



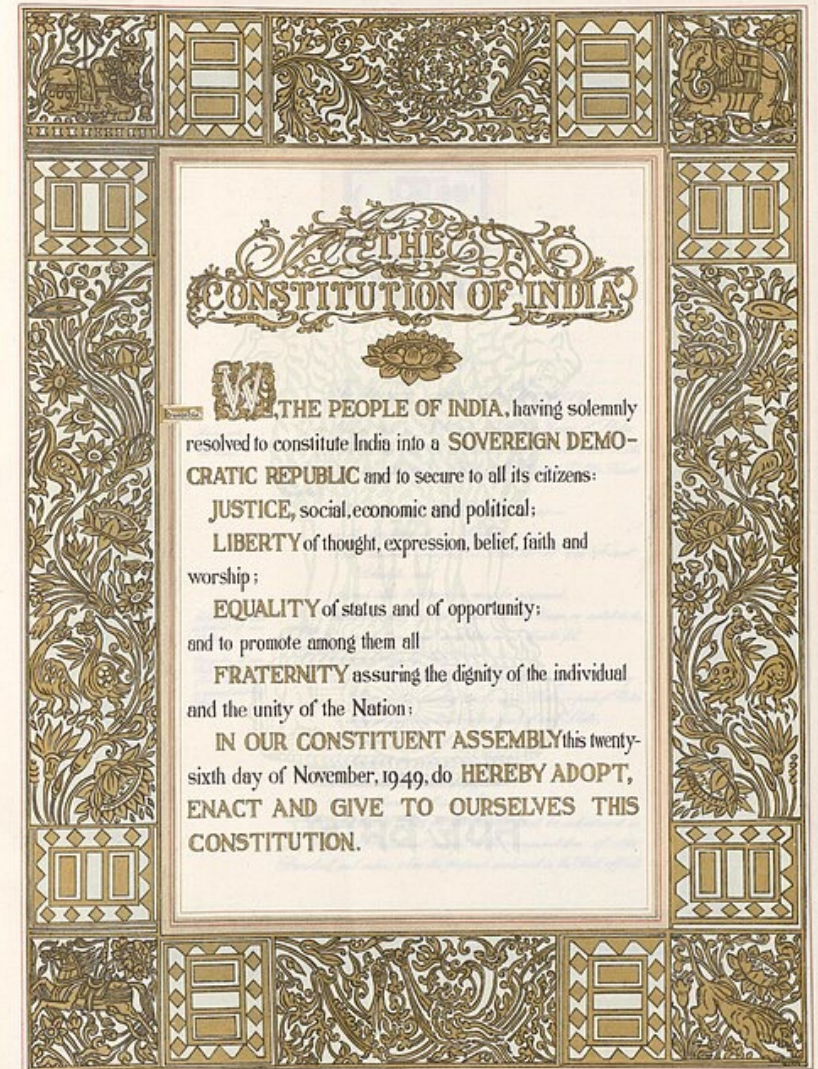
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# Indian Constitution

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# History

- Adopted on 26 November 1949, the Indian Constitution was one of the earliest post-colonial Constitutions.
- The Government of India Act 1935, which was the constitution and governing document of British India until its independence, provided the basis for the constitution of India.
- Originally it had 395 articles, 22 parts, and 8 schedules; it is the longest written constitution. It consists of approximately **448 to 470 articles** organized into **25 parts** and **12 schedules**

# Key features



The Constitution of India is the supreme legal authority which binds the legislative, executive, and judicial branches of government.



It empowers Parliament and the Legislatures of States and Union Territories to enact statutes.



It establishes India as a 'Sovereign Socialist Secular Democratic Republic' with a Parliamentary form of Government.



It grants all citizens Fundamental Rights and empowers the independent judiciary to invalidate legislations or government actions which violate the Constitution.

## Immutability of the basic constitutional structure

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The Constitution of India is remarkable for its durability, although heavily amended over time. The Indian constitution is the world's most frequently-amended national governing document.<sup>1</sup>



Any amendment to the Constitution requires a two-thirds majority in the Rajya Sabha.



The Indian Constitution does not contain a provision to limit the powers of the parliament to amend the constitution.

# Immutability of the basic constitutional structure

However, the Supreme Court of India established in the landmark *Kesavananda Bharati v. State of Kerala* (1973) case that Parliament cannot amend the "basic structure" of the Constitution.

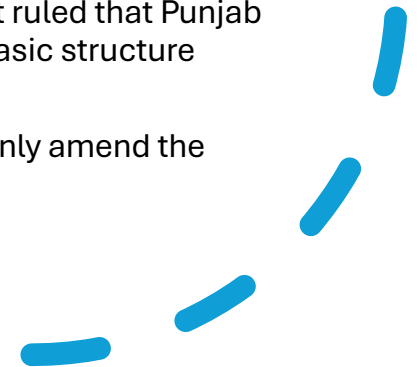
This decision laid down the constitution's basic structure:<sup>4</sup>

- **Supremacy** of the constitution
- **Republican, democratic form of government**
- Its **secular nature**
- **Separation of power**
- Its **federal character**

Accordingly, an amendment cannot destroy what it seeks to modify; it cannot modify the constitution's basic structure or framework, which are immutable. Such an amendment will be declared invalid.

In *Golaknath v. State Of Punjab* decision, the Supreme Court ruled that Punjab could not restrict any fundamental rights protected by the basic structure doctrine.

To conclude with, the Parliament or a State legislature can only amend the constitution to the limit of its basic structure.



# Governance

- India is governed by a **bicameral Parliament** (Lok Sabha and Rajya Sabha) with the executive directly accountable to the parliament.
- The executive is composed of a **President** (nominal head) and **Prime Minister** (real executive) which heads the council of ministers.
- The constitution bestows all the national government's executive power in the office of the **president**. The president is chosen by an electoral college composed of the members of both the national and state legislatures. This *de jure* power is not exercised. His role is mostly ceremonial.
- The **prime minister** leads the majority party or a coalition comprising a majority. He/She must have the support of a majority of the members of the lower House of Parliament. The Lok Sabha can pass a motion of no confidence, removing the prime minister from office.

# Bicameral Structure

- Lok Sabha



- Rajya Sabha



# Doctrine of separation of powers

- The rule of law entails the separation of powers between the three organs of the Government.
- However, the doctrine of separation of powers has not been accepted in India in its strict sense. Each branch is, in some form or the other, dependent on the other organ which checks and balances it.
- There is express mention that the **executive power** of the Union and of a State is vested by the constitution in the President and the Governor (Articles 53(1) and 154(1)). However, there is no corresponding provision vesting the legislative and judicial powers.

# Doctrine of separation of powers

- The **President's function and powers** are enumerated in the Constitution itself. The prime minister, acting via the president, can unilaterally exercise the legislative power, adopting **ordinances** that have the force of law. Governments have been abusing the ordinance system to enact laws that could not pass both Houses of Parliament.
- **Parliament** is competent to make any law subject to the provisions of the Constitution and there is no other limitation on its legislative power. The prime minister is responsible before the parliament.
- The **judiciary** is independent and there can be no interference with its judicial functions either by the Executive or by the Legislature.

# Independence of the judiciary: a basic feature of the Constitution

- The judiciary protects the fundamental rights enshrined in the constitution from infringement by any state body and balances the conflicting exercise of power between the central government and a state.
- The doctrine has highlighted that an independent judiciary is a basic feature of the constitution.
- The Indian Constitution provides for a single integrated system of courts to administer both Union and State laws. At the apex of the entire judicial system is the Supreme Court of India followed by the High Courts in each State.
- The Supreme Court of India is the guardian of the Constitution: judicial review to invalidate unconstitutional laws.

# Supreme Court constitutional review

**Article 13(2)** ‘Laws made after the adoption of the constitution must be compatible with it, or they will be deemed void *ab initio*’.

**Article 13(3)** ‘In such situations, the Supreme Court (or a high court) determines if a law is in conformity with the constitution. If such an interpretation is not possible because of inconsistency (and where separation is possible), the provision which is inconsistent with the constitution is considered void’.

# Supreme Court

- Cases heard at or appealed to the High Courts can be further appealed to the Supreme Court.
- The decisions of the Supreme Court are binding on all Courts within the territory of India.
- The Supreme Court comprises the Chief Justice of India and not more than 33 other Judges appointed by the President of India.

# High Courts and District Courts

- Under the administration of each High Court are the District Courts. Each State is divided into judicial districts presided over by a District Judge, which is the principal civil court of original jurisdiction.
- Village/Panchayat Courts also function in some States adjudicate civil and criminal disputes of petty and local nature.

# Federal structure

- The Constitution features a federal structure with unitary features. **Article 1** declares that India is a "Union of States".
- Each state and union territory has its own government. At the Union level, the states are represented in the Rajya Sabha or Council of States. The Rajya Sabha is coequal with the lower house or Lok Sabha, and its consent is required for a bill to become a law.
- Analogous to the president and prime minister, each has a Governor and a chief minister.

# Seventh Schedule of the Constitution

The Seventh Schedule of the Constitution contains three lists:

- a **Union List**,
- a **State List**,
- and a **Concurrent List**.

These lists set out the various subjects on which Parliament and State Legislatures are empowered to make laws.