



# drishti

## Upholding Constitutional Democracy

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*In light of the recent SC verdict in the Delhi Govt vs LG case, we explore the basic values that our constitution imbibes and its indispensability for our country.*

Democracy- which means the rule of people- is operationalized through the adoption of a set of rights, principles and laws called the constitution. In the era of nation-states, the constitution has come to be the fundamental document which governs a nation and is supposed to reflect the philosophy of a particular nation and its citizenry. It is the device which institutionalizes the role of government - along with the government bodies - as the supreme organizer obligated to supervise the fair distribution of power among citizen and organizations. Most modern constitutions share a common set of values, for example, liberty, equality, fraternity, which aim to defend the basic rights of the citizen. The Indian constitution, though unwieldy and complicated in language, is considered to be one of the finest in the world.

### Historical context

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The constitution of India was the outcome of two major events of Indian history that shaped one another. One was the series of colonial laws enacted to govern India; notably the **Government of India Act, 1935**. The second was the **freedom struggle** that brought together large numbers of Indians in a spectacular anti-imperialist and nationalist project.

The membership of the Congress in the Constituent Assembly held social, economic and political views ranging from the reactionary to the revolutionary, and it did not hesitate to voice them. The leaders of the Assembly, who played the same role in the Congress and in the union government, were national heroes and had almost unlimited power, yet **decision making in the Assembly was democratic**. Thus, the Indian constitution expresses **the will of the many rather than the needs of the few**.

As Bipin Chandra correctly points out, “the **wisdom of the US constitution** and its Supreme Court, the **innovations of the Irish constitution**, the **time-tested conventions of the British Parliament**, the **administrative minutiae of the Government of India Act 1935**,

and much else, essence of their own people's struggle for freedom – all went into the design and content of the Indian Constitution”.

## The purpose served by the Constitution

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The basic difference between a democracy and a constitutional democracy is that while democracy can only guarantee that the power is vested with the people (the majority, in fact), the constitution **preserves the rights of the minority** and prevents them from unwelcome contingencies of the majority will.

The constitution also acts as a **bridge between the people and the state**, a bridge that was curated with a vision to put a check on state power. It also **protects the pluralistic fabric of the society** from succumbing to the waves of temperamental shift in public mood.

The **constitutional morality balances popular morality** and acts as a threshold against an upsurge in mob rule.

While many of the third world countries have collapsed into authoritarian rule, it is the intrinsic values imbibed in our constitution which kept this fractious body politic, called India together.

During the framing of the constitution, it was envisioned that the constitution will serve as a device to **align the social values along with the values of equality, liberty and fraternity** and **remodel the social constructs** afflicted with casteism, gender divides and religious animosity.

The constitution provides a moral framework for **profound, non-violent social transformations**. The constitution not only restricts the power of the state but also emboldens it to take steps for the public good. Thus, it provides for a flexible and progressive system.

## Judicial interpretation of the constitution

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Thus, the constitution encompasses six key notions regarding its interpretation by Judiciary:

- Renaissance
- Morality
- Pragmatism
- Objectivity
- Purposive interpretation
- Good Governance

## Constitutional Renaissance

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It refers to the process of constant repair and renewal of “constitutionalism” as a function of adjudication.

It includes the following:

- Obeisance to the constitutional spirit, vision and letter.
- The interpretation of the constitution by the judiciary in a way that glorifies its democratic spirit and reflects a ‘reverence’ towards the constitution.
- Protection of “rights of all, which means that people are true sovereign and they should not be treated as just ‘subjects’ and all forms of public power should be placed at the service of constitutional ends.

## Constitutional Morality

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Constitutional morality provides a principled understanding for unfolding the work of governance. It specifies norms for institutions to survive and an expectation of behaviour that will meet not just the text but the soul of the Constitution. It also makes the governing institutions and representatives accountable.

## Pragmatism

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It refers to the view that constitutions are not limited to their literal interpretation but rather are subject to evolving interpretations according to the change in social order and practices. This stem from the concept of ‘living constitution’ in the US which means the constitution has a dynamic and evolving meaning.

## Objectivity

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The doctrine of constitutional objectivity means that constitutional reference is not an act of subjective discretion and those in power are expected to act ‘reasonably’ and ‘justly’

## Purposive interpretation

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This refers to the interpretation of constitution by the judiciary in light of the interest of the people of India and maintaining institutional integrity.

## Good Governance

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The ultimate motive of constitution-related judicial articulation should be enabling a good and justifiable governance system.

Thus , the constitution is not a static, stagnant or sacrosanct document per se, rather only **“morality” and “democratic spirit” fundamental to it are sacrosanct**. The institutionalization of constitutional democracy has helped the people of India realize the importance of democracy and inculcate democratic sensibilities among them. At the same time, it is important that the government and the judiciary work in harmony to uphold the trust people of the country have held in them and ensure “constitutional governance”.