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## CONSTITUTION: THE KINDS OF CONSTITUTION

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Poovarasana R, SRM Institute of Science and Technology, Kattankulathur

### ABSTRACT

This study analyses the concept of constitutions, which provide the essential framework for national governance. A constitution outlines the rights and responsibilities of individuals as well as the composition, authority, and operations of governmental organisations. Written and unwritten constitutions are the two main groups into which the research divides them. Formally recorded written constitutions, like those of the US and India, offer a readily understandable legal reference. Unwritten constitutions, such as the one in the United Kingdom, are founded on laws, court rulings, and customs that together serve as the ultimate law.

Rigid and flexible constitutions are two other categories. While flexible constitutions make it simpler to adjust to changing conditions, rigid constitutions are more difficult to change, guaranteeing stability and continuity. In order to illustrate how the type of governance affects constitutional design, the study also makes a distinction between republican and monarchical constitutions.

The research attempts to give a thorough grasp of the different kinds of constitutions and their effects on the legal and governance structures of various nations through comparative analysis. The significance of constitutions in creating the rule of law, defending citizens' rights, and directing governmental operations is highlighted by this investigation.

## **INTRODUCTION**

The fundamental legal document that establishes the fundamental values and frameworks that govern a country or organisation is its constitution. It establishes the foundation for government, the delegation of authority, and the rights and responsibilities of citizens, making it the ultimate law.

This study examines the various methods that countries set up their governance by looking at the various kinds of constitutions, including written and unwritten, federal and unitary, parliamentary and presidential, rigid and flexible, and so on. Understanding of these differences helps one better understand how constitutions uphold the rule of law and affect politics. This research aims to explore the concept of constitutions, delving into their essential functions and the various types that exist.

### **Research objectives**

To look into the meaning and importance of a constitution within the framework of national governance.

To point out instances from other nations while contrasting and comparing written and unwritten constitutions.

To examine characteristics and consequences of both flexible and rigid constitutions.  
To find out the distinctions between unitary and federal constitutions, as well as how they affect governance.

### **Research questions**

In the modern nation-states, what is the definition and function of a constitution? What are the differences between the formation and implementation of written and unwritten constitutions? What distinguishing features and benefits do rigid versus flexible constitutions offer? How do presidential and parliamentary systems of governance influence the composition and operation of their respective constitutions?

## **MEANING OF CONSTITUTION**

The state's constitution is its constitutional law. As the highest and most fundamental law of

the state, constitutional law holds this status. It establishes the structure and duties of the state government. Only the powers granted by the Constitution may be used by the government.

"Constitution is the way in which citizens who are the component parts of the state are arranged in relation to one another". - Aristotle

"Constitution is a body of judicial rules which determine the supreme organs of state, prescribes their modes of creation, their mutual relations, their spheres of action and the fundamental place of each of them in relation to state." -Jellinek

"Constitution of a state is that body of rules or laws, written or unwritten which determine the organization of government, the distribution of powers to the various organs of government and the general principles on which these powers are to be exercised." –Gilchrist

A Constitution is a document with unique legal sanctity that lays out the structure and main duties of a state's government's organs and establishes the rules that govern their operations.

It covers the following subjects such as:

Structure and authority of the government

Fundamentals and regulations guiding the political process

Interactions between citizens and their government

Rights and responsibilities of citizens.

## **IMPORTANCE OF CONSTITUTION**

**The Basis of Governance:** The constitution lays out the composition, roles, and boundaries of governmental institutions. It guarantees a system of checks and balances by outlining the division of powers between the legislative, executive, and judicial branches.

**Protection of Rights:** It protects citizens from infringement by enshrining their fundamental freedoms and rights. These rights frequently include right to impartial trial, equality before law, and freedom of speech.

**The rule of law:** Because the constitution upholds the rule of law, everyone is bound by it, even

public servants. In governance, this principle guarantees accountability, justice, and fairness.

**Unity and Sovereignty:** It affirms the state's sovereignty while frequently highlighting the country's integrity, unity, and guiding ideals. The inhabitants' feeling of identity and shared purpose are strengthened as a result.

**The Framework of Democracy:** A democratic framework is established by the majority of contemporary constitutions, which specify the procedures for elections, representation, and citizen engagement in governance. This encourages public participation in politics and political stability.

**Resolving Conflicts:** Conflicts are avoided and social order is upheld by the constitution, which offers a legal foundation for settling disagreements. It frequently contains clauses that allow for the peaceful transition of power and grievance resolution procedures.

## **STRUCTURE OF CONSTITUTION OF INDIA**

**Parts:** A "Part" of the Constitution is a section that unifies articles on related topics or ideas. The Indian Constitution is divided into various parts, each of which addresses a distinct facet of the nation's governmental, administrative, or legal system. The Indian Constitution had 22 parts at first. The Indian Constitution currently consists of 25 parts.

**Articles:** A particular provision or clause in the Constitution that describes various aspects of the nation's legal and governmental structure is referred to as "Article." There are multiple articles in each part of the constitution, each with a sequential number. The Indian Constitution included 395 articles in its original form. The Indian Constitution currently has 448 articles.

**Schedules:** A "schedule" is a list or table that is attached to the Constitution and contains specific extra information or rules that are important to its provisions. By offering clarification and additional information, they enhance the Constitution's comprehensiveness and functionality. The Indian Constitution included 8 schedules at first. Currently, the Indian Constitution has 12 schedules.

## **ENACTMENT AND ADOPTION OF INDIAN CONSTITUTION**

In 1946, a Constituent Assembly was established to prepare Indian Constitution. The

Constituent Assembly was led by Dr. Rajendra Prasad.

On August 29, 1947, the Constituent Assembly passed a motion requesting the formation of a Drafting Committee to draft India's permanent constitution. Dr. B.R. Ambedkar was so proposed to lead the Drafting Committee.

The final draft of the Constitution was delivered on November 4, 1948.

After much deliberation and minor revisions, the Constituent Assembly declared the Draft Constitution to be accepted on November 26, 1949. The "Date of Adoption" of the Indian Constitution is this date.

Some of the provisions of the Constitution became operative on November 26, 1949. However, India became an independent republic on January 26, 1950, when the majority of the Constitution took effect. The Indian Constitution is known as the "Date of Enactment" on this date.

## **SALIENT FEATURES OF INDIAN CONSTITUTION**

The Indian Constitution, which reflects the country's diverse society and democratic ideals, is renowned for being thorough and extensive. Here are a few of its noteworthy characteristics: Length and Details:

With its initial 395 articles, 22 sections, and 8 schedules, the Constitution of India is the longest written constitution in the world. Numerous amendments have since caused it to grow to more than 450 articles and 12 schedules.

Sovereign, Socialist, Secular and Democratic Republic:

According to the Preamble, India is a democratic, secular, socialist, sovereign republic that guarantees equality, justice, and fraternity to all of its citizens.

The System of Parliament:

With a bicameral legislature at the centre (the Lok Sabha and Rajya Sabha), India has a parliamentary system of governance at both the federal and state levels.

### Fundamental Rights:

The Fundamental Rights listed in Part III of the Constitution are upheld by the courts and shield civil freedoms against the state's capricious actions. Among the fundamental Rights Art. 14 (Equality before Law and equal protection of Laws), Art. 19 (Freedom of speech etc.) and Art. 21 (Right to live and Personal Liberty) are of great importance and are described as Golden triangle.

### Directive principles of state policy:

Although they cannot be challenged in court, the Directive Principles in Part IV serve as a guidance for the state when it comes to law and policymaking in order to create a just society.

### Fundamental Duties:

In 1976 through 42nd Amendment the Fundamental Duties were added, describe the moral duties of people to preserve India's unity and foster a sense of patriotism.

### A Federal Framework with Unitary Prejudice:

A federal system with a powerful central government is established under the Constitution. Although each state has its own administration, the federal government still has considerable authority, particularly in times of crisis.

### Independent Judiciary:

The Supreme Court, which serves at the head of the judiciary and ensures that rights are protected and the rule of law is upheld, is independent of the legislative and executive branches.

### Rigidity and Flexibility:

The Constitution is both flexible and inflexible; some provisions can be changed with a simple majority, while others need a special majority or approval by half of the state legislatures.

### Single Citizenship:

In order to promote unity and a sense of national identity, India grants all of its residents a

single citizenship.

Universal Adult Franchise:

Voting is guaranteed to all citizens above the age of 18, guaranteeing democratic engagement.

## **FUNCTIONS OF CONSTITUTION**

Expression of Ideology: It captures the fundamental philosophy and ideological principles that guide how the state should be governed.

Basic Law Foundation: It establishes the foundational laws that require special procedures to modify, ensuring stability in governance.

Organizational Structure: It defines and separates the powers between legislature, executive, and judiciary preventing power concentration and ensuring checks and balances.

Government Level Definition: It clearly outlines the structure and powers of different government levels (federal, confederal, or unitary), enabling effective administrations.

Amendment Mechanism: It provides methods to modify the constitution, allowing it to adapt to changing societal needs while maintaining stabilities.

These functions are essential because they:

Prevent anarchy and dictatorships.

Define clear relationships between citizens and the states.

Establish limits on governmental powers.

Protect citizens' rights and outline their duties.

## **KINDS OF CONSTITUTION**

### **BASED ON FORM**

#### **Written Constitution**

A book or a collection of documents assembled into a single volume is referred to as a written constitution. It is a purposefully written and implemented constitution. It is created and approved by a legislature, council, or constituent assembly.

According to Garner, "A written constitution is a consciously planned constitution, formulated and adopted by deliberate actions of a constituent assembly or a convention." establishes a clear framework for government institutions, including their structures, authorities, roles, interactions.

The term "written constitution" refers to a constitution that is composed of a book or a collection of documents. It is a purposefully written and implemented constitution. It is created and approved by a legislature, council, or constituent assembly.

Garner writes, "A written constitution is a consciously planned constitution, formulated and adopted by deliberate actions of a constituent assembly or a convention." It establishes a clear framework for government institutions, including their structures, authorities, roles, and interactions.

It represents the state's constitutional law. It takes pleasure in its position of supremacy. Its requirements bind the government completely, and it operates strictly in compliance with them. The only way to alter a written constitution is to follow the established amendment procedure specified in the document. The Constitution was duly passed and put into effect. A written, codified, or documentary constitution is one that outlines the fundamental laws of the state in one or more papers, with or without modifications. Written constitutions have their roots in the French Revolution (1789) and the American War of Independence (1775–83). E.g., India, United States, Germany, Japan, Canada, France, Switzerland.

### **Unwritten Constitution**

Instead, Britain has a collection of different laws, customs, political practices, and court rulings (common laws). treaties, and can be found in a several different documents that together make up the British Constitution. The constitution of these nations is made up of a number of historical records, laws, decrees, customs, traditions, and regal rights.

A constitution that has not been drafted, adopted by a Constituent Assembly, or even published



in book form is said to be unwritten. Numerous historical charters, statutes, and agreements contain it. It is the result of slow, steady evolution. The government is set up and operates according to a number of established, but not entirely documented, laws and customs.

An unwritten constitution is not entirely unwritten, though. Although some of its components are written down, they are not codified in a book, code, or legal document. Garner states that "an unwritten constitution is one in which most and not all, rules are unwritten and these are not found in any one charter or document." E.g., Israel, New Zealand, and United Kingdom

## **BASED ON AMENDMENT PROCESS**

### **Flexible Constitution**

A constitution that is easily amendable is said to be flexible. A number of political scientists support the idea that a flexible constitution allows for amendments just like any other ordinary statute. The same process that is used to pass regular laws is also used to pass constitutional amendments.

One of the best examples for constitution which is flexible in nature is the British Constitution. With a simple majority, the British Parliament, a sovereign body, can enact or alter any legislation, even constitutional laws. Laws that seek to amend any ordinary law or a constitutional law must pass using the same parliamentary process, which is a simple majority of legislative votes.

A flexible or elastic constitution is one that is easily amendable; these are typically unwritten constitutions with few or no particular amendment procedures. Through regular legislative procedures, the parliament can change fundamental principles and establish new guidelines for government action, as shown in the constitutions of the UK and Canada. If a constitution allows for a straightforward amending process, it is considered flexible. It means that if a bill proposing an amendment is approved by a simple majority of the members in each House who are present and voting, and if the President or Governor, as the case may be, signs it into law, the Constitution will be amended. E.g., Great Britain, New Zealand, Israel.

### **Rigid Constitution**

The Rigid Constitution is one that is difficult to change. Its amendment process is challenging.

The legislature must approve an amendment bill by a certain, typically large, majority of two thirds or three quarters in order to change it. Ordinary laws are typically passed by the legislature with the support of a simple majority of its members.

The most basic law of the land is regarded as a strict constitution. It is considered to be the fundamental desire of the sovereign people. Because of this, it may only be changed through a unique process that calls for a large majority of votes to approve the proposed modification, which is frequently followed by popular ratification in a referendum.

A rigid or inelastic constitution is one that is difficult to change; these are typically written constitutions. Furthermore, it is a constitution whose provisions may only be changed through specific amending procedures and not through regular forms of legislation. In other words, it might be feasible to change the constitution if it specifically allows for that change. Amendment to a rigid constitution necessitates a unique, intricate, and more technical process. For instance, a majority of members in both houses and a two-thirds majority of the members present and voting are required to adopt some sections of the Indian Constitution, such as 54 and 55 (Election of President). Prior to being submitted for the president's approval, it must also be approved by at least half of the state legislatures. E.g., United States, Germany, Australia, India

## **ON POWER DISTRIBUTION**

### **Federal Constitution**

A federal constitution establishes a separation of powers between the federal government and each state. The constituent document will explicitly outline the authority allocation between the federal government and the states or provinces.

According to Professor Wheare, "federalism" is the process of allocating authority so that the national and local governments are individually autonomous, unified, and within a sphere. A Federal Constitution allows for the partition or distribution of powers between Union/Central and Unit/State Governments. This is because both the federal (central) and regional governments are independent in their own domains and do not share authority. E.g., United States, India, Germany, Canada.

Essential characteristics of federal constitution:

1. Supremacy of constitution
2. Written constitution
3. Rigid constitution
4. Distribution of powers
5. Independent judiciary

### **Unitary Constitution**

A unitary constitution is one in which all powers are vested in a single central government. The Central Government is subservient to the State, Provincial, and Unit Governments. For instance, Great Britain. The parliament has the authority to create new states, change a state's borders or name, and expand or contract the size of existing states. Therefore, the parliament is essential to the states' fundamental existence.

Three categories of crises may be declared by the union parliament: financial emergencies, war-related emergencies, and internal unrest caused by malfunctions in the constitutional machinery. The Union Government may become unitary as a result of this parliamentary power. Regarding the issues included in the state list, the parliament passes laws that apply to all or any portion of India's territory.

1. The parliament may pass laws in the states listed under article 249.
2. The 42nd Amendment gives the Union parliament more authority in relation to the Tribunal.

E.g., United Kingdom, France, Japan, China.

### **BASED ON NATURE**

#### **Evolved Constitution**

An evolved constitution is one that has never been created by an institution or by a group of

people. It is the outcome of a slow and steady evolutionary process. Its laws and principles are legally obligatory since they are acknowledged as time-tested, old, historical and accepted practices and conventions.

While some of these norms are recognised by the law and so become enforceable, others are adhered to because of their moral commitment, practical usefulness, and public acceptance. The result of historical development, political demands, and the people's practical wisdom are evolved constitutions.

E.g. U.K., New Zealand, Israel, Canada.

### **Enacted Constitution**

A constitution that has been enacted is one that was created by humans. An assembly or council known as a Constituent Assembly creates, enacts, and adopts it. After careful consideration of its goals, tenets, and provisions, it is officially passed. It is written systematically and formally, either as a book or as a collection of documents.

E.g., China, Japan, India, United States.

Important Features of Enacted Constitutions:

An established constitution is codified in a single written text that has been formally adopted through a legislative procedure.

They are often created and adopted by a constituent assembly or a specific legislative body tasked with draughting the constitution.

These constitutions go into great detail about the processes for draughting and enforcing laws, individual rights and responsibilities, and the composition and functions of the government. The enacted constitution, which is considered the supreme law of the land, must guide all legislation and government actions.

Enacted constitutions contain specific provisions outlining the amending procedure, which can range from somewhat straightforward to extremely complex.

## **BASED ON HEAD OF STATE**

### **Republican Constitution**

The head of state is an elected or appointed official rather than a hereditary monarch, which is a characteristic of a Republican constitution. This kind of constitution guarantees that the people and their representatives retain sovereignty.

Important Characteristics of Republican Constitutions:

The electorate elects the president or a representative either directly or indirectly through an electoral body. Accountability and representation are therefore guaranteed.

The constitution upholds the idea that the people are the source of all power. This is frequently stated in the fundamental provisions or preamble.

Representative democracy makes sure that the government reflects the interests and will of its constituents by electing representatives to the government.

According to the constitution, everyone is bound by the law, even public servants. This contains safeguards against power misuse, such as checks and balances.

To guarantee that no one body has unlimited power, the executive, legislative, and judicial branches have a clear separation of duties.

Citizens are guaranteed certain fundamental freedoms and rights under the constitution, which are upheld by the legal system and subject to judicial enforcement.

E.g. India, U.S., France, Germany

### **Monarchy Constitution**

A monarchy constitution is one in which a king, queen, or emperor, who usually inherits their position by birthright, rules a nation. There are various kinds of monarchy constitutions, from absolute monarchies, in which the king or queen has almost unrestricted authority, to constitutional monarchies, in which the king or queen's authority is constrained by a formal constitution or by the law.

## Types of Monarchy Constitutions

### Absolute Monarchy:

The monarch has almost total control over the government and is not bound by a constitution or laws. The monarch's word is law, and they often control all branches of government. E.g., Saudi Arabia.

### Constitutional Monarchy:

Usually acting as ceremonial heads of state, the monarch's authority is constrained by laws or a constitution. In a parliamentary system, elected officials hold the actual political authority. E.g., Sweden, Japan, and the United Kingdom.

## **BASED ON SOVEREIGNTY**

### **Presidential Constitution**

Under a presidential constitution, the president, who is usually chosen independently of the legislature, is both the head of state and the head of government. The distinct division of authority between the legislative, executive, and judicial institutions is what distinguishes this type of constitution.

#### Essential Elements of Presidential Constitutions:

The president has separate executive powers and is chosen separately from the legislature. The president often has a set term and is difficult for the legislature to remove from office. The three branches of government are judicial (courts), legislative (parliament or congress), and executive (president)

To avoid misuse, each branch functions autonomously and restrains the authority of the others. For a set amount of time, the president and other important leaders provide stability and continuity in the government.

A direct mandate from the electorate is ensured by the president's frequent direct election by the people.

Although a legislative supermajority frequently overrides this, the president normally has the authority to veto legislation passed by the legislature.

E.g. United States, Brazil, Mexico

### **Parliamentary Constitution**

The executive branch is directly answerable to the legislative (parliament) and receives its legitimacy from it under a parliamentary constitution. This type of government combines legislative and executive branches and frequently has a ceremonial head of state, like a president or king, who has few powers.

Important Characteristics of Parliamentary Constitutions:

The legislative and executive branches are combined, in contrast to presidential systems. Members of the legislature, usually the prime minister, are the head of state and are backed by a majority of the parliament.

The parliament is the ultimate authority for the Prime minister and the cabinet. A vote of no confidence has the power to remove someone from office.

The executive is frequently made up of several people (the cabinet), which results in shared duties and group decision-making.

Unlike set presidential terms, governments can be dissolved and new elections held if the incumbent party loses the support of the parliament. This allows for more flexible governance.

E.g., United Kingdom, India, Canada, Australia.

### **CONCLUSION**

To sum up, constitutions are the foundation of a country's legal and political system since they establish the framework of government, safeguard the rights of its citizens, and uphold the rule of law. They are essential to preserving national cohesion, promoting political stability, and facilitating democratic processes. Written and unwritten, flexible and rigid, federal and unitary, republican and monarchical, and other constitutional variants reflect the various ways that nations have organised their governance to suit their own historical, cultural, and social

requirements. Although each style has advantages and disadvantages, they all strive to build a cohesive, well-functioning society with open, responsible, and just governance.

Constitutions continue to be crucial for directing and upholding countries all over the world, whether they offer a precise codified document like the US Constitution or develop through laws and conventions like the UK Constitution.



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