

## Meaning of the Constitution

Constitution is a legally sanctified public document, consisting of the basic governing principles of the State and sets out the framework and the principal functions of the organs of the Government of a State. It is a political framework on which the laws and regulations of the nation are based on and further deals with the structure of the government and includes rights and duties of the individuals. Constitution serves as the “Fundamental Law” of a country and other laws made must be in conformity with it, in order to be legally endorsed.

The framing of the Constitution was completed on November 26, 1949 when the Constituent Assembly formally adopted the new Constitution. The Constitution came into force with effect from January 26, 1950. **It took almost 2 years, 11 months and 18 days for the constituent assembly to complete the text of the constitution.** The Constitution was adopted by the Constituent Assembly **on 26 November 1949, and came into effect on 26 January 1950. The date of 26 January was chosen to commemorate the Poorna Swaraj i.e. Declaration of Complete Independence.**

The Constitution contains the fundamental law of the land. It is the source of all powers of, and limitations on, the three organs of the State, viz. the executive, legislature and judiciary. No action of the state would be valid unless it is permissible under the Constitution. Therefore, it is imperative to have a clear understanding of the nature and working of the Constitution.

## Difference Between Constitution And Constitutionalism

The main difference between constitution and constitutionalism lies in the fact that the constitution is a written document, drafted by the constituent assembly, while constitutionalism is a principle and a system of governance which limits the power of the government.

1. Constitutionalism is based on the principles outlined in the constitution or in other legal documents but it is also a principle of its own. The idea of constitutionalism is opposed to the concept of strict and tyrannical rule and is based on the belief that the power of the government should be limited in order to prevent abuses and excesses.
2. The constitution is often a written document, while the principles of constitutionalism are generally unwritten.

## Three Main Organs of The Government

The three organs of government are the legislature, executive, and judiciary. Most governments around the world, though arranged differently, exercise these powers in one way or another.

1. **Legislature :** This refers to making laws, a power usually vested in a legislative assembly

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of some kind. In the federal type of government of the United States, Congress is the legislative branch. It is divided into two houses, each of which must approve potential legislation by a majority vote. In Great Britain, this power is held by Parliament. In India, this power is exercised by Union Parliament which comprises of President, House of People (Lok Sabha) and Council of States (Rajya Sabha).

- 2. Executive :** The executive power is broadly defined as the power to enforce or to carry out laws. In the United States, this power belongs to the President and the Executive Branch. In most countries, the actual work of enforcing laws is done by an enormous and complex bureaucracy who the President is tasked with supervising. In Great Britain and other parliamentary systems, the executive power is exercised by a number of ministers who head offices similar to those in the United States. In India, the executive power is exercised by the President in the Centre and by the Governor in the State. The executive powers can be exercised by them directly or through subordinates appointed by them.
- 3. Judiciary :** The judicial branch basically interprets and applies laws, including the Constitution, through legal decisions. In the United States, there is a judicial branch headed by a Supreme Court that mostly hears important constitutional cases on appeal. In Great Britain, the judicial power is also held by a judiciary branch which has gradually become independent from Parliament. In India, Supreme Court is the highest judicial authority under the Constitution of India.

### **Salient features of the Indian Constitution**

- 1. Written Constitution:** The Indian Constitution is mainly a written constitution. A written constitution is framed at a given time and comes into force or is adopted on a fixed date as a document. As you have already read that our constitution was framed over a period of 2 years, 11 months and 18 days, it was adopted on 26th November, 1949 and enforced on January 26, 1950.
- 2. Federal Policy:** The Constitution of India does not use the term 'federal state'. It says that India is a 'Union of States'. There is a distribution of powers between the Union/Central Government and the State Governments.
- 3. Parliamentary Democracy:** India has a parliamentary form of democracy which has been adopted from the British system. Under this system the government is elected by the people.
- 4. Fundamental Rights and Duties:** Fundamental Rights are one of the important features of the Indian Constitution under Part III. The Constitution has categorized Fundamental Rights into Six broad categories (from Article 14 to 30). Fundamental Rights are justiciable and are protected by the judiciary. In case of violation of any of these rights one can move to the court of law for their protection. Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. **Now, there are 11 fundamental duties after the 86th constitutional amendment 2006.**
- 5. Independent Judiciary:** Indian judiciary is an independent and impartial in nature. The Indian judiciary is free from any kind of interference or influence from the executive and the legislature.

6. **Universal Adult Franchise:** Indian democracy functions on the basis of 'one person one vote'. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status, etc.
7. **Single Citizenship:** In India there is a concept of single citizenship. It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chhattisgarh etc. to which he/she may belong but remains a citizen of India. Like U.S.A., India has no concept of dual citizenship wherein an individual have two citizenships one of the country and the other of the domiciled state.
8. **Emergency Provisions:** The Constitution makers also foresaw that there could be situations wherein the government could not function as in the case of normal times. To cope with such situations, the Constitution elaborates on emergency provisions. There are three types of emergencies under the Constitution of India; a) National Emergency wherein emergency is caused by war, external aggression or armed rebellion; b) State Emergency which arises out of the failure of constitutional machinery in states; and c) financial emergency.

## Forms of the government

### Parliamentary form of Government

The essential characteristics of a Parliamentary system of Government are:

- (i) The head of the state is merely a Constitutional head [Article- 74]
- (ii) The Council of Ministers (herein after COM), vested with real and effective powers, is made answerable to the legislature. [Articles- 74 and 75(3)]
- (iii) The Council of Ministers, which is the real Executive, consists of members of the legislature, belonging to the party in power, having support of the majority in the legislature. The COM is a part of the legislature and is responsible to it. [Article- 75(5)]
- (iv) The P.M, who is the head of the Council of Ministers, occupies a dominant position, having absolute discretion in appointing and dismissing the ministers and allocating the Government business among them. A Minister, in the Council of Ministers, therefore, holds his portfolio during the pleasure of the Prime Minister.
- (v) Since the COM is answerable to the legislature, its tenure is dependent on the will of the legislation. The Ministers are collectively responsible to the legislature and on the defeat of the Government on a policy matters in the legislature leads to the resignation of the whole COM.

### Presidential form of Government

The chief characteristics of a Presidential system are-

- (i) Under the Presidential System of Government, the President, the Chief Executive, is the real Executive head of the Government. He is the de jure and de-facto head of the entire administration and not a nominal head as in a Parliamentary System.
- (ii) The President enjoys full discretion in selecting the member of his cabinet. The Ministers hold office during the pleasure of the President and are responsible to the legislature.

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- (iii) Under the Presidential System, the President cannot be removed by a vote of no-confidence in Parliament.
- (iv) Under such a system, the legislature cannot dictate to the President.

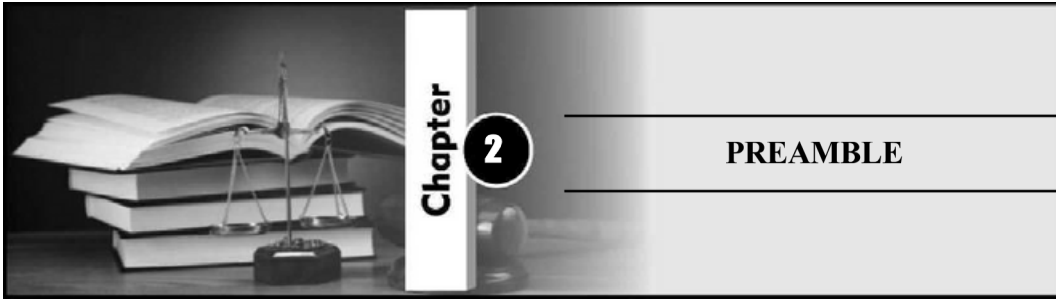
The President, under such a system, is not responsible or for initiation of legislation is concerned. It is the President who frames the policy and proposals for legislation.

### **Main sources of the indian constitution**

On November 26, 1949, the Indian Constitution came into existence. The Indian constitution was drafted by the Constituent Assembly, taking into account aspects of other countries constitutions and the Government of India Act of 1935. Some aspects of the Indian constitution are borrowed from a variety of sources. The Indian Constitution borrows a number of features from other countries because there was no hesitation in learning from other nations' experiences. The Indian Constitution has incorporated elements from other countries' that were appropriate to Indian subjects and aims

- **The Government of India Act of 1935 inspired many of the provisions of our constitution. These attributes are:**
  - Federal Scheme
  - Office of governor
  - Judiciary
  - Public Service Commissions
  - Emergency provisions
  - Administrative details
- **The following table details the other borrowed provisions from various nations:**

S.N. Countries		Borrowed Features of Indian Constitution
1.	Australia	<ul style="list-style-type: none"> <li>- Concurrent list</li> <li>- Freedom of trade, commerce and intercourse</li> <li>- Joint-sitting of the two Houses of Parliament</li> </ul>
2.	Canada	<ul style="list-style-type: none"> <li>- Federation with a strong Centre</li> <li>- Vesting of residuary powers in the Centre</li> <li>- Appointment of state governors by the Centre</li> <li>- Advisory jurisdiction of the Supreme Court</li> </ul>
3.	Ireland	<ul style="list-style-type: none"> <li>- Directive Principles of State Policy</li> <li>- Nomination of members to Rajya Sabha</li> <li>- Method of election of the president</li> </ul>
4.	Japan	<ul style="list-style-type: none"> <li>- Procedure Established by law</li> </ul>
5.	Soviet Union (USSR) (now, Russia)	<ul style="list-style-type: none"> <li>- Fundamental duties</li> <li>- Ideals of justice (social, economic and political) in the Preamble</li> </ul>
6.	UK	<ul style="list-style-type: none"> <li>- Parliamentary government</li> <li>- Rule of Law</li> <li>- Legislative procedure</li> <li>- Single Citizenship</li> <li>- Cabinet system</li> <li>- Prerogative writs</li> <li>- Parliamentary privileges</li> <li>- Bicameralism</li> </ul>
7.	US	<ul style="list-style-type: none"> <li>- Fundamental rights</li> <li>- Independence of judiciary</li> <li>- Judicial review</li> <li>- Impeachment of the president</li> <li>- Removal of Supreme Court and High Court judges</li> <li>- Post of vice-president</li> </ul>
8.	Germany (Weimar)	<ul style="list-style-type: none"> <li>- Suspension of Fundamental Rights during emergency</li> </ul>
9.	South Africa	<ul style="list-style-type: none"> <li>- Procedure for amendment in the Indian Constitution</li> <li>- Election of members of Rajya Sabha</li> </ul>
10.	France	<ul style="list-style-type: none"> <li>- Republic: Ideals of liberty, equality and fraternity in the Preamble</li> </ul>



## The Preamble: Source of Constitution

The Preamble to an Act sets out the main objectives which the legislature is intended to achieve. It indicates the source from which the Constitution comes viz the people of India. In *Re Berubari case (1960)*, the Supreme Court has said that the Preamble to the Constitution is a key to open the minds of the makers, and shows the general purpose for which they made the several provisions in the constitution.

### The preamble to the indian constitution says:-

“WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India into a [SOVEREIGN, SOCIALIST, AND 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.***”

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**NOTE:** The words ‘Socialist’ and ‘Secular’ have been added to the Preamble by the 42nd Amendment Act, 1976. Also, unity of the Nation was amended to read unity and integrity of the Nation’

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## Objectives of the Preamble

The following are the objectives which the Preamble secures to every citizen:- 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]. “Liberty equality and fraternity” which the constitution seeks to secure all the people of India are to serve the primary objective of ensuring social, economic and political justice.

Thus, Preamble of Indian Constitution not only gives nature and source, aims and objectives but also the pattern and mode of the Constitutions.

**The Preamble To Our Constitution Serves Following Purposes:-**

1. It indicates the source from which the Constitution derives into authority.
2. It also states the objects which the Constitution seeks to establish and promote.
3. It declares the great rights and freedoms which the people of Indian intended to secure to all citizens and the basic type of government and polity which was to be established.

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