

Chapter 2 - The Constitution of India

“A Constitution is not a parchment of paper; it is a way of life and has to be lived up to.” - Justice H.R. Khanna, former Supreme Court judge.

A **Constitution** is the supreme law of the land that governs a politically organized society. It lays down the basic structure of the political system by defining the powers and responsibilities of different levels and organs of government, ensuring the **rule of law**. It reflects the **faith and aspirations of the people**, giving them a shared identity. The Constitution plays a vital role in shaping society. It sets the rules for coordination among diverse groups, helping maintain harmony. At the same time, it distributes power and places limits on the State's authority, thereby protecting individual rights. It also provides a framework for achieving collective goals and aspirations, guiding the overall progress and development of society.

Why Do We Need a Constitution? – A Deeper Perspective

Despite the promise of democracy, the need for a Constitution remains vital. This is because one person alone cannot achieve much – important things like education, health, peace, and development require the combined effort of many people. When people come together, they create collective power, and in modern societies, this power is usually held by the State (government).

However, this power can be misused. It may be used by some people in the State to benefit only themselves, not the whole society. To prevent this, the Constitution provides a clear framework to guide and control how power is used. In fact, the **chief purpose of the Constitution of a country is that it defines and limits the powers of government (PYQ 2023)**. It sets the boundaries within which the government must operate, ensuring it does not act in an arbitrary or oppressive way.

Moreover, in modern democracies, power doesn't always lie with all people equally, but often with a temporary or permanent majority, which can lead to majoritarianism. The Constitution helps protect the rights of individuals and minorities, making sure that the majority cannot do whatever it wants.

So, the Constitution is not just a set of laws. It is a protection – from misuse of power, from unfair rule by the majority, and from decisions made in anger or haste. It ensures that the country is run in a fair, balanced, and thoughtful way.

From Idea to Reality: M. N. Roy and the Constituent Assembly:

M. N. Roy was the first to propose the idea of a Constituent Assembly in 1934, emphasizing that only a democratically elected body could frame India's Constitution. At a time when the focus was on political rights under colonial rule, Roy highlighted the need for a sovereign body representing the people's will. His invaluable contribution lay in shifting the debate from reforms to a truly independent constitutional framework. Though initially ignored, his vision was later adopted by the Congress and became the basis for India's Constitution-making, ensuring its democratic character.

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Chapter 2 - The Constitution of India

Constitutional government:

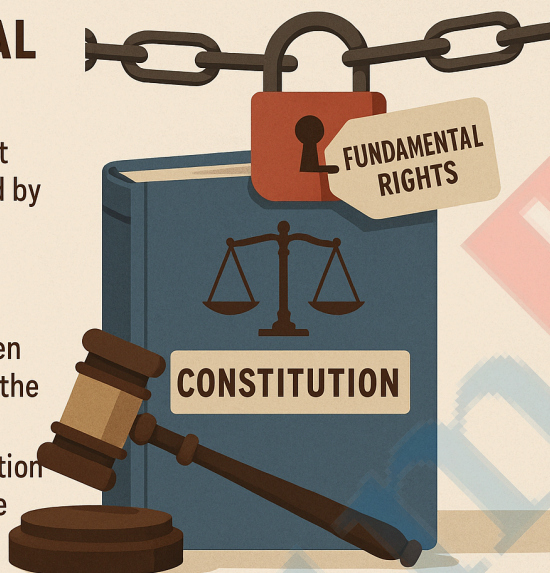
A constitutional government means a government limited by the terms of the Constitution (PYQ 2020, 2021). The Constitution is seen as a 'general limitation' and Fundamental Rights are seen as a 'specific limitation' on the authority of the State. It places an effective restriction on the authority of the State in the interest of individual liberty. The vice versa, however, is not true. (PYQ 2014)

CONSTITUTIONAL GOVERNMENT

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Constitutional Law and its Components:

There is no fixed or strict definition of constitutional law. Whether written or unwritten, constitutional law refers to the basic principles that shape how a State is organized and how it functions. It includes the structure of the government, the division of powers among different branches, and the ways in which these branches operate.

Constitutional Law is the comprehensive body of laws contained in the Constitution that provides the legal and administrative framework of a nation. It also includes all **amendments**, which allow the legal system to adapt and evolve with changing societal needs and values. In addition, it covers **case laws** – the judgments and interpretations given by the Judiciary – which shape legal precedents and help clarify constitutional provisions.

Moreover, **Constitutional Law** also includes **conventions** which are customary practices that are widely accepted within society. Although they are not formally codified, conventions carry the same force as legislative law. They often guide how the government functions and how legal principles are understood. *For example, the convention of inviting the leader of the majority party to form the government and become the Prime Minister.*

Significance of the Constitution:

The “**fundamental law of the land**” holds great importance as it establishes the **supremacy of the Constitution** over

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Chapter 2 - The Constitution of India

parliamentary laws, since Parliament itself is created by the Constitution. This means Parliament cannot override the fundamental principles laid down in it, ensuring coherence and consistency in governance.

The Constitution also empowers the government to take positive steps to reduce inequality and deprivation. It guarantees **civil liberties** and **minority rights**, protecting individual freedoms while upholding equality for all citizens. At the same time, it requires a **rigorous amendment process**, with a special majority in key cases, which shows both its **rigidity** and **resilience**. Above all, it upholds the inviolable **Basic Structure** of the Constitution, which cannot be altered.

Important Features of the Indian Constitution:

1. **Longest written National Constitution:** The Indian Constitution was the longest written national constitution at the time of its inception. It originally contained 395 Articles and 8 Schedules. Currently, it contains 448 Articles and 12 Schedules.
2. **Constitution as a 'living document':** The Indian Constitution is described as a 'living document' as it can be interpreted and modified as per the needs, aspirations, and ideals of contemporary society. The concept of a constitution as a "living document" is often attributed to Justice William J. Brennan Jr.
 - a. Generally the constitutional interpretation is based on 2 legal philosophies
 - i. **Originalism:** Judges must interpret the Constitution as it was understood at the time of ratification; its meaning is fixed by the framers' intent or the original text, regardless of judges' personal views.
 - ii. **Living Constitution / Modernism:** The opposite of originalism; holds that the Constitution should evolve with changing societal needs and be interpreted in light of contemporary values (espoused by jurists like Justice Ginsburg).

India's Evolving Constitution:

The Indian Constitution's adaptability is embodied in its provisions for both rigidity and flexibility. The framers, recognizing the need for the Constitution to evolve, intentionally incorporated mechanisms for amendment that allow it to address the issues and challenges of future generations. This foresight ensures that the Constitution can respond to the changing political, social, and economic scenarios, as well as new aspirations and inspirations that arise in society. Furthermore, it allows for a broad interpretation of fundamental principles such as justice, equality, liberty, and fraternity, ensuring these ideals remain relevant and effective in the context of modern India.

At the same time, while the Constitution evolves to meet contemporary demands, it also preserves its core values. The amendments and interpretations are designed to uphold the original intent of the framers, ensuring continuity with the foundational principles of the document. This balance between preserving the intent of the framers and adapting to new realities is what makes the Indian Constitution both flexible and enduring.

Illustrations of the Indian Constitution as a living document include changes made to meet the expectations of a **changing society**:

- A creative and wide interpretation of Article 21 to ensure the individual's right to live with dignity, such as the Right to free legal aid in the Hussainara Khatoon case, recognition of the third gender in the NALSA case, the Triple Talaq case, and the Temple Entry Movement.

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Chapter 2 - The Constitution of India

- The evolution of implied Fundamental Rights, such as the right to privacy, the right to internet access, the right to reputation, and the right to be forgotten.
- Ever-evolving affirmative actions to address societal disparities.

3. **Framed from diverse sources** (Refer to Table 2.1)

4. **Federal System with Unitary Features:** Article 1 of the Indian Constitution states, “India, that is Bharat, shall be a Union of States.” The Constitution of India establishes a federal framework and incorporates several unitary elements, underscoring its unique blend.

Federal features	Unitary Features
“Dual Polity” at Central and state level	Power balance tilted towards strong centre
Written Constitution	Indestructible Union of destructible states
Supremacy of Constitution	Single Constitution and single citizenship
Rigidity of Constitution	All-India Services
Constitutional “Division of Powers”	Appointment of governors
Bicameralism at union level	Emergency provisions
Independence of judiciary	Single, integrated judiciary
	Unequal representation in Rajya Sabha

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FEDERAL & UNITARY FEATURES OF INDIAN CONSTITUTION

FEDERAL FEATURES

- “Dual Polity” at Central and state level
- Written Constitution
- Supremacy of Constitution
- Rigidity of Constitution
- Constitutional “Division of Powers”
- Bicameralism at union level.
- Independence of judiciary



UNITARY FEATURES

- Power balance tilted towards strong centre.
- Indestructible Union of destructible states
- Single Constitution and single citizenship
- All-India Services
- Appointment of governors
- Emergency provisions
- Single, integrated judiciary
- Unequal representation in Rajya Sabha

5. Independent & Integrated Judicial System: India’s judicial framework is independent from external influence and functions in a unified manner across the country. It builds public trust in the justice system while strengthening democracy, protecting rights, and upholding the rule of law. The Supreme Court is the custodian of the Constitution of India (PYQ 2015).

6. Parliamentary Form of Government: The Parliamentary System of Government is the one in which the Executive (Council of Ministers) are chosen from the Members of Parliament (PYQ 2013). These Council of Ministers, working as the ‘Government,’ are responsible to the Parliament and can be removed by it (PYQ 2015, 2020). The Council of Ministers holds the office until they enjoy confidence in the Parliament (PYQ 2013). It is thus, a mechanism of parliamentary democracy for ensuring the collective responsibility of the Government to the people (PYQ 2017). It is also known as the Cabinet form of Government. In the Parliamentary form of Government, the nominal executive is the head of State i.e. President while the real executive is the head of Government i.e., the Prime Minister. In the Presidential system, the President is head of both the executive and government while the executive and legislature work independently (PYQ 2013, 2017).

7. Balance between Parliamentary Sovereignty and Judicial Supremacy: According to A.V. Dicey, Parliamentary Sovereignty is the Parliament’s right to make or unmake any law while no person or body has the authority to override or set it aside. In short, it means, ‘True is what the Parliament does that no authority on earth can undo’. This principle can be traced to the United Kingdom. Judicial supremacy, on the other hand, reaffirms the idea that the judiciary remains the final and authoritative interpreter of the Constitution. This ideal is followed in the United States of America. To find a

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Chapter 2 - The Constitution of India

delicate equilibrium between these two principles, the framers of the Indian Constitution adopted the principle of Constitutional supremacy. Under it, the Constitution remains the highest source of authority for all the state organs, and they cannot exercise any power which is not conferred upon them by the Constitution. Thus, it preserves the rule of law, protects individual rights and fosters a dynamic yet stable democratic system within the constitutional framework.

According to **A.V. Dicey, Parliamentary Sovereignty** means that Parliament has the right to make or unmake any law, and no person or body can override it. In short, 'True is what the Parliament does that no authority on earth can undo'. This principle comes from the United Kingdom. On the other hand, **Judicial Supremacy** gives the judiciary the final authority to interpret the Constitution. This system is followed in the United States of America. To find a delicate equilibrium between these two principles, the framers of the Indian Constitution chose a middle path by adopting **Constitutional Supremacy**. Here, the **Constitution** is the highest source of authority, and no organ of the state can exercise powers beyond what it grants. This ensures the **rule of law**, protects **individual rights**, and helps maintain a **stable yet flexible democracy**.

8. Flexible as well as Rigid: The **Constitution of India** is a blend of **flexibility and rigidity**. Some provisions can be amended only through a **special majority** in both Houses of Parliament, and in certain cases, they also require approval from more than half of the **state legislatures**. This shows the rigid nature of the Constitution, making it resistant to frequent changes. At the same time, it is also flexible. Some provisions can be amended by a **simple majority** in Parliament, just like ordinary laws. These amendments do not fall under the scope of **Article 368**, reflecting the Constitution's flexibility.

9. Others: Other features might include Fundamental Rights, Directive Principles of State Policy, Fundamental Duties, universal adult suffrage, single citizenship, a secular state, emergency provisions, etc.

Why was the Parliamentary form of government opted?

India opted for a Parliamentary form of government over the Presidential system primarily to ensure greater accountability of the executive to the legislature, even if it meant less stability. The framers drew on India's prior experience with the British parliamentary model under the Government of India Acts of 1919 and 1935, which had familiarized the country with its functioning. They also wished to avoid the risk of friction and deadlock between the executive and legislature, especially in a newly independent nation facing urgent challenges of nation-building. Given India's diversity, the parliamentary system was seen as better suited to provide a representative government. Moreover, the presidential system carried the danger of power concentration and personality cults, as witnessed in many fragile democracies, which could undermine the spirit of democracy.

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Chapter 2 - The Constitution of India



Constitutionalism:

Constitutionalism refers to an idea or a principle that the authority of the government is derived from the body of fundamental law and is also limited by it. It seeks to establish that the State is set up for the fulfillment of the aspirations of the people and noble objectives of the society, and the extent of the power of the State is as per those aspirations and objectives.

It suggests that the working of the State should be within the constitutional boundaries, and no organ of the State or officeholder is allowed to exercise unlimited or arbitrary power. It must be noted that Constitutionalism is a spirit that does not necessarily require a written constitution. Also, it can be absent despite the existence of a constitution. The features that ensure constitutionalism in India include the rule of law, supremacy of law, fundamental rights, separation of powers, judicial review, etc.

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Chapter 2 - The Constitution of India

Constitutional Morality:

Constitutional morality is the adherence to the core principles, norms and conscience of the Constitution. 'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets (UPSC 2021). These principles include - constitutional supremacy, parliamentary form of government, rule of law, intolerance for corruption etc. to name a few. It aims to create an egalitarian, ethical, and liberal society based on social, economic and political justice. Dr. B.R. Ambedkar invoked the phrase '**constitutional morality**' during constituent Assembly debates. According to him, constitutional morality was the answer to the existing disparity in the society and the doctrine primarily translated to respect for Constitutional democracy as the accepted form of governance and administration.

"Constitutional morality is not a natural sentiment. It has to be cultivated." – Dr. B.R. Ambedkar

Although constitutional morality is not specifically mentioned in the Constitution, it is derived from various ideals and principles embedded in its different parts such as Preamble, Fundamental Rights, Directive Principles and Fundamental Duties, etc.

Views/Opinions of Supreme Court on Constitutional Morality:

- In the 2015 Krishnamoorthy case, the court emphasised that constitutional morality is essential for good governance.
- Union of India vs. Government of the NCT of Delhi (2018), it was ruled that high-ranking officials must adhere to constitutional morality and uphold the ideals outlined in the Constitution to prevent the arbitrary use of authority.
- In the Government of NCT of Delhi case (2018), likened constitutional morality to a "second basic structure doctrine", emphasising its role in curbing arbitrary authority.
- In Navtej Singh Johar vs. Union of India (2018), the Supreme Court held that Section 377 infringed upon the rights of the LGBTQI community and violated the fundamental values of individual dignity as enshrined in Articles 14, 19, and 21 of the Constitution.
- In K. S. Puttaswamy vs. Union of India (2018), the Supreme Court confirmed the constitutional validity of Aadhaar with certain restrictions, underscoring the role of courts in checking executive abuse of power.
- In K. S. Puttaswamy case (2018), the Court reiterated its duty to uphold constitutional morality by nullifying any law or executive action that contravenes the constitution.
- Joseph Shine vs. Union of India (2019), adultery not a crime.

Constitutional Morality is a significant concept as it upholds the **rule of law** while respecting the **plurality and diversity** of society. It aims to make individuals and communities more inclusive and to maintain people's trust in democratic institutions. It urges the organs of the State to protect the **heterogeneous nature of society** through constitutionalism. In this way, constitutional morality becomes the foundation of effective constitutional laws. Upholding it is a **moral duty of all sections of society**, as it helps in strengthening and deepening Indian democracy.

Transformative Constitution: A Transformative Constitution seeks to fulfill the Constitution's primary goal of bettering society by adapting to changing principles. The term was coined by American Academician Karl Klare. It has

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Chapter 2 - The Constitution of India

two dimensions - transforming the relationship between the individual and the State and transforming the state and the society itself.

As Justice Chandrachud aptly described, “The constitution is a transformative document.” The Indian Constitution, in particular, has been called a “great social document, almost revolutionary in its aim of transforming a medieval hierarchical society into a modern egalitarian one” by the Supreme Court.

Significance of a Transformative Constitution:

A transformative constitution is essential for a society that seeks progress and equality. Its significance can be understood through the following key aspects:

- Upholding Individual Rights: It ensures that the rights of individuals are not just theoretical but actively protected.
- Promoting Societal Changes: A transformative constitution creates pathways for societal evolution, addressing inequalities and injustices.
- Encouraging Creative Interpretation: It allows for the constitution to be interpreted in ways that address contemporary issues, rather than being confined to outdated perspectives.
- Upholding Constitutional Morality: It emphasizes ethical principles that guide governance and legal practice.
- Maintaining Checks and Balances: A transformative constitution ensures that no branch of government becomes too powerful, thus safeguarding democracy.
- Fostering Faith in the Constitution: By continually evolving and adapting, it strengthens public trust in the system.
- Becoming a Living Document: It evolves with time, meeting the changing needs of society, and remains relevant across generations.

Why is the Indian Constitution termed as a transformative constitution?

The Indian Constitution is often referred to as a transformative constitution due to its role in:

Ensuring Individual Rights:

- Fundamental rights serve the twin principles of anti-dehumanization and anti-hierarchy.
- Right to privacy – added to the constitution via the Puttaswamy Case.
- Right to the choice of life partner – added to the constitution via the Hadiya Case.
- Decriminalization of Section 377 – added to the constitution via the Navtej Singh Case.

Brought in Societal Transformation:

- Universal adult franchise – granted the franchise right to every individual above 18, irrespective of religion, race, caste, or gender.
- Prevented Honour Killing – established through the Shakti Vahini Case.
- Addressed Environmental Pollution – exemplified in the MC Mehta Case.
- Anti-Discrimination – enshrined in Article 17 and through acts such as the SC/ST Act.

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Chapter 2 - The Constitution of India

Critique of the Constitution:

Bag of Borrowings

The **Constitution of India** has faced criticism on several grounds, one major critique is its so-called “**borrowed**” nature, as it draws heavily from external sources rather than being rooted in indigenous traditions and values. Some detractors even describe it as a “**carbon copy**” of the **Government of India Act of 1935**, arguing that it lacks originality and does not fully reflect the unique needs and aspirations of the country. A few critics have gone further, calling it “**anti-Indian**”, suggesting that it does not completely capture the spirit of Indian nationalism.

Some argue that the Constitution should have been approved through a referendum. This view gained support when opposition parties in the 1952 elections promised to scrap and rewrite it if elected. However, the public did not support this, and most members of the Constituent Assembly were re-elected to Parliament and State Legislatures.

Un-Gandhian

Additionally, some followers of **Mahatma Gandhi** have called the Constitution “**un-Gandhian**” because it does not fully reflect Gandhian principles such as **decentralization** for achieving *Ram Rajya*. The Constitution has also been criticized for its **voluminous content**, which some believe makes governance less effective. In addition, the **complexity of language** and intricate **legal provisions** are seen as barriers, as they often benefit legal practitioners more than the general public.

“Even a bad constitution can be good if those running it are good” - CJI D. Y. Chandrachud

Achievements of the Indian Constitution:

Despite some criticism, the achievements of the Indian Constitution are multifaceted and profound. Firstly, it has fostered unity in diversity, exemplified by the harmonious coexistence of people from diverse religions, cultures and languages. Secondly, the democratic process has catalyzed significant social transformation, redistributing political power from the urban elite to the rural populace. Moreover, the widespread legitimacy of the constitution is evident, as it has remained unchallenged by various social groups and political factions. Furthermore, the Constitution’s commitment to environmental protection is underscored by provisions such as Article 48A, and it has acted as a tool to expand the right to life beyond human lives. Additionally, the principle of the rule of law has ensured that the nation is governed not by whims but by the principles of natural justice. Lastly, the constitution serves as a powerful instrument for the empowerment of vulnerable sections of society.

Constitution Day (PYQ 2023)

Constitution Day, also known as ‘Samvidhan Divas’, is celebrated on 26th November each year since 2015, to commemorate the adoption of the Constitution of India. The celebration also aims to promote Constitutional values among citizens. The Constituent Assembly of India adopted the Constitution of India on 26th November 1949, and it came into effect on 26th January 1950.

75 Years of the Indian Constitution: A Journey of Promise and Paradox

India’s Constitution turns 75 in 2024 — a rare milestone globally. While the average lifespan of a constitution is just 19 years, India’s has endured four times longer, even amid immense political, social, and economic challenges. Framed in

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Chapter 2 - The Constitution of India

the shadow of Partition, mass displacement, and the task of integrating over 500 princely states, the Constitution emerged as a bold act of faith. It introduced universal adult franchise and parliamentary democracy in a nation battling illiteracy and poverty – a gamble that, despite its trials, largely paid off.

Over the decades, the Constitution has shaped a distinct constitutional culture – where people respect institutions, participate in elections in large numbers, and expect their rights to be upheld. Courts have played a key role in safeguarding fundamental rights, even as they were granted expansive restriction clauses. Federalism too, has matured – from a centralised framework to one that acknowledges regional identities and power-sharing, aided by the rise of regional parties and the 73rd and 74th Constitutional Amendments.

Yet, this celebration also invites some introspection. Over decades, governments of all hues have used constitutional mechanisms to consolidate power further. The Emergency was imposed through constitutional means. Such concentration of power has come at a cost. Parliamentary debates are often bypassed or disrupted, laws are rushed through without committee scrutiny, and the bureaucracy – once Sardar Patel’s ‘steel frame’ – has become less assertive in checking executive overreach. Governors, meant to be neutral, have frequently acted as political agents. Judicial independence is again strained through executive delays and post-retirement inducements. Investigative agencies and the Election Commission have, at times, appeared partisan. Even dissent, once a constitutional right, faces curbs through harsh laws like UAPA and PMLA, where arrest becomes punishment and bail elusive.

Despite these concerns, the Constitution continues to endure. All political parties now invoke its sanctity, and its central role in elections reflects public reverence. Ambedkar once said, “A Constitution is not a mere lawyer's document; it is a vehicle of life, and its spirit is always the spirit of the age.” At 75, the Indian Constitution remains a living document. But for it to thrive another 75, its spirit must evolve with the times – not just through amendments, but through deeper democratic commitment.

Table 2.1: Sources of the Indian Constitution

S.No.	Countries	Borrowed Features of Indian Constitution
1.	Government of India Act, 1935	<ol style="list-style-type: none"> 1. Federal Scheme 2. Office of governor 3. Judiciary 4. Public Service Commissions 5. Emergency provisions 6. Administrative details
2.	Australia	<ol style="list-style-type: none"> 1. Concurrent list (PYQ 2003) 2. Freedom of trade, commerce and intercourse 3. Joint sitting of the two Houses of Parliament
3.	Canada	<ol style="list-style-type: none"> 1. Federation with a strong Centre (PYQ 2003)

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Chapter 2 - The Constitution of India

		<ol style="list-style-type: none"> 2. Vesting of residuary powers in the Centre 3. Appointment of state governors by the Centre 4. Advisory jurisdiction of the Supreme Court
4.	Ireland	<ol style="list-style-type: none"> 1. Directive Principles of State Policy (PYQ 2003) 2. Nomination of members to Rajya Sabha 3. Method of election of the President
5.	Japan	<ol style="list-style-type: none"> 1. Procedure Established by law
6.	Soviet Union (USSR)	<ol style="list-style-type: none"> 1. Fundamental duties 2. Ideals of justice (social, economic and political) in the Preamble
7.	United Kingdom (UK)	<ol style="list-style-type: none"> 1. Parliamentary government 2. Rule of Law 3. Legislative procedure 4. Single Citizenship 5. Cabinet system 6. Prerogative writs 7. Parliamentary privileges 8. Bicameralism
8.	United States (USA)	<ol style="list-style-type: none"> 1. Fundamental rights (PYQ 2003) 2. Independence of judiciary 3. Judicial review 4. Impeachment of the president 5. Removal of Supreme Court and High Court judges 6. Post of Vice-President
9.	Germany (Weimar)	<ol style="list-style-type: none"> 1. Suspension of Fundamental Rights during emergency
10.	South Africa	<ol style="list-style-type: none"> 1. Procedure for amendment of the Indian Constitution 2. Election of members of the Rajya Sabha
11.	France	<ol style="list-style-type: none"> 1. Republic 2. Ideals of liberty, equality and fraternity in the Preamble

Do you know?

The **original Constitution of India** was **handwritten in both English and Hindi**.

- The **English version** was calligraphed by **Prem Behari Narain Raizada**.
- The **Hindi version** was written by **Vasant Krishan Vaidya**.

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Chapter 2 - The Constitution of India

- Both versions were signed by members of the Constituent Assembly and are preserved in the **Parliament Library**.

However, **only the English version** was treated as the **legally authoritative text** from 1950 onwards. The Hindi version was symbolic, not enforceable. To correct this and promote Hindi for official use, the **58th Constitutional Amendment Act, 1987** inserted **Article 394A** into the Constitution.

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