



Important Sources of the Indian Constitution

- The Constitution of India is the backbone of democracy in our country. It is an umbrella of rights that gives the citizens an assurance of a free and fair society.
- The Constituent Assembly adopted the Constitution on 26th November 1949 and it came into effect on 26th of January 1950.

Sources:

Government of India Act 1935

The Constitution of 1950 was a by-product of the legacy started by the Government of India Act 1935. This was the longest act passed by the British government with 321 sections and 10 schedules. This act had drawn its content from four sources – Report of the Simon Commission, discussions and deliberations at the Third Round Table Conference, the White Paper of 1933 and the reports of the Joint select committees.

This act abolished the system of provincial dyarchy and suggested the establishment of dyarchy at the centre and a 'Federation of India' consisting of the provinces of British India and most of the princely states.

Most importantly, the act established the office of the Governor; all the executive powers and authority of the centre was vested in the Governor.

Some features of the Government of India Act 1935 were:

- **Federal Legislature:** The act suggested that the legislature will have two houses, i.e., the Council of States and a Federal Assembly. **The Council of States** was the upper house which was a permanent body with a tenure of three years and composed of 260 members of which 156 were representatives of British India and 101 of the Princely Indian states. **The Federal Assembly** was the lower house with a tenure expanding up to five years and its composition included 250 representatives of British India and 125 members from Princely states.
- **Provincial Autonomy:** This act enabled the Provincial Governments to be responsible only to Provincial Legislatures and helped them break free from external control and intrusion. It was with the establishment of this act that the powers between the centre and provinces were divided in terms of **three lists** – Federal list (59 items for the Centre), Provincial list (54 items for Provinces) and Concurrent list (36 items for both). The Residuary powers were handed over to the Viceroy.

The United Kingdom

A lot of concepts and features of the Indian Constitution have its roots in Great Britain. Some of those are:

- **Parliamentary form of government:** In such form of government, the country is governed by a cabinet of ministers led by the Prime Minister. The Prime Minister is the head of the government whereas the President i.e. the nominal head, is the head of the state. The main feature of the parliamentary form of government is the availability of one or more opposition parties that exists to keep a check on the ruling party and its functioning.
- **Rule of Law:** This basically states that a State is not governed either by the representatives or by the people but only by the law of that country. The concept of rule of law states that everyone is

equal before the law; even the ones making it. **Article 14** of the Indian Constitution codifies the rule of law.

Article 14: Right to Equality; The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

- **The idea of a single citizenship:** This implies that a person born or migrated to Indian Territory can enjoy the political and civil rights of India alone and no other country at the same time. Therefore, India does not allow dual citizenship. Indian state also does not recognize state citizenship implying that there should not be any demarcation made between the citizens of two or more states within the territory of India.
- **Writs:** The Supreme Court and High Courts in India has the power to issue writs in order to make the **Right to Constitutional Remedies** [Article 32 to 35] available to the citizens. There are five writs - **Habeas Corpus** (produce the detained person before the court and release him if detention is found illegal), **Mandamus** (an order from the Supreme Court or the High Court to a lower court to perform public duty), **Certiorari** (SC or HC issues the writ for quashing the order already passed by an inferior court), **Prohibition** (issued by the SC or the HC to a lower court to stop the latter from continuing with the procedures) and **Quo-Warranto** (restrains a person from holding a public office he is not entitled to hold). The Indian Constitution provides for these writs in Articles 32 and 226.

Article 32 (1): The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

Article 32 (2): The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Article 226 (1): Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

The United States of America

Some of the features borrowed from the USA are:

- **Fundamental Rights: Articles 12 to 32** of the Indian Constitution contains all the fundamental rights. Fundamental rights are the basic human rights given to the citizens of the country to assure them an equal stance in society. **The six fundamental rights are** - Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and Right to Constitutional Remedies.
 - **Judicial Review:** The provision of Judicial Review gives the judiciary an upper hand in interpreting the Constitution. The judiciary can thus nullify any order by the legislature or executive if that order is in conflict with the Constitution of the country.
- The Basic Structure Doctrine, is an **Indian judicial principle** asserting that the power of the Parliament to amend the Constitution is limited by the Constitution.
 - It means that the **Constitution has several basic features that cannot be amended.**
 - This applies **only to Constitutional amendments** and not to ordinary acts of the Parliament.
 - The initial stand of the Supreme court, that any part of the Constitution is amendable, whilst in compliance with the article 368, including the Fundamental Rights and the Article 368 was first challenged by Justice JR Madholkar in the year 1964, in his dissent of the Sajjan Singh vs State of Rajasthan judgement.

- The Kesavananda Bharati vs State of Kerala proceedings (1973), a landmark ruling, answered one main question: Was the power of the Parliament to amend any part of the Constitution unlimited? **This judgement ruled that the Constitution cannot be amended so as to affect the basic structure**, in contrast to the earlier judgement in the 1967 Golaknath case, which had concluded that the Parliament cannot amend so as to take away the Fundamental Right of a citizen.
- **Indira Gandhi violated the Doctrine with Emergency in 1975** and tried to prevent her prosecution by the 39th amendment. Chief Justice Ray attempted to review the Kesavananda Bharati judgement by calling a bench of 13 Judges, including himself, but within two days, he was narrowed down by a majority of 12:1; and the **39th and 41st amendment were struck down**.
- **Impeachment of the President and Removal of Judges:** Article 61 of the Indian Constitution provides for the impeachment of the President through legislative procedures carried out by the two houses of the Parliament. **Article 124 (4)** of the Indian Constitution and the provisions of the **Judges Inquiry Act of 1968** deal with the removal of judges.

Article 124 (4): A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

Ireland

The main feature borrowed from the Irish Constitution is the provision of the **Directive Principles of State Policy (DPSP)**. The DPSP are listed in the **Part IV** of the Indian Constitution and it clearly states that it is the duty of the State to apply these principles in the process of law making. There are mainly three categories of these principles - Socialist Directives, Gandhian Directives and Liberal Intellectual Directives. The procedure for the nomination of members to the Rajya Sabha is also borrowed from Ireland.

Canada

The provisions of a Federation with a strong centre, Residuary powers of the Centre, appointment of State governors by the Centre and the advisory jurisdiction of the Supreme Court, have all been borrowed from the Canadian constitution. **Article 248** of the Indian Constitution states that the Parliament has the sole power to make laws regarding any item not mentioned in the Union and State lists respectively. **Article 143** provides for an advisory jurisdiction for the Supreme Court. Under this provision, the President may seek opinion of the Supreme Court on public matters and the Supreme Court may then further give its opinion after studying the case properly.

France

The Indian Preamble borrowed its ideals of **Liberty, Equality and Fraternity** from the French Constitution. The Indian state came to be recognized as the 'Republic of India' in the lineage of the Constitution of France.

Australia

The Constitution of Australia lent us the provisions of **Freedom of Trade and Commerce** within the country and between the states. The provisions of the same are laid down in the **Articles 301-307** of the Indian Constitution. We also received the provisions of the Concurrent list and the joint sitting of both the houses of Parliament from Australia.

South Africa and Germany

While the Constitution of South Africa gave us the provisions of the procedure of the amendment and the Election of the Rajya Sabha members, the German Constitution, gave us the provision of suspension of fundamental rights during emergency.

These were the major sources of the Indian Constitution. As the father of our Constitution and the Chairman of the Drafting Committee, Dr. B.R. Ambedkar said, **“As to the accusation that the Draft Constitution has [re]produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution....”**

| Major Sources of Indian Constitution | |
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| Provisions | Source/country |
| <i>Constitution of the United States</i> | <ul style="list-style-type: none"> ▪ Preamble ▪ Fundamental Rights ▪ Federal structure of government ▪ Electoral College ▪ Independence of the judiciary and separation of powers among the three branches of the government ▪ Judicial review ▪ President as Supreme Commander of Armed Forces ▪ Equal protection under law |
| <i>British constitution</i> | <ul style="list-style-type: none"> ▪ Parliamentary form of government ▪ The idea of single citizenship ▪ The idea of the Rule of law ▪ Writs ▪ Institution of Speaker and his role ▪ Lawmaking procedure ▪ Procedure established by Law |
| <i>Canadian constitution</i> | <ul style="list-style-type: none"> ▪ A quasi-federal form of government — a federal system with a strong central government ▪ Distribution of powers between the central government and state governments ▪ Residual powers retained by the central government |
| <i>Irish constitution (Ireland)</i> | <ul style="list-style-type: none"> ▪ Directive Principles of State Policy ▪ Nomination of members to Rajya Sabha ▪ Method of Election of President |
| <i>French constitution</i> | <ul style="list-style-type: none"> ▪ Republic and the ideals of Liberty, Equality and Fraternity in the Preamble |
| <i>Australian constitution</i> | <ul style="list-style-type: none"> ▪ Freedom of trade and commerce within the country and between the states ▪ Power of the national legislature to make laws for implementing treaties, even on matters outside normal Federal jurisdiction ▪ Concurrent List |

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| <i>Constitution of Soviet Union (USSR)</i> | <ul style="list-style-type: none"> ▪ Fundamental Duties under Article 51-A ▪ A Constitutionally mandated Planning Commission to oversee the development of the economy |
| <i>Constitution of South Africa</i> | <ul style="list-style-type: none"> ▪ Procedure for amendment ▪ Election of Rajya Sabha members |
| <i>Constitution of Germany</i> | <ul style="list-style-type: none"> ▪ Emergency powers to be enjoyed by the Union ▪ Suspension of Fundamental Rights during emergency. |
| <i>Constitution of Russia</i> | <ul style="list-style-type: none"> ▪ Fundamental Duties ▪ Idea of Social, Economic, and Political Justice in Preamble |
| <i>Constitution of Japan</i> | <ul style="list-style-type: none"> ▪ Procedure Established by Law |
| <i>Government of India Act 1935</i> | <ul style="list-style-type: none"> ▪ Federal Scheme ▪ Emergency Provisions ▪ Public Service Commissions ▪ Office of Governor ▪ Judiciary ▪ Administrative Details |

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