



# Contents

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<i>Constitution</i> .....	1
<i>Soul of the Constitution</i> .....	8
<i>Fundamental Rights</i> .....	14
<i>Executive</i> .....	22
<i>Legislature</i> .....	30
<i>Judiciary</i> .....	36
<i>Federalism</i> .....	42
<i>Election and Representation</i> .....	50
<i>Local Governments</i> .....	56
<i>Emergency Provisions</i> .....	62
<i>Party System</i> .....	68
<i>Important Schedules</i> .....	74
<i>Lokpal and Lokayukta</i> .....	84
<i>Important Commissions &amp; Bodies</i> .....	96
<i>Amendments of Constitution</i> .....	110
<i>Constitution as a Living Document</i> .....	115
<i>Multiple Choice Questions</i> .....	121



# *Constitution*

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A constitution is a body of fundamental principles according to which a state is constituted or governed

The constitution specifies the basic allocation of power in a society. The constitution decides who gets to decide what the laws will be. In principle, constitution decides the role regarding the rule and regulation of the society.

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 document or set of legal documents, those documents may be said to embody a written constitution; if they are written down in a single comprehensive document, it is said to embody a codified constitution. There are various types of constitution throughout the world politics. Two are discussed below:

- Monarchical constitution
- Democratic Constitution

Monarchical Constitution is one in which a monarch decides all the rules of the society. In some constitutions like the old Soviet Union, one single party was given the power to decide.

Democratic constitution is one in which the people get to decide about the rules of the society. In the Indian Constitution for example, it is specified that in most instances, Parliament gets to decide laws and policies, and that identifying what the law in any given society is.

If Parliament has the authority to enact laws, there must be a law that bestows this authority on Parliament in the first place. This is the function of the constitution. It is an authority that constitutes government in the first place.

Constitutions concern different levels of organizations, from sovereign states to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted.

Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights. An example is the constitution of the United States of America.

## **Function of the Constitution**

The 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.

Other is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them.

Constitutions limit the power of government in many ways. The most common way of limiting the power of government is to specify certain fundamental rights that all of us possess as citizens and which no government can ever be allowed to violate.

The exact content and interpretation of these rights varies from constitution to constitution. But most constitutions will protect a basic cluster of rights.

Citizens will be protected from being arrested arbitrarily and for no reason. This is one basic limitation upon the power of government.

Citizens will normally have the right to some basic liberties: to freedom of speech, freedom of conscience, freedom of association, freedom to conduct a trade or business etc.

In practice, these rights can be limited during times of national emergency and the constitution specifies the circumstances under which these rights may be withdrawn.

#### Aspirations and goals of a society

Most of the older constitutions limited themselves largely to allocating decision-making power and setting some limits to government power. But many twentieth century constitution of which the Indian Constitution is the finest example, also provide an enabling framework for the government to do certain positive things, to express the aspirations and goals of society.

The Indian Constitution was particularly innovative in this respect. Societies with deep entrenched inequalities of various kinds, will not only have to set limits on the power of government, they will also have to enable and empower the government to take positive measures to overcome forms of inequality or deprivation.

For example, India aspires to be a society that is free of caste discrimination. If this is our society's aspiration, the government will have to be enabled or empowered to take all the necessary steps to achieve this goal. In a country like South Africa, which had a deep history of racial discrimination, its new constitution had to enable the government to end racial discrimination.

More positively, a constitution may enshrine the aspirations of a society. The framers of the Indian Constitution, for example, thought that each individual in society should have all that is necessary for them to lead a life of minimal dignity and social self-respect — minimum material well being, education etc.

The Indian Constitution enables the government to take positive welfare measures some of which are legally enforceable. As we go on studying the Indian Constitution, we shall find that such enabling provisions have the support of the Preamble to our Constitution, and these provisions are found in the section on

Fundamental Rights. The Directive Principles of State of Policy also enjoin government to fulfil certain aspirations of the people.

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

### **The Authority of a Constitution**

We have outlined some of the functions a constitution performs. These functions explain why most societies have a constitution. But there are three further questions we can ask about constitutions:

- a) What is a constitution?
- b) How effective is a constitution?
- c) Is a constitution just?

In most countries, Constitution' is a compact document that comprises a number of articles about the state, specifying how the state is to be constituted and what norms it should follow. When we ask for the constitution of a country we are usually referring to this document. But some countries, the United Kingdom for instance, do not have one single document that can be called the Constitution. Rather they have a series of documents and decisions that, taken collectively, are referred to as the constitution. So, we can say that constitution is the document or set of documents that seeks to perform the functions that we mentioned above.

But many constitutions around the world exist only on paper; they are mere words existing on a parchment. The crucial question is: how effective is a constitution? What makes it effective? What ensures that it has a real impact on the lives of people? Making a constitution effective depends upon many factors.

### **Fundamental identity of a people**

Finally, and perhaps even most importantly, a constitution expresses the fundamental identity of a people. This means the people as a collective entity come into being only through the basic constitution.

It is by agreeing to a basic set of norms about how

one should be governed, and who should be governed that one forms a collective identity. One has many sets of identities that exist prior to a constitution. But by agreeing to certain basic norms and principles one constitutes one's basic political identity.

Second, 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. So the constitution also gives one a moral identity.

Third and finally, it may be the case that many basic political and moral values are now shared across different constitutional traditions. If one looks at constitutions around the world, they differ in many respects in the form of government they enjoin in many procedural details. But they also share a good deal. Most modern constitutions create a form of government that is democratic in some respects, most claim to protect certain basic rights. But constitutions are different in the way they embody conceptions of natural identity.

Most nations are an amalgamation of a complex set of historical traditions; they weave together the diverse groups that reside within the nation in different ways. For example, German identity was constituted by being ethnically German. The constitution gave expression to this identity.

The Indian Constitution, on the other hand, does not make ethnic identity a criterion for citizenship. Different nations embody different conceptions of what the relationship between the different regions of a nation and the central government should be. This relationship constitutes the national identity of a country.

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### **Mode of promulgation**

In many countries constitutions remain defunct because they are crafted by military leaders or leaders who are not popular and do not have the ability to carry the people with them. The most successful constitutions, like India, South Africa and the United States, are constitutions which were created in the aftermath of popular national movements.

Although, India's 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.

The Constitution drew 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, and who were able to convince the people that the constitution was not an instrument for the aggrandisement of their personal power. The final document reflected the broad national consensus at the time.

Some countries have subjected their constitution to a full-fledged referendum, where all the people vote on the desirability of a constitution. The Indian Constitution was never subject to such a referendum, but nevertheless carried enormous public authority, because it had the consensus and backing of leaders who were themselves popular.

Although the Constitution itself was not subjected to a referendum, the people adopted it as their own by abiding by its provisions. Therefore, the authority of people who enact the constitution helps determine in part its prospects for success.

# *Multiple Choice Questions*

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1. Match the following features of the Indian Constitution and their sources.

<b>I</b>	<b>II</b>
(A) Bill of Rights and Judicial Review	1. England
(B) Parliamentary system of democracy	2. Ireland
(C) Directive Principles	3. U.S.A.
(D) Residuary powers with Centre	4. Canada

**Codes:**

- (a) A-4, B-1, C-2, D-3  
 (b) A-1, B-2, C-3, D-4  
 (c) A-3, B-4, C-2, D-1  
 (d) A-3, B-1, C-2, D-4
2. In what way is the Indian Constitution rigid?
- (a) The provisions of the Constitution can be amended with two-thirds majority of Parliament alone  
 (b) The Centre alone can initiate amendments  
 (c) The provisions regarding constitutional relationship between Union and State Governments can be amended only with the joint consent of Central and State Legislatures

- (d) The Indian Constitution is not rigid
3. "We the people of India having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all citizens..." From this statement we can conclude
- (a) Sovereignty lies with the executive of the country  
 (b) Sovereignty lies with the President  
 (c) Sovereignty lies with the people of India  
 (d) Sovereignty lies with the elected representatives of the people of India
4. The Preamble to the Constitution of India reads:
- (a) We, the people of India .... in our Constitution Assembly,... enact and give to ourselves this Constitution  
 (b) We, the people of India ....in this Constituent Assembly... decide to enact and give to India this Constitution.  
 (c) We, the people of India ....through the representatives of this Constituent Assembly. enact and give to ourselves this Constitution.  
 (d) We, the members of the Constituent Assembly,... representing the people of India enact this Constitution.
5. Put the following in the ascending order with regard to their years of creation.
- I. Andhra Pradesh  
 II. Gujarat  
 III. Nagaland      IV. Meghalaya  
 V. Haryana
- (a) I, II, III, IV, V  
 (b) II, I, III, V, IV  
 (c) I, II, III, V, IV  
 (d) II, V, I, III, IV