

Indian Constitution**1. Making of Indian Constitution**

The Constitution of India was framed by a Constituent Assembly setup under the Cabinet Mission Plan, 1946. The Assembly consisted of 389 members representing Provinces (292), States (93), the Chief Commissioner's provinces (3) and Baluchistan (1). The Assembly held its first meeting on December 9, 1946.

Dr. Sachchidananda Sinha, the oldest member, was elected as the temporary President of the Assembly. While the work was in progress, Dr. Sahchidananda Sinha died. Dr. Rajendra Prasad was elected as the President of the Assembly. Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the VicePresidents of the Assembly. The Assembly met for 11 sessions along with 166 days of meetings. During the discussion, 2473 amendments were presented. Some of them were accepted. The Assembly worked through various committees and the draft of the Constitution was prepared by the Drafting Committee under the chairmanship of Dr. B.R. Ambedkar. He is recognised as the 'Father of the Constitution of India'.

After the draft had been discussed by the people, the press, provincial assemblies and others, the Constitution was finally adopted on November 26, 1949, contained a Preamble, 22 parts, 395 Articles and 8 Schedules. The drafted Constitution came into force on 26th January, 1950. This day is known as the Republic Day. It is being observed every year.

Salient features of Indian Constitution

1. It is the lengthiest of all the written constitutions of the world.
2. It has borrowed most of its provisions from the constitutions of various countries.
3. It is partly rigid and partly flexible.
4. It establishes a federal system of government.
5. It makes India as a secular state.
6. It provides an independent judiciary.
7. It introduces Universal Adult Franchise and accords the right to vote to all citizens above 18 years of age without any discrimination.

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2. Sources of Indian Constitution

The Primary Sources of the Indian Constitution are as follows:

The framers of the Constitution adopted the features of the Indian Constitution from several sources. The primary sources that inspired the framers of the Indian Constitution are:

The Government of India Act, 1935:

Federal provisions, office of Governor, judiciary, public service commissions, emergency provisions, and administrative details were adopted from the Government of India Act, 1935.

Country	Constitution
Britain	Parliamentary government, single citizenship, rule of law, cabinet system, legislative procedure, prerogative writs were adopted from the Britain.
US Constitution	Fundamental Rights, Judicial Review, Independence of Judiciary, Impeachment of the President, removal of Supreme Court Judges, High Court Judges and Vice-President were adopted from the US Constitution.
Irish Constitution	The Directive Principles of State Policy, were adopted from the Irish Constitution.
Canadian Constitution	Federation with a strong centre, residuary powers with the centre, concurrent list, the appointment of state governors by the centre and advisory jurisdiction of the Supreme Court were adopted from the Canadian constitution.
Australian Constitution	Freedom of trade, commerce, and the joint sitting of the two Houses of Parliament were inspired by the Australian Constitution.
Weimar Constitution (Germany)	The Weimar constitution influenced the constitutional provision for the suspension of Fundamental Rights during Emergency.
Soviet Constitution	Fundamental duties, the ideal of justice (social, economic and political) in the Preamble, were on the model of the constitution of the USSR. (Fundamental duties were asserted through 42nd amendment in 1976)

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French Constitution	Republic and the ideals of liberty, equality, and fraternity in the Preamble, were adopted from the French constitution.
South African Constitution	Procedure for amendment to the Constitution, and election of the members of Rajya Sabha, were on South African model. The final and amended draft was adopted on 20th November 1949.

3. Salient Features of Indian Constitution

Longest Written Constitution: The Indian Constitution is considered to be the longest written constitution in the world. It contains different provisions for states and centre and their interrelationship. The framers of the Constitution have borrowed provisions from several sources and several other constitutions of the world. The Indian Constitution contains the detailed list of individual rights as fundamental rights, directive principles of state policy and details of administrative procedures.

A unique blend of rigidity and flexibility: Indian Constitution may be called rigid as well as flexible based on its amending procedure.

Sovereign, Socialist, Secular, Democratic and Republic: Its people govern India through their representatives elected by the universal adult franchise. India as a sovereign country means it manages its internal and external affairs freely without the interference of any external factors. The term socialist was added to the Indian Constitution through the 42nd Amendment in 1976. Socialism in Indian context means achievement of socialist goals through democratic, evolutionary and non-violent means. In India, we follow the mixed model of the socialist and capitalist economy. Secularism in Indian context means that it recognizes all religions equally without having any state religion. Republic in Indian context means the head of the state in India is elected and not the monarch.

Parliamentary System of Government: Parliament controls the functioning of the Council of Ministers, and hence it is called the Parliamentary system. In a parliamentary system of government, (i.e.) the executive is responsible to the legislature and remains in power only when it enjoys the confidence of the majority legislators. The President of India, remaining in office for a five-year duration, is the nominal, titular or constitutional head, and the executive head. However, the Prime Minister in India is the real executive and head of the Council of Ministers who are collectively responsible to the Lok Sabha.

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Single Citizenship: Indian Constitution has the provision for single citizenship provided by the union and recognized by all the states across India.

Universal Adult Franchise: The Constitution of India establishes political equality in India through the method of the universal adult franchise which operates with the principle of 'one person one vote.' All Indians who are eighteen years of age or above is entitled to vote in the elections. There is no discrimination in voting rights for the citizens of India based on caste, religion, gender, race or status.

Independent and Integrated Judicial System: In India, the judicial system is an autonomous organ kept free from the influence and intervention of the executive and the legislature in exercising its functions. The integrated Indian judicial system has the Supreme Court at the apex, the high courts and lower courts are subordinate to it.

Fundamental Rights: Fundamental Rights are significant provisions of the Indian Constitution and are inviolable and normal times. Fundamental Rights in India can be suspended during emergencies; and can be amended by extra ordinary means. The provisions of Fundamental Rights are enforceable in the court of law when it is violated.

“Right to Education -The Indian Constitution (86th Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education to all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full-time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.”

Directive Principles of State Policy: Fourth part of the Indian Constitution titled the Directive Principles of State Policies provides the guidelines to be followed by the states regarding governance and are not enforceable in the court of law.

Fundamental Duties: The Fundamental Duties were added to the Indian Constitution through the 42nd Amendment. Fundamental duties provided in part IVA Article 51A are moral conscience which ought to be followed by the Indian Citizens.

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Federal or Unitary: India is an indestructible Union with destructible states which means it acquires a unitary character during the time of emergency. The Union is not strictly a federal polity but a quasi-federal polity with some vital elements of unitariness. Though federal in form, the Indian Constitution, unlike other federal Constitutions, is both unitary as well as federal according to the requirements of the times and the circumstances.

Balancing Parliamentary Supremacy with Judicial Review: The Constitution recognizes the need to provide for the review of the judgment or the order of the Supreme Court by itself. Subject to the provisions of any law made by Parliament or any rules made by the Supreme Court under Article 145, the Supreme Court has the power to review any judgment pronounced or made by it. The independent judiciary in India with the power of judicial review is a prominent feature of our constitution. The harmonization which our Constitution has effected between Parliamentary Sovereignty and a written Constitution with a provision for Judicial Review is a remarkable achievement of the framers of our Constitution.

Indian Citizenship

Citizenship identifies those who are the lawful members of a country. The Citizenship Act, 1955 regulates the determination and acquisition of citizenship after the adoption of the Indian Constitution. The Indian Constitution provides for citizenship by birth, descent, registration, naturalization and by incorporation of territory. The Constitution also provides for renunciation and termination of citizenship under certain circumstances. The Constitution contains provisions regarding registration of Overseas Citizens of India and their rights.

The Citizenship (Amendment) Bill, 2015 was introduced in Lok Sabha by the Minister of State, Ministry of Home Affairs, on February 27, 2015 that amends the Citizenship Act, 1955.

The Act allows a person to apply for citizenship by registration or naturalization if they fulfill specific qualifications. A person may apply for a certificate of naturalization if they have resided in India or have served the Government in India for twelve months immediately preceding the date of application. The Bill allows the Central Government to relax the requirement of twelve months stay or service if extraordinary circumstances exist.

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Local Bodies

Local bodies were created under the 73rd and 74th Constitutional Amendment Act.

4. Preamble

The term 'preamble' refers to the introduction or preface to the Constitution. It consists of the ideals, objectives and basic principles of the Constitution. It has great value and has been described as the 'key to the Constitution'.

The Preamble to the Indian Constitution is based on the 'Objective Resolution', drafted by Jawaharlal Nehru, which was adopted by the Constituent Assembly on January 22, 1947. It has been amended once by the 42nd Constitutional Amendment Act of 1976, which added three new words - socialist, secular and integrity. The Preamble begins with the phrase 'We, the People of India'. Thus, we can say that the people of India are the source of our Constitution. The Preamble of our Constitution states that India is a Sovereign Socialist Secular Democratic Republic. Its aim is to secure to all Indian citizens Social, economic and political justice.

5. Citizenship

The word 'Citizen' is derived from the Latin term 'Civis'. It means resident of a City State. The Constitution of India provides for a single and uniform citizenship for the whole of India. Articles 5 to 11 under part II of the Constitution deals with the citizenship.

Citizenship Act (1955)

The Citizenship Act of 1955 provides for acquisition and loss of citizenship after the commencement of the Constitution. This Act has been amended so far eight times.

Acquisition of Citizenship

According to the Citizenship Act, 1955, the citizenship could be acquired through any of the following methods.

1. **By Birth:** All persons born in India on or after January 26, 1950 are treated as citizens by birth.
2. **By Descent:** A person born outside India on or after January 26, 1950 shall be a citizen of India by descent, if his father is a citizen of India at the time of his birth.
3. **By Registration:** A person can acquire citizenship of India by registration with appropriate authority.

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4. By Naturalisation: A foreigners can acquire Indian citizenship, on application for naturalization to the Government of India.
5. By Incorporation of Territory: In the event of a certain territory being added to the territory of India, the Government of India shall specify the persons of that territory who shall be citizen of India.

Loss of Citizenship

The Citizenship Act of 1955 prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, renunciation, termination and deprivation.

1. It can be voluntarily renounced by a citizen.
2. It can be terminated if a person acquires the citizenship of some other country.
3. The central government can deprive a naturalized citizen, if it satisfied that the citizenship was acquired by fraud, false representation or concealment of material facts or indulges in trade with enemy countries or if the person has been sentenced to imprisonment for a period of 2 years.

6. Fundamental Rights

The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA. Originally, the Constitution provided for seven Fundamental Rights. At present, there are only six Fundamental Rights. Part III of the Constitution is rightly described as the Magna Carta of India. While Fundamental Rights are available to all persons, certain Fundamental Rights are available only to Indian Citizens.

I. RIGHT TO EQUALITY

- Art. 14 - Equality before law.
- Art. 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- Art. 16 - Equality of opportunity in matters of public employment.
- Art. 17 - Abolition of Untouchability.
- Art. 18 - Abolition of titles except military and academic

II. RIGHT TO FREEDOM

- Art. 19 - Freedom of speech and expression, assembly, association, movement, residence and profession.

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- Art. 20 - Protection in respect of conviction for offences.
- Art. 21 - Protection of life and personal liberty.
- Art. 21A - Right to elementary education.
- Art. 22 - Protection against arrest and detention in certain cases.

III. RIGHT AGAINST EXPLOITATION

- Art. 23 - Prohibition of traffic in human beings and forced labour.
- Art. 24 - Prohibition of employment of children in factories, etc.

IV. RIGHT TO RELIGION

- Art. 25 - Freedom of conscience and free profession, practice and propagation of religion.
- Art. 26 - Freedom to manage religious affairs.
- Art. 27 - Freedom from payment of taxes for promotion of any religion.
- Art. 28 - Freedom from attending religious instruction or worship in certain educational institutions.

V. CULTURAL & EDUCATIONAL RIGHTS

- Art. 29 - Protection of language, script and culture of minorities.
- Art. 30 - Right of minorities to establish and administer educational institutions.

VI. RIGHT TO CONSTITUTIONAL REMEDIES

- Art. 32 - It allows individuals to seek redressal for the violation of their fundamental rights.

Suspension of Fundamental Rights

When the President makes a Proclamation of Emergency under Article 352, the freedoms guaranteed under Article 19 are automatically suspended. The President can suspend other fundamental rights through specific orders. These orders must be approved by the Parliament.

7. Directive Principles of State Policy

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51. The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal-intellectual. These principles are not enforceable by the courts.

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But they are fundamental for the governance of the country. They aim at promoting the Social Welfare of the people. Dr. B.R. Ambedkar described these principles as ‘novel features’ of the Indian Constitution.

Amendment Process and Procedure

The Constitution of India has a unique provision to make the Constitution relevant to changing conditions and needs but without changing the basic structure. Article 368 deals with the amendment of the Constitution. As per this article, the Parliament has the supreme power to initiate the amendment process. The procedures for amendment of the constitution are as follows:

1. Parliament may amend the constitution through by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
2. An amendment of this Constitution may be initiated through the introduction of a Bill in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill.
3. The bill must be passed in each house by a special majority, that is, majority by more than 50 percent of the total membership of the house and a majority of two-thirds of the members of the house present and voting. Each house must pass the bill separately. In case of a disagreement between the two houses, on issues concerning amendment there is no provision for holding a joint-sitting of the two houses. If the bill seeks to amend the federal provisions of the constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members present and voting in such legislatures.
4. After duly passed by both the houses of parliament and ratified by the state legislatures wherever necessary, the bill is forwarded to the President for assent. The President must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament. After President’s assent, the bill becomes an Act (i.e., A Constitutional Amendment Act) and the constitution stands amended in accordance with the terms of the Act.

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Types of Amendment

The constitution can be amended in three ways:

1. Simple majority of the parliament,
2. Special majority of the parliament, and
3. Special majority of the parliament and the ratification of half of the state legislatures.

1. Simple Majority of Parliament:

According to Article 368 a number of provisions in the constitution can be amended by a simple majority of the two houses of parliament. These provisions include

- Admission or establishment of new states, formation of new States and alteration of areas, boundaries, or names of existing states.
- Abolition or creation of legislative councils in states.
- Second schedule - emoluments, allowances, privileges and so on of the President, the Governors, the Speakers, judges, etc.
- Quorum in parliament.
- Salaries and allowances of the members of parliament.
- Rules of procedure in parliament.
- Privileges of the parliament, its members and its members and its Committees.
- Use of English language in parliament.
- Number of judges in the Supreme Court.
- Conformant more jurisdiction on the Supreme Court.
- Use of official languages.
- Citizenship – acquisition and termination.
- Elections to parliament and state legislatures.
- Delimitation of constituencies.
- Union territories.
- Fifth schedule – administration of schedule areas and scheduled tribes
- Sixth schedule – administration of tribal areas.

2. By Special Majority of Parliament

The majority of the provisions in the constitution need to be amended by a special majority of the parliament, that is, a majority (i.e., more than 50 per cent) of the total membership of each house and a majority of two-thirds of the members of each

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house present and voting. The expression total membership of the house is irrespective of fact whether there are vacancies or absentees. The special majority is required only for voting at the third reading stage of the bill. The constitution's clauses which can be amended in this way include:

- (i) Fundamental rights
- (ii) Directive principles of state policy: and
- (iii) All other provisions which are not covered by the first and third categories.

3. Amendments by Special Majority of Parliament and Consent of States

The basic structures of the constitution which are related to the federal structure of the polity can be amended by a special majority of the parliament and also with the consent of half of the state legislatures by a simple majority. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- Election of the President and its manner.
- Extent of the executive power of the union and the states.
- Supreme Court and high courts.
- Distribution of legislative powers between the union and the states.
- Any of the list in the seventh schedule.
- Representation of states in parliament.
- Power of parliament to amend the constitution and its procedure (Article 368).

8. Differences between Fundamental Rights and Directive Principles of State Policy

Fundamental Rights	Directive Principles of State Policy
It was derived from the Constitution of the USA.	It was drawn on the model of the Constitution of Ireland.
Even the Government cannot take away or abridge these rights.	These are mere instructions to the Government.
These are enforceable by a court of law.	These are not enforceable in any court.
These have legal sanctions.	These have moral and political sanctions.

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These rights strengthen political democracy in the country.	The implementation of these principles ensures social and economic democracy.
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9. Fundamental Duties

The Fundamental Duties in the Indian Constitution are inspired by the Constitution of former USSR. In 1976, the Congress party set up the Sardar Swaran Singh Committee to make recommendations on fundamental duties. The 42nd Amendment Act of 1976 added some responsibilities of citizens to our Constitution called the Fundamental Duties. This amendment added a new part, namely, Part IVA to the Constitution. This new part consists of only one Article that is Article 51A which for the first time specified a code of ten fundamental duties of the citizens.

List of Fundamental Duties

- (a) To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- (b) To cherish and follow the noble ideals which inspired the national struggle for freedom.
- (c) To uphold and protect the sovereignty, unity and integrity of India.
- (d) To defend the country and render national service when called upon to do so.
- (e) To promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
- (f) To value and preserve the rich heritage of our composite culture.
- (g) To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.
- (h) To develop scientific temper, humanism and the spirit of inquiry and reform.
- (i) To safeguard public property and to abjure violence.
- (j) To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.
- (k) To provide opportunities for education to his child or ward between the age of six and fourteen years. (The 86th Constitutional Amendment Act, 2002)

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has also introduced the 11th Fundamental Duty under 51A(k) under which all citizens of India or parents shall provide opportunities for education to their children between age of 6 and 14 years)

10. Official Language

Part XVII of the Constitution deals with the official language in Articles 343 to 351. Initially, the Constitution recognised 14 regional languages which were included in the Eighth Schedule. At present, 22 languages are recognised.

11. Emergency Provisions

National Emergency (Article 352)

The President under Article 352 can declare emergency if he is satisfied that India's security is threatened due to war, external aggression or armed rebellion, or if there is an imminent danger or threat. When a national emergency is declared on the ground of war or external aggression it is known as external emergency. On the other hand, when it is declared on the ground of armed rebellion it is known as internal emergency. This type of emergency has been declared three times so far: in 1962, 1971 and 1975.

State emergency (Article 356)

Under Article 356, the President can declare an emergency in a state if the Governor reports that a situation has arisen under which the government of a State cannot be carried on in accordance with the provisions of the Constitution. The continuance of such an emergency beyond one year is possible only if emergency under Art. 352 are in operation or the Election Commission certifies that there are difficulties in holding Assembly elections. Maximum duration of the emergency can be three years. The State is governed by the Governor on behalf of the President. For the first time, the President's Rule was imposed in Punjab in 1951.

Financial emergency (Article 360)

Article 360 authorises the President to declare financial emergency if he is satisfied that the financial stability or credit of India or of any of its parts is in danger. In this type of emergency, salaries and allowances of any class of persons serving State or Union, including judges of the Supreme Court and High Court can be reduced by an order of the President. This type of emergency has not been declared in India so far.

12. Constitutional Reform Commissions

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The National Commission to Review the Working of the Constitution was set up by a resolution of the Government of India in 2000 headed by M.N.Venkatachaliah. In April 2007, a three member commission headed by the former Chief Justice of India M.M.Punchchi was set up by the then Government to take a fresh look at relative roles and responsibilities of various levels of Government and their inter-relations.

13. Article 370 (Repealed by parliament August-2019)

The article 370 in the Constitution is about Jammu and Kashmir region given the provision which grants special autonomous status.

According to this law, except defence, foreign affairs, communication, and finance, the central government requires the State Government's permission for applying all other laws. The State and its residents have a separate set of laws relating citizenship, property right and fundamental right from other citizens of India.

The centre has no power to impose financial emergency through article 360 over the State. An emergency is declared only during the time of war and external aggression. Therefore the central government cannot declare an emergency for a case of internal disturbance or other dangers unless the state requests the centre.

