

Need of a Constitution

The Constitution of a country is a set of **written rules** that are accepted by all people living together in a country. Constitution is the supreme law that determines the relationship among people living in a territory (called citizens) and also the relationship between the people and government. A country is usually made up of different communities of people who share certain beliefs but may not necessarily agree on all issues. A Constitution helps serve as a **set of rules and principles** that all persons in a country can agree upon as the basis of way in which they want the country to be governed. It lays out certain **ideals** that form the basis of the kind of country that we citizens aspire to live in.

A Constitution does many things :

First, it generates a degree of trust and coordination that is necessary for different kind of people to live together;

Second, it specifies how the government will be constituted, who will have power to take which decisions;

Third, it lays down limits on the powers of the government and tells us what the rights of the citizens are; and

Fourth, it expresses the aspirations of the people about creating a good society.

Constitutive Principles or Rules

We know that each game has rules according to which it is played. Each of these rules helps define the game and helps us distinguish one game from another. As these rules are fundamental to the game, they could be called the constitutive rules of the game. In the same way, a society also has constitutive rules that make it what it is and differentiate it from other kinds of societies. In large societies in which different communities of people live together, these rules are formulated through consensus, and in modern countries this consensus is usually available in written form. A written document of such rules is called a Constitution.

All countries that have constitutions are not necessarily democratic. But all countries that are democratic will have constitutions. In countries that have adopted a democratic form of government or policy, the Constitution plays a crucial role in laying out certain important guidelines that govern decision-making within these societies.

You know how a class monitor can misuse his power. Similarly, a minister may use his power or authority in terrorising his opposition parties. He can earn a lot of money through corrupt means. In democratic societies, the Constitution often lays down rules that guard against this misuse of power by our political leaders. In the case of the Indian Constitution, many of these rules or laws are contained in the section on Fundamental Rights. The Indian Constitution guarantees the right to equality to all persons.

You also know how the majority of students in a class can lay a decision for playing a certain game on the rest. Similarly, in a democracy a majority can continuously enforce decisions that exclude minorities and go against their interests. This can be an inter-community domination, i.e. one community dominating others or intra-community domination, i.e. members of one community dominating others within the same community. The Constitution usually contains rules that ensures that minorities are not excluded from anything that is routinely available to the majority.

Sometimes, many people in a democracy might be bored of the party politics resulting in the disruption of law and order. They may demand a strong dictator to enforce law and order. Swept by the emotions they may not realise that in the long run, dictatorial rule goes against all their interests. Merely feeling strongly for small interests, they may go against their larger interests. Such decisions could have an adverse effect on the larger principles that the country believes in. The Constitution does not allow for the easy overthrow of provisions that guarantee rights of citizens and protect their freedom. A good Constitution does not allow such whims to change its basic structure.

Thus, the Constitution has a vital role to determine the authority/ legitimacy of the laws.

Constitution Reflects the Ideals of the Country

In 1934, the Indian National Congress made the demand for a Constituent Assembly. In the early 1940s, this assertion for an independent Constituent Assembly formed only of Indians gained momentum and this was convened in December 1946. The members of the Constituent Assembly approached the task of drafting a Constitution for independent India with the great idealism that the freedom struggle helped produce.

A people's movement in Nepal fought for several decades to establish democracy. Previously Nepal was a monarchy. The previous constitution of Nepal which was adopted in 1990, reflected the fact



The people of Nepal demanding democracy

that the final authority rested with the king. People did not want to continue with the previous constitution because it did not reflect the ideals of the country that they want Nepal to be. In 2006, the people of Nepal finally succeeded in putting an end to the powers of the king. Nepal changed all its constitutive rules in order to move from a monarchy to a democracy.

How was Indian Constitution Written

Around 300 members of the Constituent Assembly met periodically for three years from December 1946 to November 1949. Dr. B.R. Ambedkar was the chairman of the drafting committee. After drafting, each provision was discussed in great detail in the Constituent Assembly and there was a sincere effort to compromise and reach an agreement through consensus. Thus, there was an extraordinary sense of unity felt amongst the members of the Constituent Assembly.

Under the British, the people of India had been forced to obey rules that they had very little role in making. The long pains under the authoritarian rule of the colonial State convinced Indians that free India should be a democracy in which everyone should be treated equally and be allowed to participate in government. The Constitution was also about the rules that would determine the functioning of the government. The immediate problems and future vision both were before the members of the Constituent Assembly. Migration of refugees as a result of partition, undecided Princely states dismal socio-economic condition of the vast mass of people were those problems. The country was made up of several different communities speaking different languages, belonging to different religions and distinct cultures. The Constituent Assembly gave India a visionary document that emphasises the role of people in choosing their **representatives** and reflects a respect for maintaining **diversity** while preserving national unity and concern for eradicating poverty through **socio-economic reforms**.

Thus, a country's history often determines the kind of Constitution that a country adopts for itself.

The Preamble of the Constitution

The Preamble of the Constitution contains the philosophy on which the entire Constitution has been built. It provides a standard to examine and evaluate any law and action of government to find out whether it is good or bad. It is the soul of the Indian Constitution.

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 :



Prime Minister Jawaharlal Nehru addressing the Constituent Assembly



(a) Dr Rajendra Prasad, President of the Constituent Assembly



(b) Pandit Jawaharlal Nehru, Prime Minister



(c) Several ministers including Vallabhbhai Patel, Deputy Prime Minister



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.

Let us understand the meaning of each of its key words.

WE, THE PEOPLE OF INDIA : The Constitution has been drawn up and enacted by the people through their representatives, and not handed down to them by a king or any outside power.

SOVEREIGN : People have supreme right to make decisions on internal as well as external matters.

SOCIALIST : Wealth is generated socially and should be shared equally by society. Government should regulate the ownership of land and industry to reduce socio-economic inequalities.

SECULAR : Citizens have complete freedom to follow any religion. But there is no official religion. Government treats all religious beliefs and practices with equal respect.

DEMOCRATIC : A form of government where people enjoy equal rights, elect their rulers and hold them accountable.

REPUBLIC : The head of the state is an elected person and not a hereditary position.

JUSTICE : Citizens cannot be discriminated on the grounds of caste, religion and gender. Social inequalities have to be reduced. Government should work for the welfare of all, especially of the disadvantaged groups.

LIBERTY : There are no unreasonable restrictions on the citizens in what they think, how they wish to express their thoughts and the way they wish to follow up their thoughts in action.

EQUALITY : All are equal before the law. The traditional social inequalities have to be ended. The government should ensure equal opportunity for all.

FRATERNITY : All of us should behave as if we are members of the same family. No one should treat a fellow citizen as inferior.

Note : In 1976, the words 'Socialist', 'Secular' and 'Unity and Integrity of the Nation' were added to the Preamble by the 42nd Amendment.

The word 'Socialist' was added to recognize the need to bring about economic and social equality alongwith political equality.

Key Features of the Indian Constitution

The authors of the Indian Constitution tried to **balance** the concerns of diversity, unity, representation and socio-economic reform to transform India into a strong democratic society. The key features of the Indian Constitution are the following :

1. **Federalism:** Belief in or support for a federal system of government is called federalism. A federal country or system of government consists of a group of states which control their own affairs but which are also controlled by a single national government which makes decisions on national concern such as foreign affairs, defence etc. Thus, federalism refers to the existence of more than one level of government in the country. In India, we have governments at the state level and at the centre. Panchayati Raj is the third tier of government. The Constitution contains lists that details the issues that each tier of government can make laws on. In addition, the Constitution also specifies where each tier of government can get the money from for the work that it does. All persons in India are governed by laws and policies made by each of these levels of government.

Under federalism, the states are not merely agents of the federal government but draw their authority from the Constitution as well. The vast number of communities in India meant that a system of government needed to be devised that did not involve only persons sitting in the national capital and making decisions for everyone. Instead it was important to have another level of government in the states so that decisions could be made for that particular area.


Different meanings of the word 'State'

The general meaning of 'State' is a country considered as a political organisation. It also means one of the areas with limited law making powers that together make up a country controlled by a central government. The State also refers to a political institution that represents a sovereign people who occupy a definite territory. For example, the Indian State, the Nepali State etc. The Indian State has a democratic form of government. The government (or executive) is just one part of the State and cannot be used for the 'State'. The 'government' is responsible for administering and enforcing laws. The government can change with elections.



People standing in line to cast their votes

2. **Parliamentary Form of Government :** The members of the Constituent Assembly felt that the freedom struggle had prepared the masses for universal adult suffrage and this would help encourage a democratic mindset and break the clutches of traditional caste, class and gender hierarchies. This means that the people of India have a direct role in electing their representatives




which form a Parliament. Also every citizen of the country, irrespective of his/her social background, can also contest in elections. These representatives are accountable to the people.

The principle of universal adult franchise was adopted with an abundant faith in the common man and the ultimate success of democratic rule, and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man.

- 3. Separation of Powers :** The Constitution has divided the State into three organs or branches : the **legislature**, the executive and the judiciary. The legislature refers to our elected representatives. The executive is a smaller group of people who are responsible for implementing laws and administration. The judiciary refers to the system of courts in this country to seek justice. In order to prevent the misuse of power by any of the three organs, the Constitution says that each of these organs should exercise different powers. Through this separation of powers, each organ acts as a check on the other organs of the State and this ensures the balance of power between all the three.
- 4. Fundamental Rights :** Fundamental Rights protect citizens against the arbitrary (not fixed) and absolute exercise of power by the State as well as other individuals. The object of the Fundamental Rights is twofold. The first objective is that every citizen must be in a position to claim those rights. And secondly these rights must be binding upon every authority that has got the power to make laws. Fundamental Rights are called the 'Conscience' of the Constitution.

Fundamental Rights provided in the Indian Constitution include :

- 1. Right to Equality :** The government shall not deny to any person in India equality before the law or the equal protection of the laws. It means that the laws apply in the same manner to all regardless of a person's status. It means that no person is above law. It also states that no person can be discriminated against on the basis of their religion, caste or sex. Every person has access to all public places including playgrounds, hotels, shops etc. The State cannot discriminate against anyone in matters of employment. The practice of untouchability has also been abolished.
- 2. Right to Freedom :** This includes the right to freedom of speech and expression, the right to form associations, the right to move freely and reside in any part of the country, and the right to practise any profession, occupation or business.
- 3. Right against Exploitation :** The Constitution prohibits trafficking (selling and buying of human beings, particularly women and children), forced labour, and children working under 14 years of age.

- 
4. **Right to Freedom of Religion** : Religious freedom is provided to all citizens. Every person has the right to practise, profess and propagate the religion of their choice.
 5. **Cultural and Educational Rights** : All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture.
 6. **Right to Constitutional Remedies** : This allows citizens to move to the court if they believe that any of their Fundamental Rights have been violated by the State. Right to Constitutional Remedies according to Dr. B.R. Ambedkar is, therefore, 'the heart and soul of the Constitution'.


Fundamental Rights are those conditions of social life without which a person cannot develop her/his personality. Rights are the true guarantee for the success of working democracy. As human being, we enjoy certain rights – social, economic and cultural and these are provided by the fundamental rights.

Originally there was also a Fundamental Right to Property. However, after the 44th Amendment 1978, the Right to Property has now become only a legal right.

Directive Principles of State Policy

Part IV of the Constitution deals with the Directive Principles of the State Policy. This section was designed to ensure greater social and economic reform and to serve as a guide to the independent Indian State to institute laws and policies that help reduce the poverty of the masses. The main Directive Principles are :

1. Provision of adequate means of livelihood to all
2. Equitable distribution of wealth among all
3. Protection of children and youth
4. Equal pay for equal work to both men and women
5. Free and compulsory education for children upto the age of 14 years
6. Prevention of cow slaughter
7. The right to work, to education, to public assistance in case of unemployment, old age, sickness and disability
8. Prohibition of liquor
9. Establishment of village panchayats
10. Protection of historical and national monuments
11. Separation of the Judiciary from the Executive to secure for all citizens, a uniform civil code
12. Promotion of international cooperation and world security.
13. Free legal aid from the State to the weaker sections of society
14. State to protect natural environment, forests and wildlife



Fundamental Rights constitute a limitation upon the State actions whereas Directive Principles are instruments of instruction to the government to carry out certain responsibilities. Directive Principles cannot be enforced in a court of law and do not create any justifiable rights in favour of an individual. However, some of the Directive Principles have been turned into law such as no. 4, 5, 6 above.

5. **Secularism** : A secular State is one in which the State does not officially promote any one religion as the State religion. We will study this topic in detail in the next chapter.

Fundamental Duties


By the 42nd Amendment in 1976, the Fundamental Duties of Indian citizens were incorporated in the Constitution. Basically, the Fundamental Duties are to help others to enjoy Fundamental Rights. In other words, the objective of the Fundamental Duties is to promote patriotism among the citizens and promote the ideas of harmony.

1. To abide by the Constitution and to respect its ideals and institutions, the national flag and national anthem.
2. To cherish and follow the noble ideas which inspired our national freedom struggle.
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote harmony and 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.
6. To value and preserve the rich heritage of our composite culture.
7. To protect and improve the natural environment.
8. To develop a scientific temper, humanism and the spirit of enquiry and reform.
9. To safeguard public property and abjure violence.
10. 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.

As citizens of India, we must follow the fundamental duties. However, it must be noted that the enjoyment of our rights is not dependent upon fulfillment of duties. It has not changed in any way the status of our fundamental rights.

Constitution – A Living Document

Indian Constitution has been changed over the years to reflect new concerns of the polity. It is a living document as it is constantly evolving to suit the needs and aspirations of our society and various



institutions. Whenever required, the Constitution has been adapted to the changing situations through a procedure of amendment. Thus, the position of the Constitution has been as the source of all the laws and policies of the country. The Constitution is a Fundamental Law as it provides the fundamental law of governance.

Need for Laws


Law is a set of rules and regulations, which are recognized by the society and enforced by the State. The executive has the responsibility of implementing laws. **Rule of Law** is the foundation of any democracy. It implies that everybody is equal in the eyes of law. No person regardless of his/her caste, class, religion, race or status is above the law. The government cannot discriminate between an ordinary citizen, a rich person, a political leader or a senior government official. Society, to a certain extent is based on competition among fellow beings for the distribution of resources. In such a situation, laws are necessary for peace and harmony.

For example, the practice of dowry has been prevalent in our society for centuries. Dowry is the name of gifts or things to help the newly wed girl and her husband. Over the years many in-laws of the girl, out of greed, demanded money in cash or costly gifts from her parents. Some parents of girls also gave heavy dowries for showing their prestige in society. It has caused immense hardship and many times distress to the poor or middle class parents of the girls. Article 15 of Indian Constitution prohibits discrimination against any citizen on the grounds of caste, sex, region or religion. So, the government passed the Dowry Prohibition Act in 1961. The Act makes taking and giving dowry a crime. Anyone found guilty will be fined or imprisoned. Later amendments make the punishment more severe. In case of dowry-death (death of the bride owing to harassment for dowry), the guilty person shall be punished with imprisonment for a term of seven years or more.

Laws and Dissent

All laws made by the legislature have to be followed. It is the fundamental duty of every citizen. But sometimes, even the ordinary citizens break the unjust and unfair laws that go against their interests. The British Governor-Generals and Viceroy's often imposed laws without taking notice of the misery of the people. Even though legislature is chosen by the people it does not mean that all laws passed by it are always just and fair and in the interest of the society. When a section of society or whole society expresses disagreement with a law through actions and words, it is called **dissent**.

The defiance of the Salt Law in 1930 by Gandhiji and his followers was followed by the rise of a mass movement called the Civil Disobedience Movement. The aim was to violate unjust policy of the British by breaking the salt law. The British imposed a salt law in India which



declared that sale or production of salt by anyone but the British Government was a criminal offence. Gandhiji said that salty water of the sea belonged to nature on which no government has a sole right.

Even in independent India people expressed discontent regarding certain orders issued by the government, for example, higher taxes imposed in the budget or increasing rates of electricity or railway fare which the government had to reduce after expression of disagreement by people through demonstrations or media. Another example is of sale of liquor. Almost all states in India give license for different localities to sell liquor. The women in villages found that their money, earned by day long hard work is wasted by their husbands in buying liquor from the village wine shop. The women united against their husbands and the liquor mafia and the government issuing them license. They fought against the contractor's goondas and drove them out. In such cases the police could not save the liquor shop. At last the government had to close the shops in those villages.

Current Efforts by the Marginalised Communities to Realize their Rights

The marginalised communities are the Scheduled Castes, Scheduled Tribes and Other Backward Classes. The Constitution has some safeguards for the marginalised communities. Dr. Ambedkar stated that although the laws might exist, the marginalised communities still had reason to fear because the administration of these laws were in the hands of 'caste society officers'. He therefore, urged them to join the government as well as the civil services.

The Indian Constitution while guaranteeing the Right to Equality to all citizens has made special provisions for the upliftment of the marginalised communities. Keeping these provisions in view, the government has taken steps from time to time for the betterment of the marginalised communities :

- Reservation of seats in the Parliament, state legislature and local government;
- Reservation of seats in educational institutions;
- Provision of scholarships and grants;
- Launching vocational training courses in tribal areas;
- Special training and coaching programmes for competitive examinations for employment and entrance examinations for Engineering, Medical, etc.
- Reservation of government jobs — 15% for Scheduled Castes, 7.5% for Scheduled Tribes and 27% for Other Backward Classes.

 **Key Words**

- » Constitution : a written document outlining principles by which a nation is governed.
- » Ideal : a goal or a principle in its most excellent or perfect form.
- » Preamble : brief statement outlining reasons and guiding values of the Constitution.
- » Dissent : expression of disagreement through actions and words.
- » Marginalised groups : weaker sections of society.
- » Arbitrary : rules that are not fixed or decisions that have no basis etc.
- » Sovereign : an independent people (in the context of this chapter).
- » Polity : a society that has an organised political structure, India is a democratic polity.
- » Draft : a preliminary version of a legal document.

SUMMARY

- ▶ A constitution helps serve as a set of rules and principles that all persons in a country can agree upon as the basis of way in which they want the country to be governed.
- ▶ In democratic societies, the constitution often lays down rules that guard against the misuse of power by our political leaders.
- ▶ The constitution usually contains rules that ensure that minorities are not excluded from anything that is routinely available to the majority.
- ▶ The constitution does not allow the easy overthrow of provisions that guarantee rights of citizens and protect their freedom.
- ▶ Constitution reflects the ideals of the country.
- ▶ The Constituent Assembly gave India a visionary document that emphasises the role of people in choosing their representatives and a respect for maintaining diversity while preserving national unity and concern for eradicating poverty through socio-economic reforms.
- ▶ The key features of the Indian Constitution are Federalism, Parliamentary Form of Government, Separation of Powers, Fundamental Rights and Secularism.

Exercise Time

A. Tick (✓) the only correct choice amongst the following :

1. A democratic constitution does not have _____ of the head of the state.
a. powers b. rights c. name d. options
2. _____ was the chairman of the Drafting Committee of the Constitution.
a. Jawahar lal Nehru b. Dr. B.R. Ambedkar c. Mahatma Gandhi d. Rajendra Prasad
3. The feature in the Preamble that indicates the equality for all religions is _____.
a. Secularism b. Equality c. Fraternity d. Poverty
4. Fundamental Rights are the _____ of the Constitution.
a. conscience b. heart c. right d. Power
5. Constitution is a _____ set of rules and regulations.
a. manual b. written c. oral d. all of these

B. Fill in the blanks :

1. The breaking of the _____ law led to the beginning of the Civil Disobedience Movement.

2. Constitution reflects the _____ of a country.
3. Each provision was _____ in great detail in the Constituent Assembly.
4. Fundamental Rights are called the _____ of the Constitution.
5. Indian Constitution tried to _____ the concerns of diversity, unity, representation and socio-economic reform.

C. Match the Following :

- | | |
|---------------------|--|
| 1. B.R. Ambedkar | a. Member of the Constituent Assembly |
| 2. Rajendra Prasad | b. Chairman of the Drafting Committee |
| 3. Jawaharlal Nehru | c. People have the supreme right to make decisions |
| 4. Republic | d. President of the Constituent Assembly |
| 5. Sovereign | e. Head of state is an elected person |

D. Write true (T) or False (F) against the following statements in given brackets :

1. Members of the Constituent Assembly of India held the same views on all provisions of the Constitution.
2. A country that has a constitution must be a democracy.
3. The Preamble is the soul of the Constitution.
4. Constitution reflects the ideals of a country.
5. Constitution cannot be amended because it is the supreme law of a county.

E. Define the terms :

- | | | | |
|---------------|-----------------------|--------------|-----------------|
| 1. Secularism | 2. Fundamental Rights | 3. Sovereign | 4. Dissent |
| 5. Polity | 6. Draft | 7. Ideal | 8. Constitution |

G. Answer in one word or one phrase :

1. Who, in democracy, is above law ?
2. Who are marginalised communities ?
3. What is called the 'conscience of the Constitution' ?
4. What did Dr. Ambedkar call the Right to Constitutional Remedies ?
5. Is it necessary to fulfil fundamental duties to enjoy fundamental rights ?

H. Answer these question briefly :

1. What is constitution ? Why does a democratic country need a constitution ?
2. What are constitutive principles or rules ?
3. What is Federalism ? Explain.
4. How does constitution reflect the ideals of the country ?
5. How was Indian Constitution written ?

PROJECT WORK

1. Find out how constitutive principles or rules work in your school and at home.
2. Find out about any law, passed in the last two years, the effect of which was bad to the common man. Also make a report on the reaction of the government towards the opinion of the people and whether public pressure compelled the government to modify or ratify the law.