. Nehru Report:** Formed under the leadership of Motilal Nehru to boycott the Simon Commission and made recommendations for the desired constitutional setup for India. Such recommendations include:
- (i) Grant of Empire;
  - (ii) Creation of a federal structure for India;
  - (iii) Bicameralism at the Centre;
  - (iv) Parliamentary and responsible Government in Provinces;
  - (v) Guarantee of Fundamental Right; and
  - (vi) Establishment of Supreme Court as the final court of appeal.
- C. Objective Resolutions:** Moved by J.L. Nehru, spelled out making India a sovereign republic where the ultimate supreme power is vested with the people. It stated that the people would get social, economic and political justice, liberties of all types and equality. This objective resolution acquired the place of Preamble in Indian Constitution.
- D. Government of India Act 1935:** India was governed by the GOI Act 1935 at the time when our constitution was in the process of framing, hence, has been influenced by the same such as:
- Federal set-up;
  - Distribution of powers in three lists;
  - Provincial autonomy;
  - Office of the Governor;
  - Bicameral legislature;
  - President's or Governor's power to issue ordinances; and
  - Structure of the Supreme Court.

## External Sources

- **Irish Constitution:** Directive Principles.
- **British Constitution:** Parliamentary form of government and Parliamentary Privileges.



- US Constitution: Fundamental Rights, the Supreme Court, the post of Vice President.
- Canadian Constitution: The Federal system, Union-State Relations and Distribution of Powers.
- Australian Constitution: The concurrent list, Provisions of trade and commerce.
- German (Weimar) Constitution: The emergency provisions

### Developmental Sources

Indian Constitution is dynamic which has grown with the changing needs. Thus, amendments, judicial reviews/decisions, political practices, parliamentary statutes, rules, regulations and ordinances are the developmental sources of the constitution.

- **Amendment(s):** Till September 8, 2016, there have been 101 Amendments (Goods and Services Tax Bill) shaping the Constitution in quite different from the original document. The 42nd Amendment termed as Mini Constitution clearly proves the dynamism of it due to enormous changes it effected to the Indian Constitution.
- **Judicial Decisions:** The Judicial Decisions by the Supreme Court on various important issues have paved the new dimensions such as the **Basic Structure** which shows the directions for further amendments:
  - Gopalan vs. State of Madras;
  - State of Madras vs. Champakam;
  - Golak Nath vs. State of Punjab; and
  - Keshavanand Bharti vs. Kerala State.
- **Parliamentary Statutes:** Parliament, time to time through the process mentioned in the constitution furnishes details of the various articles which are considered as constitutional laws. It provides the details information of the constitution.
- **Commentaries of Constitutional Experts:** While interpreting the Constitution, the views of the distinguished constitutional experts, whether Indian or foreign, enjoy special importance.
- The most notable constitutional experts are Jennings, Gledhill, Alexandrowit, D.D. Basu, Palkhiwala, V.N. Shukla, etc. Their views are not given legal recognition but due regard is paid to them by the judges.
- Moreover, true significance of any provision of the Constitution can be understood in the light of their views.
- **Rules, Regulations, Ordinances etc.:** Each house of the parliament is empowered to make rules for its efficient working. The President has the right to make rules for fixing the constitutional subjects.
- President of India is also empowered to make rules with respect to the condition of services of the members of the Union Public Service Commission.
- President can also frame rules to establish peace and efficient administration of the Union Territories. Above all, the President has also the power to issue ordinances when Parliament is not in session. All these rules, regulations and ordinances serve as sources of the Constitution.

### Constitutional Practices

Although the Constitution of India is the most detailed in the world, still certain practices independent of the Constitution have developed in India.

A few examples of such a practice can be enumerated as follows:

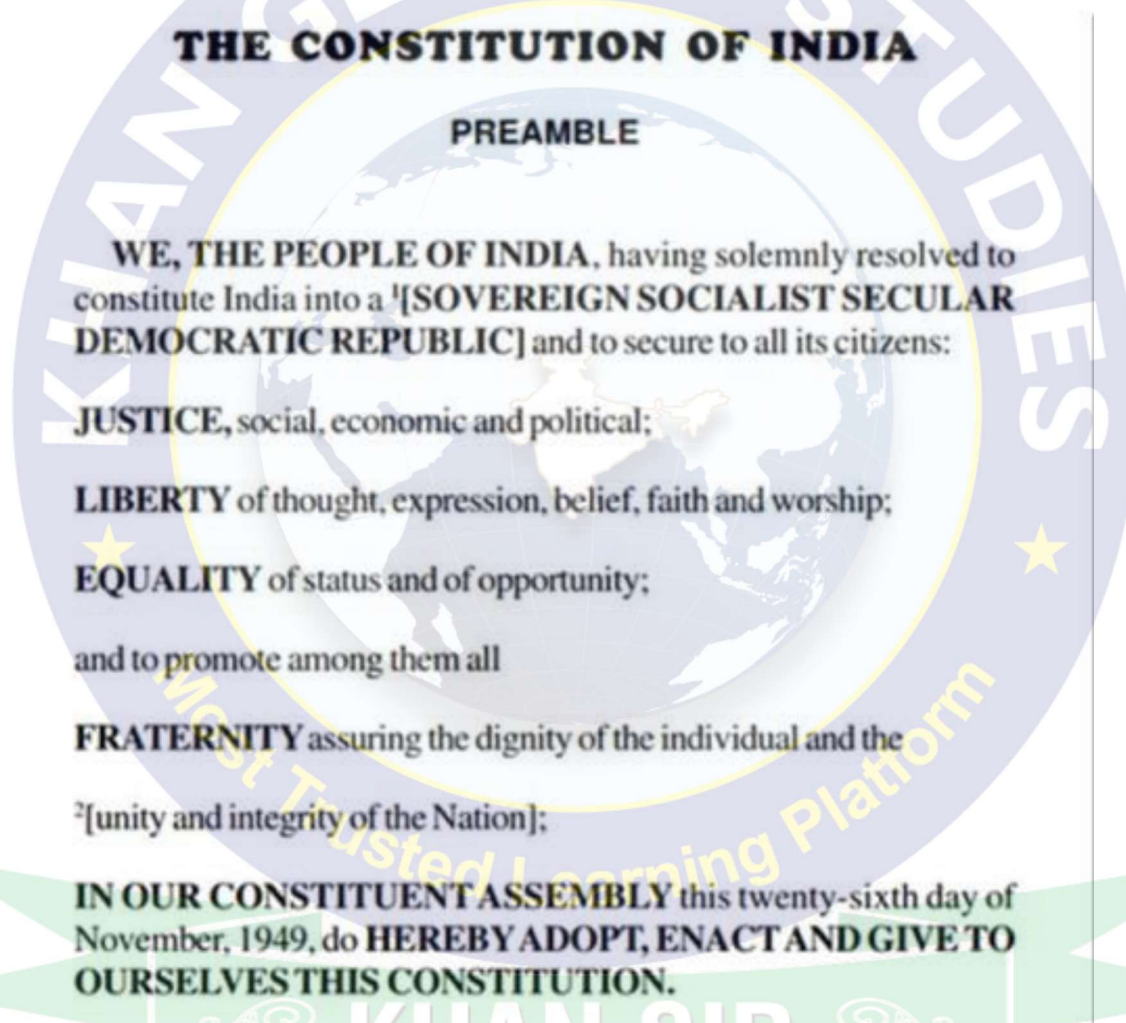
- The Central Government takes beforehand the advice of the State Government in the appointment of its Governor.
- Governor can be recalled by the Central Government on the advice of the State Government concerned.
- Governor should not belong to the state to which he is appointed.
- One of the judges of the Supreme Court must belong to the minority community.
- The senior most judge of the Supreme Court should be appointed as the Chief Justice of India.
- The leader of the majority party in Lok sabha is appointed as the Prime Minister.





# PREAMBLE AND VALUES IN THE CONSTITUTION

- The Preamble to the constitution embodies the essence of the entire constitution and is like an introduction and preface of a book. It explains the purposes and objectives with which the constitution has been written and hence provides the guideline to the constitution.
- The Objective Resolution, proposed by Pandit Nehru and passed by the Constituent Assembly, ultimately became the Preamble to the Constitution of India.



- The Preamble, in brief, explains the objectives of the Constitution in two ways: one, about the structure of the governance and the other, about the ideals to be achieved in independent India. It is because of this, the Preamble is considered to be the key of the Constitution.

**The objectives which are laid down in the Preamble are:**

- Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic. (Socialist, Secular is added by the 42nd Amendment Act, 1976)

- Provision to all the citizens of India i.e.,
  - Justice - social, economic and political.
  - Liberty - of thought, expression, belief, faith and worship.
  - Equality - of status and of opportunity.
  - Fraternity - assuring dignity of the individual and unity and integrity of the nation.

#### **Usefulness of the Preamble:**

- The Preamble sets out the objectives which the constituent assembly intended to achieve. As Supreme Court has observed, the Preamble is a key to unravel the minds of the makers of the Constitution. It also embodies the ideals and aspirations of the people of India.
- The Preamble is non-justiciable in nature, like the DPSPs and cannot be enforced in a court of law. The Preamble cannot override the specific provisions of the constitution. In case of any conflict between the two, the latter shall prevail.
- The Preamble can neither provide substantive power (definite or real) to the three organs of the State, nor limit their powers under the provisions of the constitution.
- As observed by the Supreme Court, the Preamble plays a limited and yet vital role in removing the ambiguity surrounding the provisions of the Constitution.

#### **Whether the Preamble is a part of the Constitution or not?**

- The Supreme Court in the Keshvananda Bharti v/s State of Kerala (1973) case overruled its earlier decision (Berubari Case 1965) and made it clear that the Preamble is a part of the constitution and is subject to the amending power of the Parliament as any other constitutional provisions, subject to basic structure of the constitution.
- However, it is not an essential part of the constitution; still it serves as an important guide to interpret the true spirit of the Constitution.

#### **Whether Preamble can be amended or not?**

- The Supreme Court in Keshvananda Bharti (1973) case has held that, Preamble may be amended subject to basic structure of the constitution. In other words the amendment should not destroy the basic features of it.
- In fact, Preamble has been amended by 42nd Amendment 1976 whereby three words viz, socialist, secular and integrity were added.

#### **Significance of the Preamble:**

- The Preamble declares that it is the people of India who had enacted, adopted and given the Constitution to themselves. Thus, sovereignty lies ultimately with the people.
- It also declares the ideals and aspirations of the people that need to be achieved.
- Ideals are different from aspirations. While ideals have been achieved with the Constitution proclaiming India as Sovereign, Socialist, Secular, Democratic Republic, the aspirations include justice, liberty, equality and fraternity, which are yet to be achieved. The ideals are the means to achieve aspirations.

#### **Ideals (mentioned in Preamble):**

- The word 'Sovereign' emphasizes that there is no authority outside India on which the country is in any way dependent.



- By the word 'Socialist'(added by the 42nd Amendment Act 1976), the Constitution means that the achievement of socialistic pattern of society through democratic means.
- India is a 'Secular (added by the 42nd Amendment Act 1976) state' does not mean that India is non-religious or irreligious, or anti-religious, but simply that the State in itself is not religious and follows the age-old Indian principle of "Sarva Dharma Samabhava". It also means that the State shall not discriminate against the citizens in any way on the basis of religion.
- The State regards religion to be the private affair of a person including the right to believe or not to believe in a religion.
- The term 'Democratic' means that the rulers elected by the people only, have the authority to run the government. India follows a system of 'Representative Democracy', where the MPs and MLAs are elected directly by the people.
- Efforts are being made to take democracy to the grassroots through Panchayats and Municipalities (73rd and 74th Constitutional Amendment Acts, (1992). However, the Preamble envisages not only political democracy but also social and economic democracies
- The word 'Republic' means, the head of the state is an elected representative (directly or indirectly) and not the hereditary monarch.

#### **Aspirations to be achieved (mentioned in Preamble):**

- The Indian Constitution considers political justice to be the means to achieve social and economic justice by making the state more and more welfare oriented in nature.
- Political Justice in India is guaranteed by universal adult suffrage without any sort of qualification, e.g. education, property, social status and tax return.
- While social justice is ensured by abolishing any title of honour (Art. 18) and untouchability (Art.17), economic justice is guaranteed primarily through the Directive Principles.
- The Indian Constitution guarantees six democratic freedoms to the individuals under Art-19 and Right to Freedom of Religion under Arts-25-28. Thus providing essential liberty to the society for their fullest development of intellectual, mental and spiritual thoughts.
- Our Constitution ensures equality in the matters of status and of opportunity by declaring any discrimination illegal by the state only on the basis of religion, caste, sex or place of birth (Art-15) by throwing open public places to all by abolishing untouchability (Art-17) and by abolishing titles of honour Art-18).
- However, various laws and regulations have been passed for the upliftment of SCs, STs, OBCs, Children and also for women (Protective Discrimination).
- Fraternity as enshrined in the Constitution means a sense of brotherhood prevailing amongst all the sections of the people. This is sought to be achieved by making the State secular, guaranteeing fundamental and other rights equally to people of all sections, and protecting their interests. However, fraternity is an evolving process and by the 42nd amendment, the word 'integrity' was added, thus giving it a broader meaning.