

## **TOPIC: COMPARISON OF INDIAN CONSTITUTION (GS: PAPER III)**

<b>Section A</b>	Introduction
<b>Section B</b>	Political Systems around the World
<b>Section C</b>	Salient features of constitution of various democratic countries
<b>Section D</b>	Borrowed Features of Indian Constitution
<b>Section E</b>	Comparison of Indian Constitution with that of others
<b>Section F</b>	Conclusion
<b>Section G</b>	Model Questions

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## **SECTION A: INTRODUCTION**

*“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”*

The above statement defines the importance and need of a constitution for a country. A constitution is the highest law of a country and reflects the fundamental principles on which a system of government and administration of a country is based.

The term *constitution* comes through French from the Latin word *constitutio*, used for regulations and orders, such as the imperial enactments.

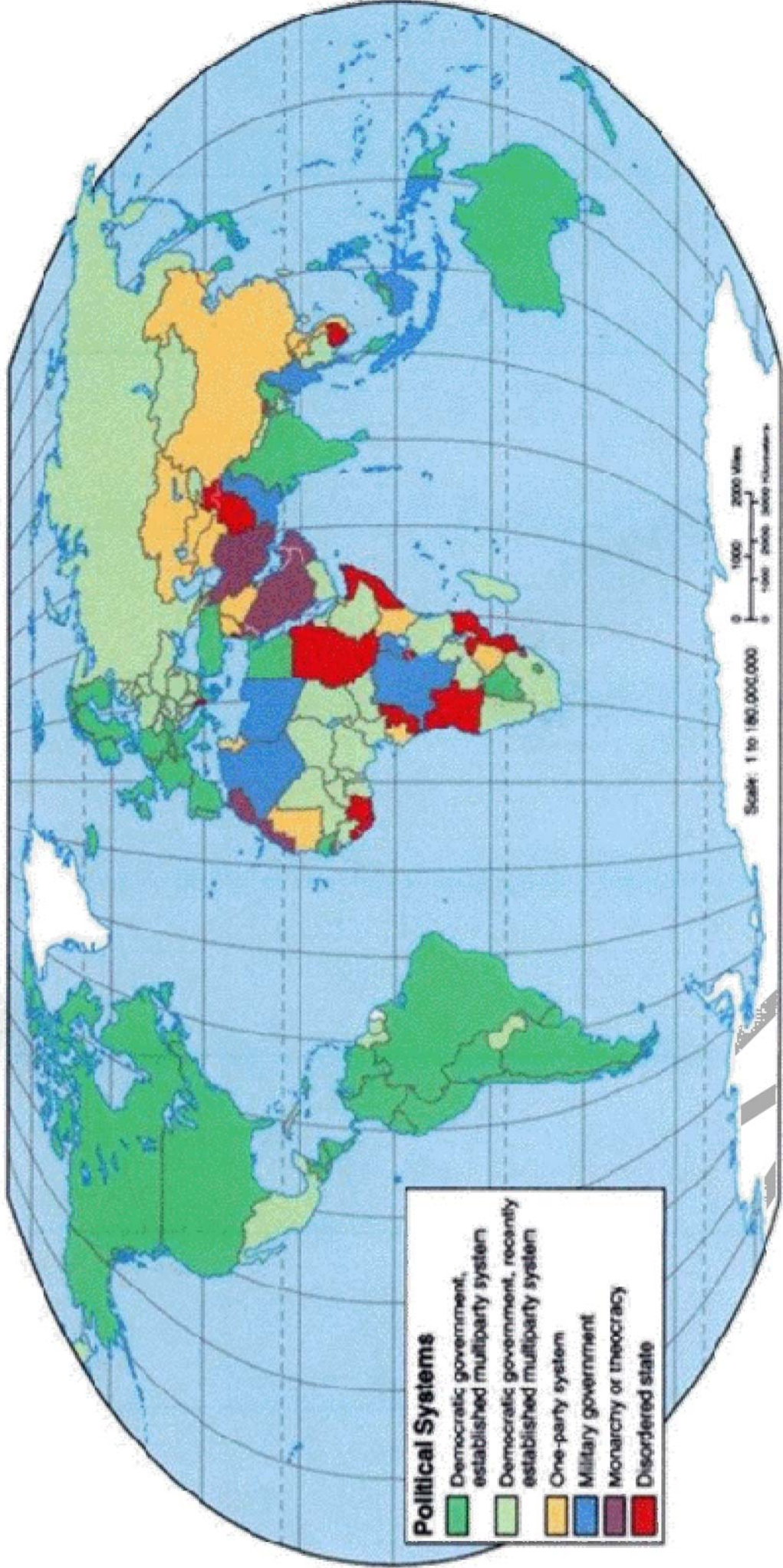
A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. These rules together make up, i.e. *constitute*, what the entity is.

A constitution of a country needs to reinvent itself to keep pace with the global changes. Hence, comparative analysis gains importance in this respect. However, before going into the details of that, a cursory glance at various political systems in the world needs attention.

## **SECTION B: POLITICAL SYSTEMS ACROSS THE WORLD**

Various Political systems prevalent across the world are explained below:

1. Dictatorship is a form of government in which the ruler is an absolute dictator (not restricted by a constitution or laws or opposition from the people).
2. Democracy is the government by the people, exercised either directly or through elected representatives.
3. Republic is slightly different from a democracy and is a government in which supreme power resides in a body of citizens entitled to vote and is exercised by elected officers and representatives responsible to them and governed according to law.
4. Anarchy is the absence of government; the state of society where there is no law or supreme power; a state of lawlessness; political confusion.



*From the above diagram, it can be inferred that comparison of Indian constitution with other democratic countries like USA, UK, Japan, France, Russia and Germany will serve the purpose of comparative analysis.*



## **SECTION C: SALIENT FEATURES OF THE CONSTITUTIONS OF VARIOUS DEMOCRATIC COUNTRIES**

### **Constitution of USA**

The United States of America is a federal republic consisting of fifty states and a federal district.

Main features of its constitution are:

1. Presidential Democracy-President is the head of state and head of government.
2. Federal System-It is a federal state that emerged from an initial agreement between a numbers of separate states.
3. The Constitution and the Rule of Law-In the United States, the Constitution is "king." Only laws passed through the mechanisms established by the Constitution are valid. Furthermore, any law that is inconsistent with the limitations, structures or principles established by the Constitution is considered, by definition, invalid.
4. The Separation of Powers and Checks and Balances-Another prominent feature of the U.S. Constitution is its scheme of separated powers. The Framers were well aware of the need to preserve liberty while establishing order with the new Constitution.

### **Constitution of UK**

The United Kingdom of Great Britain and Northern Ireland, commonly known as the United Kingdom (UK) and Britain, is a sovereign state located off the north-western coast of continental Europe. The country includes the island of Great Britain, the north-eastern part of the island of Ireland and many smaller islands.

The UK's form of government is a constitutional monarchy with a parliamentary system and its capital city is London. It consists of four countries: England, Scotland, Wales and Northern Ireland.

Characteristics or features of the U.K. constitution:

1. The Constitution is not 'written' in the sense of having a single document defining the powers of government and rights of individuals. Nevertheless many sources of constitutional law are written and these together with the non-legal rules make up the British Government.
2. The constitution is flexible and based on continuity of development.
3. In the absence of a written constitution having the status of fundamental, or higher law, the concept of Parliamentary sovereignty, or legislative supremacy represents the cornerstone of the constitution.

4. There is no strict separation of powers between the executive, legislature and judiciary, although a separation of functions exists and the concept retains importance under the constitution.
5. The United Kingdom has a constitutional monarchy.
6. The United Kingdom is a unitary, as opposed to a federal state.
7. The legislature is bicameral in nature.
8. The judiciary is independent.

### **Constitution of France**

France is a unitary semi-presidential republic located mostly in Western Europe.

The current Constitution of France was adopted on 4 October 1958. It is typically called the Constitution of the Fifth Republic, and replaced that of the Fourth Republic dating from 1946 . Since then the constitution has been amended eighteen times, most recently in 2008.

Salient Features of its constitution are:

1. The preamble of the constitution recalls the Declaration of the Rights of Man and of the Citizen from 1789 and establishes France as a secular and democratic country, deriving its sovereignty from the people.
2. It provides for the election of the President and the Parliament, the selection of the Government, and the powers of each and the relations between them.
3. It ensures judicial authority and creates a High Court (a never convened court for judging the President), a Constitutional Council, and an Economic and Social Council. It was designed to create a politically strong President.
4. It enables the ratification of international treaties and those associated with the European Union.
5. The Constitution also sets out methods for its own amendment either by referendum or through a Parliamentary process with Presidential consent.

### **Constitution of Russia**

Russia is a federal semi-presidential republic, comprising 83 federal subjects.

Salient features of its constitution are:

1. The Russian Constitution is based on world standards for human rights and basic principles of democratic state-building such as ideological neutrality of the state, political pluralism, competitive elections and separation of powers.

2. The constitution establishes a semi-presidential system, resembling the French system but with stronger executive power, due to the increased independence of the president in comparison to the French model.
3. The President of the Russian Federation holds primary power in the Russian political system. The President, who is elected for a six year term (following the 2008 Amendments to the constitution), is the head of state and the Supreme Commander-in-Chief of the Armed Forces of the Russian Federation.
4. The constitution prescribes that the Government of Russia, is the executive branch of state power and is consisting of a prime minister (chairman of the Government), deputy prime ministers, and federal ministers and their ministries and departments.
5. The legislature's innate checks and balances are reflected in the ability of the Federal Council to examine and subsequently revise or reject legislation passed by the Duma.
6. The Russian Constitution provides for a Constitutional Court, a Supreme Court, a Supreme Court of Arbitration, and for the development of various lower courts. In contrast, the Constitution withholds several areas of traditional court jurisdiction from the Court and instead gives them to the President.

### **Constitution of Germany**

Germany is a federal parliamentary republic in western-central Europe. The country consists of 16 states.

Salient Features of its constitution are:

1. The Basic Law for the Federal Republic of Germany (German: Grundgesetz für die Bundesrepublik Deutschland) is the Constitution of Germany. It was approved on 8 May 1949, and, with the signature of the western Allies of World War II on 12 May, came into effect on 23 May.
2. Basic rights are fundamental to the Basic Law, in contrast to the Weimar Constitution, which listed them merely as "state objectives".
3. The Basic Law established Germany as a parliamentary democracy with separation of powers into executive, legislative, and judicial branches.
4. The executive branch consists of the largely ceremonial Federal President as head of state and the Federal Chancellor, the head of government, normally (but not necessarily) the leader of the largest grouping in the Bundestag.
5. The legislative branch is represented by the Bundestag, elected directly through a mixture of proportional representation and direct mandates.
6. The judicial branch is headed by the Federal Constitutional Court, which oversees the constitutionality of laws.

7. Basic Law may be amended by an absolute two-thirds majority of the Bundestag along with a simple two-thirds majority of the Bundesrat
8. Germany has switched between confederal, federal and unitary rule, since the German Confederation was founded in 1815. The current Germany is a federal system of states.

### **Constitution of Japan**

Japan is a constitutional monarchy where the power of the Emperor is very limited. As a ceremonial figurehead, he is defined by the constitution as "the symbol of the state and of the unity of the people"

Salient features of its constitution are:

1. The constitution provides for a parliamentary system of government and guarantees certain fundamental rights.
2. The constitution, also known as the "Postwar Constitution" is most characteristic and famous for the renunciation of the right to wage war contained in Article 9 and to a lesser extent, the provision for de jure popular sovereignty in conjunction with the monarchy.
3. It is a rigid document and no subsequent amendment has been made to it since its adoption.
4. Legislative authority is vested in a bicameral National Diet and, whereas previously the upper house had consisted of members of the nobility, the new constitution provided that both chambers be directly elected.
5. Executive authority is exercised by a Prime Minister and cabinet answerable to the legislature, while the judiciary is headed by a Supreme Court.

### **Constitution of India**

The constitution of India was framed by the Constituent Assembly, set up in 1946 under the provisions of cabinet mission plan. Dr. Rajendra Prasad was the president of Constituent assembly and Dr. B.R. Ambedkar was the Chairman of the seven -member Drafting Committee which drafted the constitution.

The Indian constitution is the lengthiest and most detailed written constitution in the world. Though most of the features of our constitution are substantially borrowed from others, the framers gathered the best features of each of the existing constitutions and modified them according to the existing needs and conditions of the country.

The preamble of the constitution declares India a sovereign, Socialist, Secular, and democratic republic. It highlights justice, liberty, equality and fraternity as objectives of the constitution.

The Constitution of India consists of a preamble, 22 parts and 12 schedules. Although it is federal in nature it also has a strong unitary bias.

### Parts

The individual Articles of the Constitution are grouped together into the following Parts:

Part I – Union and its Territory	Part XI – Relations between the Union and the States.
Part II – Citizenship	Part XII – Finance, Property, Contracts and Suits
Part III – Fundamental Rights	Part XIII – Trade and Commerce within the territory of India
Part IV – Directive Principles of State Policy	Part XIV – Services under the Union, the States.
Part IVA – Fundamental Duties	Part XIVA – Tribunals
Part V – The Union.	Part XV – Elections
Part VI – The States	Part XVI – Special Provisions Relating to certain Classes.
Part VII – States in the B part of the I schedule	Part XVII – Languages
Part VIII – The Union Territories	Part XVIII – Emergency Provisions
Part IX – The Panchayats	Part XIX – Miscellaneous
Part IXA – The Municipalities.	Part XX – Amendment of the Constitution
Part IXB – The Cooperative Societies	Part XXI – Temporary, Transitional and Special Provisions
Part X – The scheduled and Tribal Areas	Part XXII – Short title, date of commencement, Authoritative text in Hindi and Repeals



## Schedules

Schedules are lists in the Constitution that categorize and tabulate bureaucratic activity and policy of the Government.

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**First Schedule** (Articles 1 and 4) - This lists the states and territories of India

**Second Schedule** (Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186 and 221)- - This lists the salaries of officials holding public office, judges, and CAG

**Third Schedule** (Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219)—Forms of Oaths - This lists the oaths of offices for elected officials and judges

**Fourth Schedule** (Articles 4(1) and 80(2)) - This details the allocation of seats in the Rajya Sabha (the upper house of Parliament) per State or Union Territory

**Fifth Schedule** (Article 244(1)) - This provides for the administration and control of Scheduled Areas and Scheduled Tribes

**Sixth Schedule** (Articles 244(2) and 275(1))— Provisions for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram

**Seventh Schedule** (Article 246)—The union (central government), state, and concurrent lists of responsibilities

**Eighth Schedule** (Articles 344(1) and 351)—The official languages.

**Ninth Schedule** (Article 31-B) - Originally Articles mentioned here were immune from judicial review on the ground that they violated fundamental rights. but in a landmark judgement in 2007, the Supreme Court of India held in I.R. Coelho v. State of Tamil Nadu and others that laws included in the 9th schedule can be subject to judicial review if they violated the fundamental rights guaranteed under Article 14, 15, 19, 21 or the basic structure of the Constitution.

**Tenth Schedule** (Articles 102(2) and 191(2))—"Anti-defection" provisions for Members of Parliament and Members of the State Legislatures

**Eleventh Schedule** (Article 243-D)—Panchayati Raj (rural local government)

**Twelfth Schedule** (Article 243-W)—Municipalities (urban local government)

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## SECTION D: BORROWED FEATURES OF INDIAN CONSTITUTION

Indian constitution has assimilated various features from other countries into its domain which imparts it a special character.

Following are the borrowed features of constitution from different countries.

From U.K.	<ul style="list-style-type: none"><li>• Nominal Head – President (like Queen)</li><li>• Cabinet System of Ministers</li><li>• Post of PM</li><li>• Parliamentary Type of Govt.</li><li>• Bicameral Parliament</li><li>• Lower House more powerful</li><li>• Council of Ministers responsible to Lower House</li><li>• Speaker in Lok Sabha</li></ul>
From U.S.	<ul style="list-style-type: none"><li>• Written Constitution</li><li>• Executive head of state known as President and his being the Supreme Commander of the Armed Forces</li><li>• Vice- President as the ex-officio Chairman of Rajya Sabha</li><li>• Fundamental Rights</li><li>• Supreme Court</li><li>• Provision of States</li><li>• Independence of Judiciary and judicial review</li><li>• Preamble</li><li>• Removal of Supreme court and High court Judges</li></ul>
From USSR	<ul style="list-style-type: none"><li>• Fundamental Duties</li><li>• Five year Plan</li></ul>
From AUSTRALIA	<ul style="list-style-type: none"><li>• Concurrent list</li><li>• Language of the preamble</li><li>• Provision regarding trade, commerce and intercourse</li></ul>
From JAPAN	<ul style="list-style-type: none"><li>• Law on which the Supreme Court function</li></ul>
From WEIMAR CONSTITUTION OF GERMANY	<ul style="list-style-type: none"><li>• Suspension of Fundamental Rights during the emergency</li></ul>
From CANADA	<ul style="list-style-type: none"><li>• Scheme of federation with a strong centre</li><li>• Distribution of powers between centre and the states and placing Residuary Powers with the centre</li></ul>
From IRELAND	<ul style="list-style-type: none"><li>• Concept of Directive Principles of States Policy (Ireland borrowed it from SPAIN)</li><li>• Method of election of President</li><li>• Nomination of members in the Rajya Sabha by the President</li></ul>

## SECTION E: FEATURES OF INDIAN CONSTITUTION COMPARED WITH OTHER COUNTRIES

### 1. Written Constitution

*A written constitution is a formal document defining the nature of the constitutional settlement, the rules that govern the political system and the rights of citizens and governments in a codified form.*

- India-Written and longest known constitution
- USA-Written. It's a product of 1787 constitutional document and subsequent amendments, the congressional statutes, executive orders, judicial interpretations and the political conventions.
- Great Britain: British constitution is unwritten. Only small portion of British constitution is covered by written documents. The British constitution is an evolved one and not enacted one. Various sources of British constitution are: Conventions, Great Charters, Statutes, Common Law, Legal Commentaries.
- France: Since French revolution France has changed its constitution quite often. The present French constitution which established the Fifth republic is a written constitution.
- Japan: Present constitution of JAPAN became operative in 1947. It is also a written constitution.

### 2. Flexible or Rigid

*A flexible Constitution is one that can be changed by ordinary law making process and the one which requires a special procedure for amendment is called rigid.*

- India: constitution is more flexible than rigid. It is only few the amendment of few of the provisions of the constitution that requires ratification by state legislatures and even then legislation by ½ states would suffice. The rest of the constitution could be amended by a special majority by union parliament. But with the rise of regional parties and coalition govt. even getting the legislation by half of the states is becoming difficult as is evident in the issue relating to NCTC.
- USA: It has a rigid constitution. It can be amended by the congress by means of a special process provided by the constitution for that purpose.
- Britain: Has flexible constitution. It requires no special procedure for its amendment and can be amended by the parliament in the same manner as ordinary laws are made.
- France: Rigid Constitution-Needs Special procedure-60% majority votes in both the house of parliament is needed. Alternatively President can call a national referendum on constitutional amendment.

- Japan: Rigid- Requires special process:
  - The amendment shall be initiated by the diet. Such a proposal must be passed by a majority of two-thirds of its membership.
  - After that it is submitted to the people for ratification at a special referendum or special election.
- Germany: Rigid- Article 79 states the Basic Law may be amended by an absolute two-thirds majority of the Bundestag along with a simple two-thirds majority of the Bundesrat, excluding amendment of those areas defined by the eternity clause.

### 3. Unitary or Federal

*Federalism is a system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units (like states or provinces). A unitary system is governed constitutionally as one single unit, with one constitutionally created legislature.*

1. India: It is federal system with unitary bias. Though normally the system of govt is federal; the constitution enables the federation to transform itself into unitary state in emergencies.
  - Federal features: Division of power, written constitution, Supremacy of constitution, Rigid constitution, Independent judiciary, bicameralism.
  - Some Non- Federal features:
    - Single constitution
    - Contitution has made centre very strong by vesting more powers in it such as governor is appointed by president, parliament can change the territories, borders and names of states by simple majority(article 3).
    - Constitution more flexible than rigid.
    - Single citizenship
    - Single integrated judicial system
2. USA: It is a federal state. The constitution provides for division of power between central govt and state govt. residuary powers are vested in the states. Each state has its own constitution, elected legislature, governor and Supreme Court.
3. Great Britain: It is a unitary state and all powers are vested in a single supreme central govt. The local govts are created only for administrative convenience and they derive their authority from central govt which can also abolish them altogether at any time.
4. France: France is a unitary state. The local govts are created and abolished by central govt only for administrative convenience.
5. Japan: Japanese constitution provides for a unitary state.

#### **4. Type of Govt (Parliamentary v/s Presidential)**

*In a parliamentary form of govt executive is responsible to legislature for its policies and acts. In presidential form of government the executive is completely separated from the legislature and is not accountable to legislature.*

1. **India:** The constitution of India provides for a parliamentary form of govt both at the centre and in states. The parliamentary system of GOI is largely based on the British parliamentary system.
  - Principles of parliamentary govt of India:
    - Nominal and Real executives: President is the nominal executive and prime minister is real executive.
    - Majority party rule: The political party which secures majority seats in lok sabha forms the govt.
    - Collective responsibility: The ministers are collectively responsible to the parliament/Lok sabha.
    - Double membership: Ministers are members of both, legislature and executive.
    - Dissolution of the lower house: The lower house can be dissolved on the recommendation of prime minister.
2. **USA:** Has presidential form of govt. with following features:
  - President is both head of state and head of govt.
  - The president is elected by an electoral college for a fixed tenure of four years and can't be removed by congress except by process of impeachment for a grave unconstitutional act.
  - President governs with the help of a Cabinet, an advisory body whose members are selected and appointed by him and can be removed by him at any time.
  - The president cannot dissolve the 'house of representatives' – lower house of congress.
  - The president and his secretaries are not responsible to congress for their acts.
3. **Great Britain:** Has parliamentary form of govt where King is the nominal executive.
4. **France:** Has quasi presidential and quasi prime ministerial .On one hand, it provides for a powerful president who is directly elected by the people for a seven year term. On the other hand, there is a nominated council of ministers headed by prime minister which is responsible to the parliament.
5. **Japan:** Has parliamentary system with largely British parliamentary features except for the following:
  - The prime minister is chosen as well as appointed by king/queen but in Japan PM is chosen by Diet but appointed by emperor.

- In Britain ministers are appointed by king/queen but in Japan by PM.
- Britain-PM can't remove ministers but in Japan PM can remove.
- Britain-All ministers must be members of parliament, in Japan only majority must be members of Diet.

## **5. Sovereignty of Parliament**

*Parliamentary sovereignty (also called parliamentary supremacy or legislative supremacy) is a concept in the constitutional law of some parliamentary democracies. It holds that the legislative body has absolute sovereignty, and is supreme over all other government institutions, including executive or judicial bodies. The concept also holds that the legislative body may change or repeal any previous legislation, and so that it is not bound by written law (in some cases, even a constitution) or by precedent.*

1. **UK:** Parliament has the supreme power:

- It can make, amend, substitute, and repeal any law.
- The parliament can make constitutional laws by the same procedure as ordinary laws.
- There is no system of judicial review in UK i.e. parliamentary laws cannot be declared as invalid by judiciary as being unconstitutional.

2. **France:** Has a parliament with limited powers vis a vis political executive. It can only make laws on those items which are defined in the constitution. On all other matters govt is empowered to legislate by executive decree.

- **Constitutional council:** France has a constitutional council with nine members who are appointed for a term of nine years. It functions as a judicial watchdog. It is only an advisory body.

3. **Supremacy of constitution and judicial review- India, Japan, USA:** In all three countries the written constitution is regarded as the highest law of the land and Supreme Court acts as custodian of the constitution through its power of judicial review. But there is a difference. American Supreme Court does not derive its power of judicial review from constitution but Indian and Japanese Supreme Court does so.

## **6. Republic v/s Constitutional Monarchy**

*A REPUBLIC is a form of government, and any state so governed, where the MONARCH (King or Queen) is not in fact or law or constitutionally the head of state. In essence, the word REPUBLIC connotes ownership and control of a given state by the population at large. The head of state of a REPUBLIC is usually held by one person, a President (e.g.: the U.S.A., Trinidad, France, Guyana)*



who may be appointed or elected by the Prime Minister or the populace at large respectively; depending on the constitutional arrangements and essentials.

A constitutional monarchy is a form of government established under a constitutional system which acknowledges a hereditary or elected monarch as head of state.

- Republic Countries-India, USA, France, Germany, Russia
- Constitutional Monarchy- UK, Japan

## 7. **President**

1. India: The President of India is the nominal head of state of the Republic of India.

- The real executive being council of ministers headed by Prime minister. He/She has to exercise his powers and functions with the aid and advice of council of ministers headed by PM.(Art 53, 74,75)
- The President is indirectly elected by the people through elected members of the Parliament of India (Lok Sabha and Rajya Sabha) as well as of the state legislatures (Vidhan Sabhas), and serves for a term of five years.
- President can be removed from his/her office before completion of term by impeachment for violation of constitution.

2. USA: The President of the United States of America is the head of state and head of government of the United States.

- The president leads the executive branch of the federal government and is the commander-in-chief of the United States Armed Forces.
- Constitutionally president is elected by an electoral college constituted by an electoral college constituted for the purpose. The members of this college are elected directly by the people of all the states .The College is a special body which is formed only for electing the president and gets dissolved after elections. The American presidency is one of the strongest democratic office in the world.
- President holds his office for a fixed term of 4 years. He is eligible for re election but only once. He can be removed from his office before expiry of his term through impeachment proceedings for treason, bribery or other high crimes. The house of representatives initiates the impeachment proceedings by a majority vote. The case is then tried by Senate. If the senate also passes the impeachment resolution by a two-thirds majority, president stands impeached.
- Article II of the U.S. Constitution vests the executive power of the United States in the president and charges him with the execution of federal law, alongside the responsibility of appointing federal executive, diplomatic, regulatory, and judicial officers, and

concluding treaties with foreign powers, with the advice and consent of the Senate. The president is further empowered to grant federal pardons and reprieves, and to convene and adjourn either or both houses of Congress under extraordinary circumstances

3. France- The president is the pivot of the constitution and occupies a dominant position in the system of govt. He is the real head of the state.

- The President is directly elected by suffrage.
- The length of the term was reduced from 7 yrs. A president cannot serve more than two consecutive terms. The president can be removed from the office through an impeachment process for high treason.
- The impeachment resolution should be passed by both houses of parliament by an absolute majority. After this president is tried by high court of justice.

4. Germany-The President of the Federal Republic of Germany As Germany has a parliamentary system of government with the Chancellor running the government, the President has mainly ceremonial and supervisory duties.

- President can give direction to general political and societal debates and has some important "reserve powers" in case of political instability
- All federal laws must be signed by the President before they can come into effect; he can only refuse to sign a law that he believes to violate the constitution.
- The President is elected by the Federal Convention, a body established solely for that purpose.
- While in office the president enjoys immunity from prosecution and cannot be voted out of office or recalled. The only mechanism for removing the president is impeachment by the Bundestag or Bundesrat for willfully violating German law. Once the Bundestag impeaches the president, the Federal Constitutional Court is charged with determining if he or she is guilty of the offence. If the charge is sustained the court has authority to remove the president from office.

## **8. Citizenship**

1. India-The Indian citizenship and nationality law and the Constitution of India provide single citizenship for all of India. The provisions relating to citizenship upon adoption of the constitution are contained in Articles 5 to 11 in Part II of the Constitution of India. It does not allow dual citizenship. *But govt of India is increasingly becoming more flexible with regards to its dual citizenship rules for persons with Indian origin (PIOs) and overseas citizens of India.*

2. USA- A U.S. citizen may acquire foreign citizenship by marriage, or a person naturalized as a U.S. citizen may not lose the citizenship of the country of birth. U.S. law does not mention

dual nationality or require a person to choose one citizenship or another. Also, a person who is automatically granted another citizenship does not risk losing U.S. citizenship. However, a person who acquires a foreign citizenship by applying for it may lose U.S. citizenship. In order to lose U.S. citizenship, the law requires that the person must apply for the foreign citizenship voluntarily, by free choice, and with the intention to give up U.S. citizenship.

3. UK-When becoming a British citizen one does not need to give up your present citizenship or nationality to become a British citizen. One will not normally lose British nationality if he/she becomes a citizen or national of another country.
4. France-Dual citizenship has been permitted since 1973. Possession of one or more other nationalities, does not, in principle, affect the French nationality.
5. Germany- Dual citizenship is allowed under certain circumstances
6. Australia: With effect from 4 April 2002, there are no restrictions (under Australian Law) on Australians holding the citizenship of another country.

## 9. **Fundamental Rights , Directive Principles and Fundamental Duties**

### Fundamental Rights

1. India- Indian constitution has certain fundamental rights modelled on American Bill of Rights. But unlike USA fundamental rights in india are not absolute and hence govt can impose reasonable restrictions on them. Whether the restrictions are reasonable or not is to be decided by the courts.

The six fundamental rights recognised by the constitution are:

- Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.
- Right to freedom which includes speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation (some of these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality), right to life and liberty, right to education, protection in respect to conviction in offences and protection against arrest and detention in certain cases.
- Right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings;
- Right to freedom of religion, including freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.

- Cultural and Educational rights preserving Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.
  - Right to constitutional remedies for enforcement of Fundamental Rights.
2. USA- The Bill of Rights lists specifically enumerated rights. The Supreme Court has extended fundamental rights by recognizing several fundamental rights not specifically enumerated in the Constitution
  3. Similarly the constitution of USSR and Japan also guarantees certain fundamental rights. But there are no such rights enumerated in the constitution of Great Britain.

### Fundamental duties

1. India- Fundamental duties have been taken from USSR. No other major country has it. Fundamental Duties are the ones that are recognized as moral obligations the citizens are expected to perform. Article 51A under Part IV A of the Constitution of India speaks of the Fundamental duties. One cannot enforce these fundamental duties legally. It was through the 42nd Amendment that these duties were introduced in the Constitution.

There are 10 Fundamental duties that the citizens are expected to discharge. They are:

- The citizens of India are expected to abide by the Constitution and respect all its ideals. Likewise, the citizens are expected to respect the National Flag and the National Anthem.
- The noble ideals that inspired our freedom struggle have to be cherished and followed.
- The sovereignty, unity and integrity of India needs to be upheld and protected.
- Citizens should be ready to defend and render national service towards India.
- The spirits of common brotherhood and harmony have to be promoted by all the citizens wherein they need to transcend all forms of diversities pertaining to religion, language and region. All the practices that are derogatory to the dignity of women have to be renounced.
- India has a rich, varied and composite culture and one needs to preserve it.
- Natural environment including the forests, lakes, rivers and wildlife are expected to be preserved by the citizens.
- People of India are expected to develop within themselves humanism, scientific temperament, and spirits of inquiry and reform.
- Public property is expected to be safeguarded and violence needs to be avoided.
- People are expected to strive for the excellence of all the individuals and collective activities to help in the development of the country.

### Directive principles

The constitution of India contains certain directive principles (Part 4) which confer no justiciable rights on individuals but are regarded to be fundamental in the governance of the country-being in the nature of principles of social policy as contained in the Constitution of Republic of Ireland.

### **10. Due process of law/Procedure established by law**

*DUE PROCESS - It is the legal requirement that the state must respect all of the legal rights that are owed to a person and laws that states enact must conform to the laws of the land like - fairness, fundamental rights, liberty etc. It also gives the judiciary to access the fundamental fairness, justice, and liberty of any legislation.*

*PROCEDURE ESTABLISHED BY LAW - It means that a law that is duly enacted by legislature or the concerned body is valid if it has followed the correct procedure. Say a law enacted by Indian legislature. Article 21 of Indian Constitution says that- 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.*

#### Situation in India

In India, there is no mention of the word 'Due Process'. A strict literal interpretation of Procedure established by Law give the legislative authority an upper hand and they may enact laws which may not be fair from a liberal perspective.

However, in India a liberal interpretation is made by judiciary after 1978 and it has tried to make the term 'Procedure established by law' as synonymous with 'Due process' when it comes to protect individual rights. In Maneka Gandhi vs Union of India case (1978) SC held that - 'Procedure established by law' within the meaning of article 21 must be 'right and just and fair' and 'not arbitrary, fanciful or oppressive' otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied. Thus, the 'procedure established by law' has acquired the same significance in India as the 'due process of law' clause in America.

Due process is not used in contemporary English law, though two similar concepts are natural justice (which generally applies only to decisions of administrative agencies and some types of private bodies like trade unions) and the British constitutional concept of the rule of law as articulated by A. V. Dicey and others. However, neither concept lines up perfectly with the American theory of due process.

### **11. Emergency provisions**

1. India-Part XVIII of the Constitution of India contains Articles 352-360 which deals with 'Emergency Provisions'.

- There are three kinds of provisions according to the Constitution:

- National Emergency
  - State Emergency-Earlier it was misused quite often but with judicial ruling in SR BOMMAI case and rise of regional parties its no longer misused.
  - Financial Emergency-This type of emergency has never been declared so far.
  - Grounds for Proclamation of Emergency: Before the 44th amendment to the Constitution of India, the following are the grounds under which the President can proclaim emergency:
    - War
    - External Aggression
    - Armed Rebellion
2. Australia-Unlike India, State-of-emergency legislation differs in each state of Australia.
  3. Canada- The federal government of Canada can use the Emergencies Act to invoke a state of emergency. A national state of emergency automatically expires after 90 days, unless extended by the Governor-in-Council. There are different levels of emergencies: Public Welfare Emergency, Public Order Emergency, International Emergency, and War Emergency.
  4. France- Three main dispositions concern various kind of "state of emergency" in France: article 16 of the Constitution of 1958 allows, in time of crisis, "extraordinary powers" to the president. Article 36 of the same constitution regulates "state of siege" .Finally, the April 3, 1955 Act allows the proclamation, by the Council of Ministers, of the "state of emergency" The state of emergency in France is framed by the Constitution of 1958, which states that it can be decreed by the president in the Council of Ministers, but must be confirmed by Parliament in order to be held after 12 days.
  5. Germany-In the post-war Federal Republic of Germany the Emergency Acts state that some of the basic constitutional rights of the Basic Law may be limited in case of a state of defence, a state of tension, or an internal state of emergency or disaster (catastrophe).
  6. United States-*In the United States, there are several methods for government response to emergency situations.*
    - A state governor or local mayor may declare a state of emergency within his or her jurisdiction. This is common at the state level in response to natural disasters.
    - The president of the United States, as head of the executive branch, has the authority to declare a federal state of emergency. The only emergency provisions in the U.S. Constitution are: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.



Country	India	UK	USA	Russia	Japan	France	Germany
<b>Feature</b>							
<b>Written/Unwritten Constitution</b>	Written	Unwritten	Written		Written	Written	
<b>Flexible/Rigid</b>	Both	Flexible	Rigid	Rigid	Rigid	Rigid	Rigid
<b>Unitary/Federal</b>	Federal with Unitary Bias	Unitary	Federal	Federal	Unitary	Unitary	Federal
<b>Parliamentary/Presidential Democracy</b>	Parliamentary Democracy	Parliamentary Democracy	Presidential Democracy	Semi Presidential	Parliamentary Democracy	Quasi Presidential and Quasi Prime ministerial	Parliamentary Republic
<b>Sovereignty of Parliament</b>	Supremacy of Constitution	Supremacy of Parliament	Supremacy of Constitution		Supremacy of Constitution	Parliament with limited Powers	
<b>Republic/Monarch</b>	Republic	Constitutional Monarchy	Republic	Republic	Constitutional Monarchy	Republic	Republic
<b>President</b>	Ceremonial		Executive	Executive		Executive	Ceremonial
	Indirect Election		Direct Election	Direct Election		Direct Election	Indirect Election
<b>Dual Citizenship</b>	Not recognised	Recognised	Recognised	Recognised	Not Recognised	Recognised	In principle, not recognized.
<b>Fundamental rights</b>	Yes	No	Yes	Yes	Yes	Yes	Yes
<b>Due Process of Law/Procedure established by Law</b>	Procedure established by Law	Rule of Law	Due Process of Law		Procedure Established by Law		

*Table: Summary of Comparison of various features*

## **SECTION F: WORKING OF INDIAN CONSTITUTION: ANALYSIS (Conclusion)**

The working of the constitution has stood the test of the time but certain recent developments such as fragmented polity, rise of regional political parties and governments formed by regional parties in the states, for eg in Tamil Nadu, Bihar, W Bengal etc has posed new challenges for the centre-state relations. Similarly, the advent of coalition govt post late 1980's has raised certain questions for which constitution provides either ambiguous answers or no answers at all.

Considering the complexities and huge quantum of the task of modern day govt and changing nature of Indian politics there is a need to review and amend the constitution. Some of the areas in which changes are required are:

1. Eligibility of legislators: Those candidates facing corruption and criminal charges should not be allowed to contest the elections.
2. Frequent disruptions of parliamentary sessions have become the norm of the day. Minimum hours for which parliament have to work should be incorporated in the constitution.
3. Changes in civil services rules to ensure impartiality and neutrality.
4. The fundamental rights under part III of our constitution too need to include many of those rights that have developed over a history of various judicial pronouncements. These rights though not really stated in part III have been recognized as fundamental in nature and are better known as 'implied fundamental rights'. For eg: Right to food, right to livelihood, right to clean potable drinking water, right to fresh and clean environment.

Hence, today if it's getting harder to run the constitution then the problem does not lie in the constitution but in the "working" of the constitution. As the architect of Indian Constitution said that:

*"Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile."*

*– Dr. B.R. Ambedkar, November 4, 1948*

## **SECTION G: MODEL QUESTIONS**

1. Indian constitution is a borrowed constitution. Discuss.
2. Indian constitution is a 'slavish imitation of the west'. Do you agree? Give reasons with examples.
3. In spite of borrowing majority of features from other constitutions, Indian constitution has failed to survive the present day complexities of the India's political and administrative situation. Do you agree? Give examples.
4. India should shift from Parliamentary form of governance to presidential form of governance. Critically analyse.
5. India is a quasi federal state. Do you agree?

### **Sources:**

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