

SYNOPSIS

Meaning of the term ‘Constitution’

Significance of the Constitution

Features of a Constitution

Makers of Indian Constitution

Sources of the Constitution of India

Historical Perspective of Constitution of India

Meaning of the term ‘Constitution’

A Constitution is an agreed upon document, which ‘establishes’ the basis on which consenting people shall govern themselves.

Derivation: Derived from Latin where the term ‘constitutio’ means ‘to establish’.

Oxford Latin Mini Dictionary: Constitution is a ‘body of fundamental principles or established precedents according to which a State or other organization is acknowledged to be governed’.

Wade & Phillips: Constitution of a country seeks to establish its fundamental organs of government and administration, describes their structure, composition, powers and principal functions, defines the inter-relationship of these organs with one another, and regulates their relationship with the people, more particularly the political relationship.

Significance of the Constitution

Government of a state operates in accordance with the principles laid down in its Constitution. The Constitution helps to maintain law and order in the country.

Aristotle: Constitution is ‘the way of life which the state has chosen for itself’.

George Jellinek: In the absence of Constitution, every individual, every institution and even the government will ignore law and as a result, there will be 'reign of anarchy'.

Features of a Constitution

The features of Constitution may vary from state to state but it would have the following distinctive features:

- It is a body of rules
 - It may be in a written or unwritten form
 - It determines the powers and responsibilities of state and organs of government
 - It may be written in a single document or in several documents
 - It determines the rights and duties of the citizens of a State
- It is the fundamental law of a State.

Makers of Indian Constitution

The Constitution of India, which came into effect on 26 January 1950, holds the distinction of being one of the lengthiest Constitutions in the world.

Constituent Assembly: After World War II, which ended in 1945, India's independence from the British rule was around the corner. During the winter of 1945-46, general elections for India's provincial legislatures or assemblies were held. These legislatures elected the members of the Constituent Assembly that would draft the Constitution of India. Although, in December 1946, the Constituent Assembly was ready in place in New Delhi, the Muslim League's demand for a separate Pakistan delayed its work of creating the new Constitution. On August 15, 1947, after the last Viceroy of British India Lord Louis

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Mountbatten declared India and Pakistan as two independent countries, the Constituent Assembly continued with its mandate to create the new Constitution for India.

### **Ambedkar, the Architect of Indian Constitution, the modern**

**Manu:** The Constituent Assembly had members mostly from the Congress Party with a few Communists and Independents. In 1885, **Allan Octavian Hume**, an Englishman had formed the Congress Party to enable Indian participation in the less popular British Government. In 1921, post-World War I, **Mohandas Karamchand Gandhi** (Mahatma Gandhi), assumed the leadership of the Congress party and led the movement for India's independence. Although the Constituent Assembly was largely a one-party body, the Congress Party had arranged for some persons distinguished in law and public affairs to be elected to the Constituent Assembly to contribute to the making of the Constitution. India's first law minister, **Bhimrao Ramji Ambedkar**, was appointed the Chairman of the Constitution Drafting Committee. Therefore, Dr. Ambedkar has been termed as the principal architect of the Constitution of India. The Constituent Assembly had two roles to play- governance and the framing of the Constitution. In the mornings, it dealt with the governance matters and, in the afternoons, it drafted the Constitution.

Bhimrao Ramji Ambedkar, popularly known as Babasaheb Ambedkar, was a social reformer. Born on April 14, 1891, in Mhow town of Madhya Pradesh, he inspired the Dalit movement and campaigned against social discrimination. He also served as the law minister of India (1947–51).

**Other members of the drafting committee:** Shri. N. Madhavrao, Sayyad Sadulla, Alladi Krishnaswamy Iyer, Sir

Benegal, Narsingh Rao, Shri S.N. Mukharjee, Jugal Kishor Khanna and Kewal Krishnan.

## Sources of the Constitution of India

The framers of the Constitution of India, i.e. the Constituent Assembly, drew upon three sources to draft the Constitution.

- Government of India Act of 1935
- Constitutions of other countries
- Objectives Resolution

**Government of India Act of 1935:** The first source was the foundation document or the base text- the Government of India Act of 1935, which was passed by the Parliament in London. This Act was the basis for the government and was in force in India from 1935 until 1950 when the Constitution of India was adopted. The salient features of the 1935 Act were:

- it provided for a parliamentary system (but the ultimate power was kept with the British);
- it included a wide-ranging administrative aspect for the structure of government;
- it created a centralized federal system; and it provided for elections to provincial legislatures or assemblies.

**Constitutions of other countries:** The second source was the constitutions of other countries. They were used mostly with respect to the two chapters of the Constitution namely, the Fundamental Rights and the Directive Principles of State Policy. Fundamental rights deal largely with civil and political rights of citizens (for example: right to life, freedom of speech and expression) and the Directive Principles deal largely with the economic, social and cultural rights of the citizens (for example: right to health, and livelihood).

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For instance, separation of powers among the major branches of government was adopted from USA apart from the fundamental rights which was inspired by the Bill of Rights.

The concept of Liberty, Equality and Fraternity was borrowed from the French Constitution where liberty implied ‘the freedom to choose one's way of life, political views, and behaviour in society’, equality implied ‘the idea that all people are equal before the law and have equal opportunities without discrimination’, and fraternity implied ‘the feeling of brotherhood and emotional attachment to the country and its people’.

The concept of 5-year plans was borrowed from the Soviet Union apart from the Fundamental duties. India's first FYP was launched in 1951. The Planning Commission (1951-2014) and the NITI Aayog (2015-2017) created, enforced, and tracked the Plan to increase the growth rate of the country.

The Directive Principles (socio-economic rights) was borrowed from the Constitution of Ireland. Directives are a set of guidelines for the government to frame policies and laws that promote the welfare of the people.

The concept on which the Supreme Court functions has been borrowed from countries such as Canada, USA, Japan, etc. for example, from Canada the concept of advisory jurisdiction of the Supreme Court was borrowed, from USA the concept of judicial review whereby the Court may interpret the Constitution and strike down laws that are inconsistent with its provisions was borrowed, and from Japan the concept of ‘procedure established by law’ was borrowed which implies that a law is binding even if it violates someone's personal liberty, as long as the law was implemented correctly.

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**Objectives Resolution:** The third source was the Objectives Resolution adopted in the December 1946 Assembly session. The Constitution derived its spirit from this source. The Objectives Resolution laid down the philosophy and the Constitution expressed it through its many lengthy and detailed provisions. Jawaharlal Nehru, the first Prime Minister of India, had drafted the Objectives Resolution drawing upon the Congress Party documents of the previous two decades. The Objectives Resolution called for the integrity of the Indian Union and that its authority and power were derived from the Indian people. It stated that all the people should be secured with regards to justice- social, economic and political, equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality. Furthermore, the Objectives Resolution provided for adequate safeguards for minorities, depressed and backward classes, and underdeveloped and tribal areas. The Objectives Resolution can be summarized to consist of three interdependent salient features:

- Protecting and enhancing national unity and integrity;
- Establishing the institutions and spirit of democracy; and
- Promoting a social revolution for the betterment of the citizens.

The Preamble of the Indian Constitution is based on the Objectives Resolution drafted by Pandit Nehru.

## Historical Perspective of Constitution of India

**British Acts for the governance of India:** Before independence, India was the part of British colonial empire. Sovereignty of British Crown prevailed over India. Parliament of Britain enacted

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several legislations for the governance of India. Some of the significant legislations of the British Parliament responsible for the governance of India were:

- Government of India Act, 1858
- Indian Councils Act, 1861
- Indian Councils Act, 1892
- Indian Councils Act, 1909
- Government of India Act, 1919
- Government of India Act 1935

Major source being the Government of India Act 1935: Basu says that Constitution of India draws much of its source from Government of India Act, 1935. The Government of India Act, 1935 has provided the administrative details and language to the provisions of the Constitution.

Federation of Provinces and Princely States: Unlike the other Acts of governance, the Government of India Act 1935 referred to India as a federation of Provinces and Indian States. **Autonomy** to provinces was given effect by dividing legislative and executive powers between the Provinces and the Centre.

Provinces and Governor: The Provinces were under the executive authority of **Governor** appointed by the Crown. Provinces were the autonomous units of administration. Governor exercised the powers on the advice of Ministers, who were in turn responsible to Provincial legislature. Governor was given discretion to carry out certain functions, without being bound by Ministerial advice, subject to the control of the Governor General.

Central Government and Governor General: At the Central level, Government of India was under the executive authority of

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**Governor-General.** Governor-General was to act on the advice of Ministers of Central legislature, who were in turn responsible to the Central Legislature. The Executive Council formed under Government of India Act, 1919 functioned as the Council of Ministers. Governor-General even had discretionary functions to perform, but subject to the control of Secretary of State. Government of India assumed the role of Federal Government.

**Unicameral and Bicameral legislature:** The Central legislature was bicameral consisting of Federal Assembly and Council of States. Some of the Provincial legislatures had bicameral legislature and other Provinces had unicameral legislature.

**List of law-making powers:** The legislative powers and matters were divided between Central Legislature and Provincial Legislatures. The powers assigned to the Central legislatures and provincial legislatures were included in the Federal List and Provincial List respectively. The Centre and Provinces could exercise their combined authority on matters included in the Concurrent List.

**Federal List:** It dealt with matters such as Currency, External Affairs, Armed Forces, etc. on which only Central legislature had the authority to legislate.

**Provincial List:** It dealt with matters such as Education, Public Health, and Agriculture, etc. on which only Provincial legislature had the authority to legislate.

**Concurrent List:** It dealt with matters such as marriage and divorce, criminal Law, civil law and procedure, etc. on which both federal and provincial legislatures had authority to legislate.

**Limitations on legislative power:** The exercise of legislative power was subject to various limitations:

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- Governor-General's and Crown's power to veto a bill passed by the legislature.
- Governor-General's power to issue ordinance and permanent acts, when the legislative house was not in session.
- Governor-General's power to suspend legislature, if the proceedings would affect the discharge of his special responsibilities.
- No bill to amend or repeal the law of British Parliament as applicable in India, could be introduced in legislature without the previous sanction of Governor-General.

Thus, the Central legislature and similarly the Provincial legislatures were to act under the instructions of Governor General, Secretary of State and ultimately the sovereign powers of the British Crown. Indians were given very limited rights of self-governance.

**Election of Constitution makers:** Growing dissatisfaction over limited governing rights granted to Indians under 1935 Act led to widespread protests. Eventually the Colonial government conceded that the Constitution of India would be framed by an elected Constituent Assembly consisting of Indian people. It was also agreed to establish an independent Constituent Assembly free from outside interference to frame the Constitution of India.

**First meeting of the Constituent Assembly:** On December 9, 1946 the Constituent Assembly, a body elected by members of the provincial legislatures and princely state legislatures, met for the first time and formally commenced the task of 'Constitution making'.

**Indian Independence Act 1947:** The Indian Independence Act, 1947 enacted by the British Parliament got Royal Assent and

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came into force on July 18, 1947. The Act provided that from 15 August 1947, referred to as ‘appointment date’ under Government of India Act, 1935, two independent Dominions, to be known as India and Pakistan would be established. The Constituent Assembly of each Dominion was to have unlimited power to frame, adopt any Constitution. It had all authority to repeal any Act of British Parliament including Indian Independence Act.

**Bhartiya Sanvidhan:** The Drafting Committee worked under the Chairmanship of Dr. Bhim Rao Ambedkar, the Law Minister from 15 August 1947 to 26 January 1950. After many discussions and deliberations to improve the existing system of administration, geographical compulsions, social and cultural diversities and historical precedents, a proposal on Draft Constitution of India was prepared. The draft received assent from the President of the Assembly, Dr. Rajendra Prasad, and was declared passed on 26 November 1949. The Constituent Assembly held 11 sessions and took a period of 2 years, 11 months and 18 days before it signed two copies of the document one in Hindi by the name of ‘Bhartiya Sanvidhan’ and another in English ‘The Constitution of India’. The original Constitution of India is hand-written with beautiful calligraphy by Prem Behari Narain Raizada. Artists from Shantiniketan including Beohar Rammanohar Sinha and Nandalal Bose adorned each page.

**Adoption of the Constitution:** The Constitution of India was adopted on 26 November 1949. Some of the provisions were given immediate effect. The bulk of the Constitution only became effective on 26 January 1950. This date is referred to as the date of commencement under Article 394 of the Constitution.

Every year 26th January is commemorated as ‘Republic Day’ in India.

**Article 394:** Article 394 states that ‘This Article and Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution’.