

Constitution: Why and How

📌 What is the constitution?

◆ Constitution is the collection of rules and laws related to the governance of any country. Through this, the government of that country has sovereignty (depending on itself or on the constitution) and whatever rules and laws it makes, the people automatically follow them.

(A country's constitution is a system of regulations and laws governing its government.

This gives the government of that nation sovereignty (based on self-interest or the constitution), and whatever rules and regulations it enacts are automatically obeyed by the populace.)

Who can decide which rules are the best to suit a society?

- The constitution specifies the basic allocation of power in a society.
- It decides who gets to decide what the laws will be.
- In the Indian Constitution, it is specified that in most instances, Parliament gets to decide laws and policies and that Parliament itself be organized in a particular manner.

Functions of Constitution

- Parliament has the authority to enact laws that constitute a government in the 1st Place.
- Specifies who has the power to make decisions in a society.
- To put Limitations on the government
- It decides how the government will be constituted.
- It specifies certain fundamental rights that all of us possess as citizens and which no government can ever be allowed to violate.
- To enable the government to fulfil the aspirations of a society and create conditions for a just society.

📌 Types of constitution in the world :-

◆ There are mainly two types of constitutions in the world.

1. Written Constitution

2. Unwritten Constitution

📌 Written Constitution :-

◆ A written constitution is that constitution, which is definitely made by a constituent assembly, it is called a written constitution.

Example:- India, America, Japan.

✦ **Unwritten constitution :-**

◆ Unwritten constitution is that constitution which is not made by any Constituent Assembly but there is evidence of traditions and laws passed from time to time, judges etc.

Example:- Britain, New Zealand, Israel.

✦ **Functions of the Constitution :-**

◆ The constitution establishes the three major organs of government (legislature, executive and judiciary) of a state.

◆ The constitution explains the powers of the three organs of the government and also sets the limits of their duties.

◆ The constitution regulates the mutual relations between the three organs of government and their relations with the people.

◆ The constitution works to fulfill the specific social, political and economic nature, beliefs and aspirations of the people, and prevents anarchy.

✦ **Requirement of Constitution :-**

◆ Man is a social animal. Society is made up of different types of communities. Constitution is necessary to bring harmony among these communities.

◆ The constitution provides a set of basic rules for creating mutual trust among the people.

◆ Who will have the power to take the final decision? The Constitution decides this.

◆ The constitution sets the rules and bye-laws of government formation and its powers and limits.

◆ Constitution is also necessary for the establishment of a just society.

What are the features of the Indian Constitution?

The features of the Indian Constitution as it stands today, are as follows:

- Longest Written Constitution
- Blend of Rigidity and Flexibility
- Parliamentary Government
- Independent Judiciary
- A federal system with Unitary Features
- Secular State
- Universal Adult Franchise
- Emergency Provisions

Fundamental Identity of the People

- The people as a collective entity come into being only through the basic constitution.

- Constitutional norms are the overarching framework within which one pursues individual aspirations, goals and freedoms.
- The constitution sets authoritative constraints upon what one may or may not do.
- It defines the fundamental values that we may not trespass. Hence, the constitution also gives one a moral identity.
- Many basic political and moral values are now shared across different constitutional traditions.

Mode of Promulgation: This refers to how a constitution comes into being. Who crafted the constitution and how much authority did they have?

In many countries, constitutions remain defunct why?

The reason why in many countries the constitution remains defunct is that either the constitution is drafted by the military leaders or by those leaders who were not popular among the citizens.

The major reason for the stringent constitutions is that the people or the makers of the constitution lacked the ability to carry people with them.

Why Countries like India, South Africa and the United States are the most successful constitutions?

These countries had a constitution that was drafted in the aftermath of the popular national movement. The fact that the nation faced the very challenges during the movement helped the makers to create a well-structured document.

An overview of the Indian Constitution

The constitution was formally created by a Constituent Assembly between December 1946 and November 1949. It drew upon a long history of the nationalist movement that had a remarkable ability to take along different sections of Indian society together

It carried enormous legitimacy from the fact that it was drawn up by people who enjoyed:

- Immense public credibility; Who had the capacity to negotiate and command the respect of a wide cross-section of society, The ones who were able to convince the people that the constitution was not an instrument for the aggrandisement of their personal power.

Provision of the Constitution:

- It gives everyone in society some reason to go along with its provisions
- It gives security towards the oppression of the minorities by the permanent majorities of the constitution.
- Systematically privileged some members at the expense of others, or that systematically entrenched the power of small groups in society, would cease to command allegiance
- It preserves the freedom and equality of all its members
- The more a constitution preserves the freedom and equality of all its members, the more likely it is to succeed.



Constituent Assembly in the world :-

- ◆ The person who gave the first idea of the Constituent Assembly in the world was British / British citizen Sir Henry Maine.
- ◆ The first Constituent Assembly in the world was formed in the US state of Philadelphia in 1786. At that time there used to be 13 states in America which together made up the Constitution of America.
- ◆ After this, the Constituent Assembly was formed in France in 1789.
- ◆ The first constitution in France was written in 1793.

Cripps Mission :-

- ◆ Sent to India in March 1942 by British Prime Minister Churchill under the leadership of British Member of Parliament and Labor leader Sir Stafford Cripps, whose purpose was to remove India's political deadlock.
- ◆ However, the real purpose of this mission was to entice Indians to cooperate in the war. Sir Cripps was also a member of the British War Cabinet and actively supported the Indian National Movement.
- ◆ On behalf of the Congress, Jawaharlal Nehru and Maulana Abul Kalam Azad were authorized for examination and discussion in the context of Cripps Mission.

Indian Constituent Assembly :-

- ◆ The person who gave the idea of Constituent Assembly in India was MN Rai.
- ◆ 1895: - As far as India is concerned, the first vision of the Constituent Assembly in India is seen in the Swaraj Bill in 1895, which was prepared under the direction of Bal Gangadhar Tilak.
- ◆ 1922 :- In 1922, Mahatma Gandhi was the first person who gave the speech of the Constituent Assembly.
- ◆ 1924: - The first person to demand a Constituent Assembly in 1924 (in 1924 AD) was P. Motilal Nehru (his father's name was Dada Gangadhar Naharu who was the Kotwal of Lalkla, Delhi during the revolution of 1857.)
- ◆ 1924 and 1934 :- In 1924 and 1934, Swaraj Dal was the first political party in which the demand for Constituent Assembly was made twice in 1924 and 1934.

Sachidanand Sinha was the interim or Provisional president of the Constituent Assembly

Note :- The credit of taking the ideas of the constitution to the public goes to Jawahar Naharu who has mentioned in many of his speeches and made it known to the public.

- ◆ 1936 :- 1936 Congress was established on 1885 December 28. For the first time in 1936, the Congress spoke about the importance of the meaning of the Lucknow session of the Constituent Assembly, this session was presided over by Jawaharlal Nehru (the initial workers of the Congress were 72 at that time).

- ◆ 1940 :- In August 1940, the British Prime Minister Churchill was the first person who said that the people of India will prepare the constitution of India themselves.

Formation process of the Constituent Assembly of India :-

- ◆ 1942: - The proposal of the Constituent Assembly on the principle of Britain was placed before the Indian in 1942 through the plan of the Cripps Mission. But the Cripps proposal was rejected by all political parties. That is why the Constituent Assembly could not be formed here.

Note: - Radical Democratic Party was the only political party that accepted the Cripps proposal, this party was formed by MN Rai.

- ◆ 1945: - In July 1945, when the new Labor Party government came to power in England, the way for the formation of the Indian Constituent Assembly was opened. Vice Roy Lord Wavell confirmed this.

- ◆ 1946: - The practical form of the Cripps proposal was given in the name of the 1946 Cabinet Mission plan and on the basis of this, elections to the Constituent Assembly were held in July 1946.

- ◆ According to the cabinet mission plan – constitution making – the number of members of the body – 389 was fixed. Out of which 292 representatives were to be taken from the eleven provinces under the Governors of British India, 04 representatives were to be taken from the four provinces of the Chief Commissioners (Delhi, Ajmer-Marwar, Coorg and British Balochistan) and 93 representatives were to be taken from the Indian princely states.

Note: - Out of these, Hyderabad was the only princely state whose representatives did not come to the assembly.

- ◆ Each province of the British Province was given seats in the Constituent Assembly in proportion to their population. (one place per 10 million people)

- ◆ The seats in each province were divided into three major communities - Muslims, Sikhs and generals in proportion to their population.

- ◆ June 3, 1947, according to the Mountbatten plan, the India-Pakistan partition was decided, as a result the members of Pakistan ceased to be members of the Constituent Assembly and the actual number of members of the Constituent Assembly of India was reduced to 299.

Nature of Constituent Assembly :-

- ◆ Constituent Assembly duly inaugurated - day - Monday, 09 December 1946 at eleven o'clock in the morning.

Sessions of the Constituent Assembly :-

First Session :-

- ◆ The first session of the Constituent Assembly was held on 9 December 1946. 209 members attended this meeting

- ◆ On 9 December 1946, Dr. Sachchidanand Sinha was appointed as the Provisional President.

Second Session :-

- ◆ The second session of the Constituent Assembly was held on 11 December 1946.
- ◆ During this session, on 11 December 1946, Dr. Rajendra Prasad was elected as the Permanent President of the Constituent Assembly and the Chairman of the Constitution Drafting Committee, Dr. Bhimrao Ambedkar was elected.

◆ **Third Session :-**

- ◆ On 13 December 1946, Pandit Jawaharlal Nehru presented the objective of the constitution. In this the outline of the future sovereign democratic republic of India was presented. Which was accepted by the Constituent Assembly on 22 January 1947.

Note: - The Objective Resolution was a model of the process and ideals of the Constitution, according to which the Indian Constitution was to be framed.

◆ **Fourth Session :-**

- ◆ The fourth session of the Constituent Assembly of India lasted from 14 July 1947 to 31 July 1947. During this session, the national flag tricolor was adopted on 22 July 1947.
- ◆ The Constitution of India, adopted on 26 November 1949, had 395 articles, 22 parts and 8 schedules, 3 appendices. At present the schedules have increased from 8 to 12.
- ◆ As of 25 July 2017 there were 465 articles. and became 465 on 31st December 2017.
- ◆ The Constitution of India, adopted on 26 November 1949, was duly implemented on 26 January 1950.
- ◆ There were 299/300 members in the Constituent Assembly of India, out of which on 26 November 1949, a total of 284 members were present, these 284 members signed the finally passed constitution.
- ◆ Every motion introduced in the assembly, every word and everything done there has been recorded and published in 12 rough volumes in the name of Constituents/Assemblies/Debates.

◆ **Total time total sittings in the making of Indian constitution :-**

- ◆ It took 2 years 11 months and 18 days to make the constitution and a total of 166 meetings were held and about 64 lakh rupees were spent in making the constitution.

◆ **Present Schedules in the Indian Constitution :-**

- ◆ There are twelve (12) schedules.

◆ **Women members in the Constituent Assembly :-**

- ◆ A total of 9 women members in the Constituent Assembly, out of which three were very important, were in many committees. Sarojini Naidu, Hansa Mehta, Durgabai Deshmukha and other princesses were Amrita Kaur, Begum Ejaz Rasool, Vijayalakshmi.

◆ **Drafting Committee of the Constituent Assembly :-**

- ◆ On 29 August 1947, Dr. Constitution of seven member committee under the chairmanship of Bhimrao Ambedkar. This committee presented the draft of the Constitution to the President of the Constituent Assembly on 21 February 1948.

✚ **Formation process of the Constituent Assembly of India :-**

- ◆ First meeting on 9 December 1946, Provisional President Dr. Satchidananda.
- ◆ Cabinet Mission Proposal.
- ◆ 11 December 1946 Dr. Appointment of Rajendra Prasad as permanent chairman.
- ◆ Member No. 389 , (292 + 4 + 93) .
- ◆ 14 August 1947, Partitioned India Constituent Assembly meeting, total meetings – 166.

✚ **Four shortcomings in the formation of the Constituent Assembly of India :-**

- ◆ Lack of sovereignty.
- ◆ Improper classification of provinces.
- ◆ The princely states were not compelled to follow the constitution.
- ◆ The members of the Constituent Assembly were elected in an undemocratic manner.

✚ **Preface :-**

- ◆ The purpose of the constitution maker is the essence of the ideas, the preamble is also called the preamble or preamble, its basis is considered to be the objective proposal.

Note: - The definition of the Preamble has been taken from the Constitution of Australia and its practical form has been taken from America. The constitution is the mirror of the nation and the system of governance and the preamble is the mirror of the constitution.

✚ **In the Preamble 3 types of justice have been used.**

1. Social justice
- 2 . economic justice
3. political justice

- ◆ **social justice** - the right to social justice has been ranked in the original places, especially equity.

- ◆ **economic justice** - economic justice has been ranked in the policy director elements.

- ◆ **political justice** - has the right to vote for political justice and election rights.

Note :- Preamble is considered as part of the constitution.

- ◆ The Preamble is the mirror of the Constitution.
- ◆ The preamble is also called the key to the republic and the essence and purpose of the constitution, philosophy.

- ◆ This was said by KM Munshi.
- ◆ By the 42nd Constitutional Amendment Act 1976, 3 new words were added to the Preamble.
(i) Socialism (ii) Secularism (iii) Integrity (Unity and Integrity)

Note :- On 22 July 1947, the Constituent Assembly adopted the national tricolor.

- ◆ On 26 January 1950, the Government of India gave the status of a national emblem to the Ashoka Pillar.
- ◆ 24 January 1950 Constituent Assembly Jan - Gan - mind was given the status of the national anthem and national song were also the Vande Mataram.
- ◆ On 14 September 1949, the Constituent Assembly gave the status of official language to Hindi and script Devanagari.
- ◆ In the year 2000, a National Commission was set up by the Vajpayee government under the chairmanship of Justice MN Venkatacharya to investigate the working of the Constitution. 22 feb 2020
- ◆ law rule in India is moving from the constitution the name of our country in the Constitution is the 2-way "India That India" India "That India"
- ◆ The world's smallest constitution is that of America, which has only 7 articles and it came into force on 4/3/1789.

Sources of Indian Constitution :-

- ◆ About 75 percent of the constitution was taken from the Government of India Act 1935.
- ◆ 10 Fundamental Human Rights were included from the Motilal Nehru Committee Report appointed in 1928.
- ◆ Some things from the constitutional system of other countries were also included in the Constitution of India such as :-

British Constitution :-

- ◆ The decision to win the election on the basis of the highest number of votes.
- ◆ Parliamentary form of government.
- ◆ The idea of rule of law.
- ◆ The office of the Speaker in the legislature and his method of law making.

Constitution of America :-

- ◆ List of Fundamental Rights.

- ◆ Power of judicial review and independence of judiciary.

◆ **Constitution of Ireland :-**

- ◆ Directive Principles of State Policy.

◆ **Constitution of France :-**

- ◆ The principle of liberty, equality and fraternity.

◆ **Constitution of Canada :-**

- ◆ Form of a quasi-federal government (federal system with a strong central government).
- ◆ Theory of residuary powers.

👉 **Features of the Constitution :-**

- ◆ A complete constitution written by the representatives of the people.
- ◆ It constitutes a fully sovereign, democratic, socialist, secular republic.
- ◆ Reminds citizens of Fundamental Rights along with Fundamental Duties.
- ◆ There is an independent judiciary.
- ◆ Parliamentary government system.
- ◆ Directive Principles of State Policy etc.

👉 **Indian constitution rigid :-**

- ◆ Constitution is rigid – According to Article 368, amendment in some subjects requires the support of at least half of the state legislatures in addition to a two-thirds majority of the members of the Parliament. (special majority)

👉 **Indian Constitution Flexibility :-**

- ◆ The Indian Constitution is flexible because many amendment provisions in it are amended by passing the simple majority of the Parliament.

👉 **Expansion of words mentioned in the Preamble of the Indian Constitution :-**

(a) Justice, (b) Liberty, (c) Equality, (d) Fraternity, (e) Secularism, (f) Socialist

- ◆ Justice: - To provide social, economic and political justice.
- ◆ Freedom:- Freedom of expression, thought, belief, religion, deed and worship, devotion.
- ◆ Equality:- The end of all forms of discrimination or freedom from discrimination.
- ◆ Fraternity:- To create a feeling of mutual love / affection among every citizen of the country.
- ◆ Secularism:- Freedom to practice religion to citizens of all religious views.
- ◆ Socialist: The aim of the government should be maximum public welfare, social welfare work, public welfare work. Society is supreme.

✦ **Constitution making controversy in Nepal :-**

◆ Since 1948, five constitutions have been made in Nepal - 1948, 1951, 1959, 1962, 1990 and 2006. At present the Madhesi movement is protesting against this. Most of the people want amendment in the constitution.

✦ **Fundamental provisions of a successful constitution :-**

- ◆ Every person must have a reason to respect the provisions of the Constitution.
- ◆ Ensuring social security of minorities from the majority, providing equal facilities.
- ◆ Strengthening the power of small social groups.
- ◆ To protect the freedom of all in the society.

✦ **When was the constitution of South Africa made?**

- ◆ The Constitution of South Africa was made in December 1996.

✦ **Global problems included in the constitution of South Africa :-**

- ◆ Environmental protection, class discrimination, housing problem, health problem, global poverty.

Balanced Institution Design

The designing of a constitution to ensure that no single institution acquires monopoly of power

This is done by distributing powers across different institutions. Thus the Indian constitution assigned different powers to different institutions:

- Legislature
- Executive
- Judiciary

Also, to statutory bodies like the Election Commission.

This ensures that even if one institution tries to subvert the Constitution, others will be able to check it. A constitution must strike the right balance between establishing certain values, norms, and procedures as authoritative while also allowing for sufficient flexibility in its operations to respond to changing needs and circumstances. A constitution that is too rigid will likely break under the weight of change; on the other hand, a constitution that is too flexible will provide no security, predictability, or identity to a people.

Schedules In The Constitution

First Schedule

- List of states and Union Territories

Second Schedule

- Salary of President, Governors, Chief Judges, Judges of High Court & Supreme court, Comptroller and Auditor General.
- **Third Schedule**
- Forms of Oaths and Affirmation

Fourth Schedule

- Allocation of seats of each state of India in Rajya Sabha.

Fifth Schedule

- Administration & control of scheduled areas and tribes.

Sixth Schedule

- Provisions for the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram.

Seventh Schedule

Gives allocation of powers and Functions between Union & States. Contains 3 lists.

- Union List
- State List
- Concurrent list

Eighth Schedule

- List of 22 languages of India recognised by the constitution.

Ninth Schedule

- Added by the 1st amendment in 1951. Contains acts and orders related to land tenure, land tax, railways and industries.

Tenth Schedule

- Added by 52nd amendment in 1958. Provisions of disqualification on grounds of defection.

Eleventh Schedule

- Added by 73rd amendment in 1992. Provision of Panchayati Raj.

Twelfth Schedule

- By the 74th amendment in 1992. Provision of Municipal Corporation

What task did the 'Drafting Committee' perform?

The Drafting Committee was entrusted with the responsibility to prepare the draft constitution. The Drafting Committee was set up on 29 August 1947. The constituent assembly took 2 years, 11 months and 17 days to frame the constitution.

Chairman: BR Ambedkar **Members:** N Gopaldaswami Ayyangar, AK Ayyar, KM Munshi, Mohammad Sadullah, BL Mittar, DP Khaitan.

An Assembly as diverse as the Constituent Assembly of India could not have functioned if there was no background consensus on the main principles the Constitution should enshrine.

Objective Resolution

The objective resolution was presented by Jawaharlal Nehru on 13 December 1946, laying down the underlying principles of the constitution which later became the Preamble of the constitution. The Objective resolution was adopted on 22 January 1947. The Indian Constitution gave the institutional expression to equality, liberty, sovereignty and a cosmopolitan identity based on the objective resolution.

Main points of the Objectives Resolution:

India is a sovereign and self-governing nation. Former British Indian territories, Indian States, and other areas outside of British India and Indian States wishing to join the union will form India. Except for those assigned to or vested in the Union, all powers and functions of government and administration shall be exercised by the territories that make up the Union. The people will be the source of all sovereign and independent India's powers and authority, as well as its constitution. All Indians shall be guaranteed and secured social, economic, and political justice; equality of status and opportunities; and fundamental freedoms - of speech, expression, belief, faith, worship, vocation, association, and action - subject to the law and public morality. Minorities, backward and tribal areas, as well as the depressed and other backward classes, all require adequate protection. In accordance with international law, the Republic's territorial integrity, as well as its sovereign rights on land, sea, and air, must be safeguarded. The land would willingly and fully contribute to the advancement of world peace and human welfare.