

Difference Between Constitution and Constitutionalism

The concepts of constitution and constitutionalism refer to the legal framework of a country. While constitution is often defined as the “supreme law of a country,” constitutionalism is a system of governance under which the power of the government is limited by the rule of law. Constitutionalism recognizes the need of limiting concentration of power in order to protect the rights of groups and individuals. In such system, the power of the government can be limited by the constitution – and by the provisions and regulations contained in it – but also by other measures and norms. In order to understand the two concepts – as well as their similarities and differences – it is important to understand their history and evolution. The idea of constitution has changed significantly compared to the first examples seen in ancient Greece, while the concept of constitutionalism has grown around the principle that the authority of the government is derived from and limited by a set of rules and laws.

What is Constitution?

The definition of constitution is quite complex and has significantly evolved during the last two centuries. According to the Western conception, constitution is the document that contains the basic and fundamental law of the nation, setting out the organization of the government and the principles of the society. Yet, although many countries have a written constitution, we continue to see the phenomenon of “living constitution” in many parts of the world. As society change, so do laws and regulations. Furthermore, in some cases there is no single document that defines all aspects of the state, but rather several different documents and agreements that define the power of the government and provide a comprehensive – although not unitary – legal framework. Constitution has also been defined as:

- Basic norm (or law) of the state;
- System of integration and organization of norms and laws; and
- Organization of the government.

The constitution provides the foundation of the government, structuring the political organization and guaranteeing individual and collective rights and freedoms.

What is Constitutionalism?

Constitutionalism is a system of governance in which the power of the government is limited by laws, checks and balances, in order to reconcile authority with individual and collective freedoms. The principle of constitutionalism must be understood in opposition to nonconstitutionalism – a system in which the government uses its powers in an arbitrary fashion, without respecting the citizens' rights.

The idea of constitutionalism (and of constitution) is strictly linked with the progress and spread of democracies. In monarchic, totalitarian and dictatorial systems there is generally no constitution or, if it exists it is not respected. Individual and collective rights are often disregarded in dictatorial regimes, and the government cannot be held accountable as there is no legal document that defines its limits. The concept of constitutionalism has evolved during the last few centuries thanks to political changes and progress of democratic ideals.

Similarities between Constitution and Constitutionalism

Constitution and constitutionalism are overlapping concepts, although the first refer to a written body of laws and legislation and the second is a complex principle and system of governance. Some of the similarities between the two include:

1. Both refer to the limits and features of the system of governance of a country. Constitutionalism would not exist without a constitution, and a constitutional way of governing a country requires limits and boundaries to the central authority;
2. Both influence the actions of both government and population. Besides providing a framework for political and institutional structure, the constitution sets out the main rules that all citizens should respect. Furthermore, ruling in a constitutional manner means that the government applies the regulations outlined in the

constitution to limit and manage the citizens' acts – always respecting individual and collective rights;

3. Both protect and preserve individual and collective rights, preventing the central government from abusing of its powers and infringing on the citizens' basic freedoms; and
4. Both have evolved and significantly changed during the last few centuries, benefiting from the spread of democratic ideals and becoming key features of the majority of Western countries.

Difference between Constitution and Constitutionalism

The main difference between constitution and constitutionalism lies in the fact that the constitution is generally a written document, created by the government (often with the participation of the civil society), while constitutionalism is a principle and a system of governance that respects the rule of law and limits the power of the government. Most modern constitutions were written years ago, but laws and norms had already been evolving and mutating for centuries, and continue to do so. The constitution (and laws in general) is a living entity that should adapt to the changing features of the modern world and of modern societies. Failing to adapt the constitution – without losing its core principles and values – may lead to an obsolete and unadapt governance system. Other differences between the two concepts include:

1. **Constitutionalism is based on the principles outlined in the constitution** – or in other core legal documents – but it is also a principle of its own. The idea of constitutionalism is opposed to the concept of authoritarian and despotic 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**. Both constitution and constitutionalism

evolve with the promulgation of democratic ideals – although they do not always proceed at the same speed. There can be a constitutional form of governance – that respects the rights of the citizens and promotes democratic values – even though the national constitution is outdated. At the same time, an inefficient democratic government may not be able to rule in a constitutional way, despite the existence of a constitution.

Constitution vs Constitutionalism

The concepts of constitution and constitutionalism are strictly linked, but the second is much more than just the respect and enforcement of the national constitution (as the term might suggest). The creation of a constitution is the result of years of progress and evolution, but, in some cases – like in Japan – the constitution can be imposed by invading or opposing forces, and may not embody the key values and principles that characterize a society. Building on the differences outlined in the previous section, we can identify few other aspects that differentiate constitution and constitutionalism.

Comparison Chart of Constitution vs Constitutionalism

CONSTITUTION VERSUS CONSTITUTIONALISM

	Constitution	Constitutionalism
Changes/ Amendments	<p>In the past, constitutions used to change frequently in order to adapt to social and political evolutions. Recently, in particular in the western world, constitutions tend to remain unchanged for years, and making amendments can be a long, complicated and expensive task.</p>	<p>The idea of constitutionalism has significantly evolved during the years. Constitutionalism is based upon universal principles, which allow a constitutional government to exist in different contexts and historical moments.</p>
Popular engagement	<p>In most democratic countries, popular engagement is key in the creation of the constitution, and is also necessary in order to make any formal changes to the text. If the government proposes any changes to the constitution, people are generally required to provide their views by voting in a referendum.</p>	<p>Changes in the meaning of constitutionalism are very subtle and not always evident. At a practical level, citizens should be able to identify an unconstitutional system of governance – which does not respect the provisions contained in the national constitution – and demand the respect of their rights and freedoms.</p>

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Summary of Constitution vs Constitutionalism:

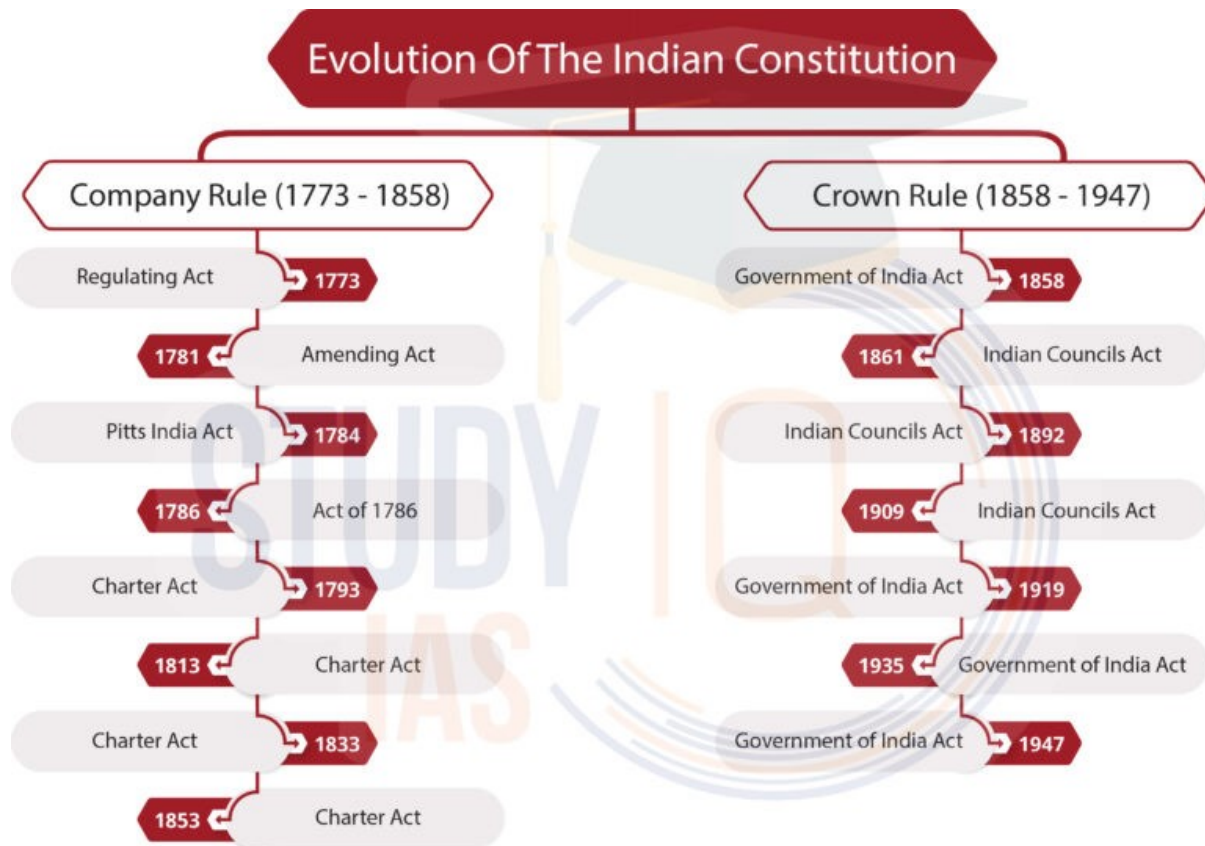
A constitution is an official document that contains provisions that determine the structure of the government and of the country's political institutions, and that sets out regulations and limits for government and citizens. Conversely, constitutionalism is a system of governance defined in opposition to unconstitutionality and authoritarianism. Constitutionalism is a principle that recognizes the need to limit the power of the central government, in order to protect basic rights and freedoms of the population.

Therefore, both concepts are linked to the idea of limiting the power of the government – and somehow creating boundaries for the acts of the citizens as well – but they are very different in nature. Constitutions, which are a key feature of today's western societies, have evolved during centuries and continue (or should continue) to adapt to the changing nature of societies and political systems. Both constitution and constitutionalism are tied to the idea of democracy and provide the legal framework for citizens to enjoy individual and collective rights. The constitution is the basic law and backbone of a country, while constitutionalism is the system of governance based on the constitution – or on other core documents – and constitutional principles. In a constitutional system, the authority of the government depends on its compliance with the limitations under the law, which is often contained in the national constitution.

History of Indian Constitution

India is a parliamentary democracy where the executive is responsible to the legislature. Many features of the Indian polity and constitution have their legacy in the British systems of administration that the colonial rulers had devised and employed in managing affairs in India.

Historical Evolution of the Indian Constitution



There are various layers in the background of the Indian Constitution:

- Regulating Act 1773
- Pitt's India Act 1784
- Charter Act of 1813
- Charter Act of 1833
- Charter Act of 1853
- Government of India Act 1858
- Indian Councils Act 1861

- India Councils Act 1892
- Morley-Minto Reforms 1909
- Montague-Chelmsford Reforms 1919
- Government of India Act 1935
- Indian Independence Act 1947

These acts were in some way instrumental for the development of the Indian Constitution.

History of Indian Constitution – Regulating Act 1773

- First time the British Parliament resorted to regulating the affairs of the East India Company.
- The Governor of Bengal was made the Governor-General of Bengal ([Warren Hastings](#)).
- An Executive Council of the Governor-General was created with 4 members.
- Centralised the administration with the Presidencies of Madras and Bombay being made subordinate to the Bengal Presidency.
- Supreme Court was established at Calcutta as the Apex Court in 1774.
- Prohibited company officials from engaging in private trade and from accepting gifts from Indians.

History of Indian Constitution – Pitt's India Act 1784

- Commercial and political functions of the company separated. The Court of Directors managed the commercial activities while the Board of Control managed political affairs.
- The company territories in India were called 'British possession in India'.
- Governor's Councils were set up in Madras and Bombay as well.

History of Indian Constitution – Charter Act 1813

- This act ended the East India Company's monopoly over trade with India except in tea and opium. Trade with India was open to all British subjects.

History of Indian Constitution – Charter Act 1833

- Governor-General of Bengal was designated the Governor-General of India ([Lord William Bentinck](#)).
- The legislative powers of the Bombay and Madras Presidencies were removed.
- This act ended the commercial activities of the company and it was transformed into an administrative body.

History of Indian Constitution – Charter Act 1853

- The legislative and executive powers of the Governor-General's Council were separated.
- A Central Legislative Council was created of 6 members out of which 4 were appointed by the provisional governments of Madras, Bombay, Agra and Bengal.
- The Indian civil service was opened as a means to recruit officers for administration through open competition.

History of Indian Constitution – Government of India Act 1858

- After the [1857 revolt](#), the rule of the company was ended and the British possessions in India came directly under the British Crown.
- The office of the Secretary of State for India was created. He was assisted by a 15-member Council of India.
- The Indian administration was under his authority and the Viceroy was his agent. The Governor-General was designated the Viceroy as well ([Lord Canning](#)).
- The Court of Directors and the Board of Control were abolished.

History of Indian Constitution – Indian Councils Act 1861

- Indians were given representation in the Viceroy's Councils. 3 Indians entered the Legislative Council.
- Provisions were made for the entry of Indians in the Viceroy's Executive council also as non-official members.
- Portfolio system was recognised.

- Decentralisation initiated with the presidencies of Madras and Bombay being restored their legislative powers.

History of Indian Constitution – Indian Councils Act 1892

- Indirect elections (nominations) were introduced.
- Legislative Councils expanded. Gave more functions to the legislative councils such as the discussion of budget and questioning the executive.

History of Indian Constitution – Indian Councils Act 1909 (Morley-Minto Reforms)

- Direct elections to the legislative councils were introduced for the first time.
- Central Legislative Council became the Imperial Legislative Council.
- The number of members of the legislative council was increased from 16 to 60.
- The concept of the separate communal electorate was accepted.
- For the first time, an Indian was made a member of the Viceroy's Executive Council. (Satyendra Prasad Sinha – Law Member).

History of Indian Constitution – Government of India Act 1919 (Montague-Chelmsford Reforms)

- Central and provincial subjects were separated.
- Diarchy was introduced in the provincial governments with executive councillors being in charge of the reserved list and the ministers in charge of the transferred list of subjects.
- The ministers were nominated from among the elected members of the legislative council and were responsible to the legislature.
- A bicameral legislature was introduced for the first time at the centre. (Legislative council and legislative assembly later to become Rajya Sabha and [Lok Sabha](#) respectively).
- It mandated 3 members of the Viceroy's executive council to be Indians.
- This act provided for the first time, the establishment of a public service commission in India.

- This act extended the right to vote and with this, about 10% of the population acquired voting rights.

History of Indian Constitution – Government of India Act 1935

- An all-India Federation was proposed which would consist of British India and the princely states. This never materialised though.
- Subjects were divided between the centre and the provinces. Centre was in charge of the Federal List, provinces in charge of the Provincial List and there was a Concurrent List which both catered to.
- Diarchy was abolished at the provincial level and introduced at the centre.
- More autonomy was accorded to the provinces and in 6 out of 11 provinces, the bicameral legislature was introduced.
- A federal court was established and the Indian Council abolished.
- Burma and Aden were severed off from India.
- This act provided for the establishment of the RBI.
- This Act continued until it was replaced by the new Indian Constitution.

History of Indian Constitution – Indian Independence Act 1947

- India was declared independent and sovereign.
- The Viceroy and the Governors were made constitutional (nominal) heads.
- Set up responsible governments at the centre and the provinces.
- Assigned both legislative and executive powers to the Constituent Assembly of India.

Salient Features of the Constitution

INTRODUCTION

- The Indian Constitution is unique in its contents and spirit.
- Though borrowed from almost every constitution of the world, the constitution of India has several salient features that distinguish it from the constitutions of other countries.
- 42nd Amendment Act (1976) is known as 'Mini-Constitution' due to the important and large number of changes made by it in various parts of the Constitution.

SALIENT FEATURES OF THE CONSTITUTION

1. Longest Written Constitution

- Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution.
- The Constitution of India is the longest of all the written constitutions of the world.
- It is a very comprehensive, elaborate and detailed document. Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules.
- Presently (2016), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules.
- Four factors have contributed to the elephantine size of our Constitution.
- They are:
 - Geographical factors, that is, the vastness of the country and its diversity.
 - Historical factors, e.g., the influence of the Government of India Act of 1935, which was bulky.
 - Single Constitution for both the Centre and the states
 - Dominance of legal luminaries in the Constituent Assembly.

2. Drawn From Various Sources

- The Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act of 1935.
- Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the World'.

- **The structural part of the Constitution is**, to a large extent, derived from the Government of India Act of 1935.
- **The philosophical part of the Constitution**(the Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively.
- **The political part of the Constitution** (the principle of Cabinet Government and the relations between the executive and the legislature) have been largely drawn from the British Constitution.
- **The other provisions of the Constitution** have been drawn from the constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan, and so on.
- The most profound influence and material source of the Constitution is the Government of India Act, 1935. The Federal Scheme, Judiciary, Governors, emergency powers, the Public Service Commissions and most of the administrative details are drawn from this Act.

3. Blend of Rigidity and Flexibility

- Constitutions are also classified into **rigid and flexible**.
- A **rigid Constitution** is one that requires a special procedure for its amendment, as for example, the American Constitution.
- A **flexible constitution**, on the other hand, is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution.
- The Constitution of India is neither rigid nor flexible but a synthesis of both.
- **Article 368 provides for two types of amendments:**
- Some provisions can be amended by a special majority of the Parliament, i.e., a two-third majority of the members of each House present and voting, and a majority (that is, more than 50 per cent), of the total membership of each House.
- Some other provisions can be amended by a special majority of the Parliament and with the ratification by half of the total states.
- At the same time, some provisions of the Constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably, these amendments do not come under Article 368.

4. Federal System with Unitary Bias

- The Constitution of India establishes a federal system of government.

- It contains all the usual features of a federation, viz., **two governments, and division of powers, written Constitution, supremacy of Constitution, rigidity of Constitution, independent judiciary and bicameralism.**
- The Indian Constitution also contains a large number of unitary or non-federal features, viz., a strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of state governor by the Centre, all-India services, emergency provisions, and so on.
- No state has the right to secede from the federation.
- Also called 'quasi-federal'

5. Parliamentary Form of Government

- The Constitution of India has opted for the British parliamentary System of Government rather than American Presidential System of Government.
- The parliamentary system is **based on the principle of cooperation and coordination between the legislative and executive organs**
- The presidential system is based on the doctrine of **separation of powers between the two organs.**
- The parliamentary system is also known as the 'Westminster' model of government, responsible government and cabinet government.
- The Constitution establishes the parliamentary system not only at the Centre but also in the states.
- The features of parliamentary government in India are:
 - Presence of nominal and real executives;
 - Majority party rule,
 - Collective responsibility of the executive to the legislature,
 - Membership of the ministers in the legislature,
 - Leadership of the prime minister or the chief minister,
 - Dissolution of the lower House (Lok Sabha or Assembly).
- Indian Parliamentary System is largely based on the British pattern, there are some fundamental differences between the two.
- the Indian Parliament is not a sovereign body like the British Parliament.

- the Indian State has an elected head (republic) while the British State has hereditary head (monarchy).
- In a parliamentary system whether in India or Britain, the role of the Prime Minister has become so significant and crucial that the political scientists like to call it a 'Prime Ministerial Government'.

6. Synthesis of Parliamentary Sovereignty and Judicial

Supremacy

- The doctrine of sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court.
- the American Constitution provides for 'due process of law' against that of 'procedure established by law' contained in the Indian Constitution (Article 21).
- The framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of judicial supremacy.
- **The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review.**
- The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

7. Integrated and Independent Judiciary

- The Indian Constitution establishes a judicial system that is **integrated as well as independent.**
- The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level.
- Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts.
- This single system of courts enforces both the central laws as well as the state laws In USA, where the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary.
- The Supreme Court is a federal court, the highest court of appeal.
- **The guarantor of the fundamental rights of the citizens and the guardian of the Constitution.**

- Hence, the Constitution has made various provisions to ensure its independence—security of tenure of the judges, fixed service conditions for the judges.
- All the expenses of the Supreme Court charged on the Consolidated Fund of India.

8. Fundamental Rights

- Part III of the Indian Constitution guarantees six fundamental rights to all the citizens:
 - (a) Right to Equality (Articles 14–18),
 - (b) Right to Freedom (Articles 19–22),
 - (c) Right against Exploitation (Articles 23–24),
 - (d) Right to Freedom of Religion (Articles 25–28),
 - (e) Cultural and Educational Rights (Articles 29–30), and
 - (f) Right to Constitutional Remedies (Article 32).
 - The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature.
 - They are justiciable in nature, that is, they are enforceable by the courts for their violation.
 - The aggrieved person can directly go to the Supreme Court which can issue the writs of *habeas corpus*, *mandamus*, prohibition, *certiorari* and *quo warranto* for the restoration of his rights.
 - However, the Fundamental Rights are not absolute and subject to reasonable restrictions.
 - Further, they are not sacrosanct and can be curtailed or repealed by the Parliament through a constitutional amendment act.
 - They can also be suspended during the operation of a National Emergency except
 - the rights guaranteed by Articles 20 and 21.

9. Directive Principles of State Policy

- According to Dr B R Ambedkar, the Directive Principles of State Policy is a ‘novel feature’ of the Indian Constitution.
- They are enumerated in Part IV of the Constitution.

- They can be classified into three broad categories— socialistic, Gandhian and liberal–intellectual.
- The directive principles are meant for promoting the ideal of social and economic democracy.
- They seek to establish a ‘welfare state’ in India.
- The directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation.
- In the *Minerva Mills* case (1980), the Supreme Court held that ‘the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles’.

10. Fundamental Duties

- The original constitution did not provide for the fundamental duties of the citizens. These were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the ***Swaran Singh Committee***.
- The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.
- The Part IV-A of the Constitution (which consists of only one Article—51- A) specifies the eleven Fundamental Duties viz., to respect the Constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to promote the spirit of common brotherhood amongst all the people; to preserve the rich heritage of our composite culture and so on.

11. A Secular State

- The Constitution of India stands for a secular state.
- **It does not uphold any particular religion as the official religion of the Indian State.** The following provisions of the Constitution reveal the secular character of the Indian State:
- The term ‘**secular**’ was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.
- The Preamble secures to all citizens of India liberty of belief, faith and worship.
- The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).
- The State shall not discriminate against any citizen on the ground of religion (Article 15).
- Equality of opportunity for all citizens in matters of public employment (Article 16).

- All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).
- Every religious denomination or any of its section shall have the right to manage its religious affairs (Article 26).
- No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).
- No religious instruction shall be provided in any educational institution maintained by the State (Article 28).
- Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).
- All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).
- The State shall endeavour to secure for all the citizens a Uniform Civil Code (Article 44).
- The Western concept of secularism connotes a complete separation between the religion (the church) and the state (the politics).
- This negative concept of secularism is inapplicable in the Indian situation where the society is multireligious. Hence, the Indian Constitution embodies the positive
- concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally.
- The Constitution has also abolished the old system of communal representation, that is, reservation of seats in the legislatures on the basis of religion.
- However, it provides for the temporary reservation of seats for the scheduled castes and scheduled tribes to ensure adequate representation to them.

12. Universal Adult Franchise

- The Indian Constitution adopts universal adult franchise as a basis of elections to the Lok Sabha and the state legislative assemblies.
- Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth, and so on.
- The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988.
- Universal adult franchise makes democracy broad-based, enhances the self-respect and prestige of the common people, upholds the principle of equality, enables minorities to protect their interests and opens up new hopes and vistas for weaker sections.

13. Single Citizenship

- Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship.
- In countries like USA, on the other hand, each person is not only a citizen of USA but also a citizen of the particular state to which he belongs.
- Thus, he owes allegiance to both and enjoys dual sets of rights—one conferred by the National government and another by the state government.
- In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them excepting in few cases like tribal areas, Jammu and Kashmir, and so on.

14. Independent Bodies

- The Indian Constitution not only provides for the legislative, executive and judicial organs of the government (Central and state) but also establishes certain independent bodies.
- These are:
 - Election Commission to ensure free and fair elections to the Parliament, the state legislatures, the office of President of India and the office of Vice-president of India.
 - Comptroller and Auditor-General of India to audit the accounts of the Central and state governments. He acts as the guardian of public purse and comments on the legality and propriety of government expenditure.
 - Union Public Service Commission to conduct examinations for recruitment to all-India services and higher Central services and to advise the President on disciplinary matters.
 - State Public Service Commission in every state to conduct examinations for recruitment to state services and to advise the governor on disciplinary matters.
 - The Constitution ensures the independence of these bodies through various provisions like security of tenure, fixed service conditions, expenses being charged on the Consolidated Fund of India, and so on.

15. Emergency Provisions

- The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively.

- The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- The Constitution envisages three types of emergencies, namely:
- National emergency on the ground of war or external aggression or armed rebellion (Article 352);
- State emergency (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Centre (Article 365); and
- Financial emergency on the ground of threat to the financial stability or credit of India (Article 360).
- During an emergency, the Central Government becomes all-powerful and the states go into the total control of the centre.
- It converts the federal structure into a unitary one without a formal amendment of the Constitution.

16. Three-tier Government

- Originally, the Indian Constitution, like any other federal constitution, provided for a dual polity and contained provisions with regard to the organisation and powers of the Centre and the states.
- Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government (i.e., local) which is not found in any other Constitution of the world.
- The 73rd Amendment Act of 1992 gave constitutional recognition to the panchayats (rural local governments) by adding a new Part IX and a new Schedule 11 to the Constitution.
- Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local governments) by adding a new Part IX-A and a new Schedule 12 to the Constitution.

17. Co-operative Societies

- The 97th Constitutional Amendment Act of 2011 gave a constitutional status and protection to co-operative societies.
- In this context, it made the following three changes in the Constitution:
- It made the right to form co-operative societies a fundamental right (Article 19).

- It included a new Directive Principle of State Policy on promotion of cooperative societies (Article 43-B).
- It added a new Part IX-B in the Constitution which is entitled as “The Cooperative Societies” (Articles 243-ZH to 243-ZT).

CRITICISM OF THE CONSTITUTION

Criticized on the following grounds:

1. A Borrowed Constitution

- The critics opined that the Indian Constitution contains nothing new and original.
- They described it as a ‘borrowed constitution’ or a ‘**bag of borrowings**’ or a ‘**hotch-potch constitution**’ or a ‘**patchwork**’ of several documents of the world constitutions.
- However, this criticism is unfair and illogical.
- This is because, the framers of the constitution made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults.
- Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, said : “One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a constitution should be has long been settled. Similarly, what are the fundamentals of a constitution are recognized all over the world.

2. A Carbon Copy of the 1935 Act

- The critics said that the framers of the constitution have included a large number of the provisions of the Government of India Act of 1935 into the Constitution of India. Hence, they called the constitution as a “**Carbon Copy of the 1935 Act**” or an “amended version of the 1935 Act”.
- For example, Sir Ivor Jennings, a British Constitutionalist, said that “the constitution derives directly from the Government of India Act of 1935 from which, in fact, many of its provisions are copied almost textually”.
- P.R. Deshmukh, a member of the Constituent Assembly, commented that “the constitution is essentially the Government of India Act of 1935 with only adult franchise added”.

- The same Dr. B.R. Ambedkar answered the above criticism in the Constituent Assembly in the following way : “As to the accusation that the Draft Constitution has reproduced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration”.

3. Un-Indian or Anti-Indian

- According to the critics, the Indian Constitution is ‘un-Indian’ or ‘anti- Indian’ **because it does not reflect the political traditions and the spirit of India.**
- They said that the foreign nature of the Constitution makes it unsuitable to the Indian situation or unworkable in India.
- In this context, K. Hanumanthaiya, a member of the Constituent Assembly, commented : “We wanted the music of Veena or Sitar, but here we have the music of an English band. That was because our constitution-makers were educated that way”.
- Lokanath Misra, another member of the Constituent Assembly, criticized the constitution as a “slavish imitation of the west, much more – a slavish surrender to the west”.
- Lakshminarayan Sahu, also a member of the Constituent Assembly, observed : “The ideals on which this draft constitution is framed have no manifest relation to the fundamental spirit of India.

4. An Un-Gandhian Constitution

- According to the critics, the Indian Constitution is Un-Gandhian because **it does not contain the philosophy and ideals of Mahatma Gandhi.**
- They opined that the Constitution should have been raised and built upon village panchayats and district panchayats.
- Member of the Constituent Assembly, K. Hanumanthaiya, said: “That is exactly the kind of Constitution Mahatma Gandhi did not want and did not envisage”.
- T. Prakasam, another member of the Constituent Assembly, attributed this lapse to Ambedkar’s non-participation in the Gandhian movement and the antagonism towards Gandhian ideas.

5. Elephantine Size

- The critics stated that **the Indian Constitution is too bulky and too detailed and contains some unnecessary elements.**

- Sir Ivor Jennings, a British Constitutionalist, observed that the provisions borrowed were not always well-selected and that the constitution, generally speaking, was too long and complicated.
- H.V. Kamath, a member of the Constituent Assembly, Commented : “The emblem and the crest that we have selected for our assembly is an elephant

6. Paradise of the Lawyers

- According to the critics, **the Indian Constitution is too legalistic and very complicated.**
- They opined that the legal language and phraseology adopted in the constitution makes it a complex document.
- Sir Ivor Jennings called it a “lawyer’s paradise”.
- H.K. Maheswari, a member of the Constituent Assembly, observed : “The draft tends to make people more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence.



THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens :

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and of opportunity ;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty - sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Keywords in Preamble:

1. Sovereign
2. Socialist
3. Secular
4. Democratic
5. Republic
6. Justice
7. Liberty
8. Equality
9. Fraternity

1. Sovereign:-

This word implies that India is neither dependence nor a dominion of any other nation but an independent state. There is no authority above it, and it is free to conduct its own affairs (both internal and external). Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

2. Socialist:-

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy.

Notably, the Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism' (also known as 'state socialism') which involves the nationalisation of all means of production and distribution and the abolition of private property. Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side'. As the Supreme Court says, 'Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism'.

3. Secular:-

The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although words 'secular state' is not mentioned in the Constitution, there can be no doubt that Constitution-makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the [fundamental rights](#) to freedom of religion) have been included in the constitution.

The Indian Constitution embodies the positive concept of secularism i.e., all religions in our country (irrespective of their strength) have the same status and support from the state.

4. Democratic:-

A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people.

The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions. Universal adult franchise, periodic elections, rule of law, independence of [judiciary](#), and absence of discrimination on certain grounds are the manifestations of the democratic character of the Indian polity.

The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

5. Republic:-

A democratic polity can be classified into two categories—monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position, that is, he comes into office through succession, eg, Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, eg, USA.

Therefore, the term 'republic' in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.

6. Justice:-

The term 'justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles. Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any

particular section of the society, and improvement in the conditions of [backward classes](#) (SCs, STs and OBCs) and women.

7. Liberty:-

The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation.

Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself. In brief, the liberty conceived by the Preamble or fundamental rights is not absolute but qualified.

8. Equality:-

The term 'equality' means the absence of special privileges to any section of the society, and the pro-vision of adequate opportunities for all individuals without any discrimination.

The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and economic.

9. Fraternity:-

Fraternity means a sense of brotherhood. The constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Articles 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities.

The Preamble declares that fraternity has to assure two things the dignity of the individual and the unity and integrity of the nation. The word 'integrity' has been added to the preamble by the 42nd Constitutional Amendment (1976).

Significance of the preamble:

The preamble embodies the basic philosophy and fundamental values: political, moral and religious- on which the constitution is based. It contains the grand and noble vision of

the [constituent assembly](#), and reflects the dreams and aspirations of the [founding fathers of the constitution](#).

Fundamental Rights - Articles 12-35 (Part III of Indian Constitution):

Articles 12-35 of Indian Constitution deal with Fundamental Rights. These human rights are conferred upon the citizens of India for the Constitution tells that these rights are inviolable. Right to Life, Right to Dignity, Right to Education etc. all come under one of the six main fundamental rights.

1. **Right to Equality**
2. **Right to Freedom**
3. **Right against Exploitation**
4. **Right to Freedom of Religion**
5. **Cultural and Educational Rights**
6. **Right to Constitutional Remedies**

What are the Fundamental Rights?

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

List of Fundamental Rights

There are six fundamental rights of Indian Constitution along with the constitutional articles related to them are mentioned below:

Classification of Fundamental Rights	Article	Deals With
Right to Equality	14	Equality Before Law
	15	Prohibition of Discrimination
	16	Equality of Opportunity in Public Employment
	17	Abolition of Untouchability
	18	Abolition of Titles
Right to Freedom	19	<p>Protection of 6 Rights</p> <p>Right to freedom of speech and expression.</p> <p>Right to assemble peaceably and without arms.</p> <p>Right to form associations or unions or co-operative societies.</p> <p>Right to move freely throughout the territory of India.</p> <p>Right to reside and settle in any part of the territory of India.</p> <p>Right to practice any profession or to carry on any occupation, trade or business.</p>
	20	Protection in Respect of Conviction for Offences
	21	Protection of Life and Personal Liberty
	21-A	Right to Education
	22	Protection Against Arrest and Detention

Right Against Exploitation	23	Prohibition of Human Trafficking and Forced Labour
	24	Prohibition of Child Labour
Right to Freedom of Religion	25	Freedom of Conscience, Profession, Practice and Propagation
	26	Freedom to Manage Religious Affairs
	27	Freedom from Taxation for Promotion of a Religion
	28	Freedom from Attending Religious Instruction
Educational and Cultural Rights	29	Protection of Interests of Minorities
	30	Right of Minorities to Establish and Administer Educational Institutions
Right to Constitutional Remedies	32	<p>Right to remedies for the enforcement of the fundamental rights using five writs:</p> <p>Habeas Corpus - to direct the release of a person detained unlawfully.</p> <p>Mandamus - to direct a public authority to do its duty.</p> <p>Quo Warranto - to direct a person to vacate an office assumed wrongfully.</p> <p>Prohibition - to prohibit a lower court from proceeding on a case.</p> <p>Certiorari - the power of the higher court to remove a proceeding from a lower court and bring it before itself.</p>
	33	Empowers the Parliament to restrict or abrogate the

		fundamental rights of the ‘Members of the Armed Forces, paramilitary forces, police forces, intelligence agencies and analogous forces.
	34	Provides for the restrictions on fundamental rights while martial law (military rule) is in force.
	35	Empowers the Parliament to make laws on Fundamental Rights

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

Why Right to Property is not a Fundamental Right?

There was one more fundamental right in the Constitution, i.e., the right to property.

However, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment.

This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people.