

AMERICAN CONSTITUTION

The American Constitution is the Constitution of the United States of America which was formed in 1787 following the American Revolution (1775–83). The Constitution was adopted in 1787 at the Philadelphia Convention and came into force in 1789. The salient features of the American Constitution are explained below.

Written Constitution The American Constitution is usually cited as a classic example of a written Constitution. In fact, it is the oldest among the existing written Constitutions of the world. It is contained in a document of some 12 pages and consists of a Preamble, 7 Articles and 27 Amendments. However, the actual working constitutional system includes, apart from the 'Constitutional Document,' the following.

- (i) The statutes of the Congress (i.e. the legislature of the USA) which determine the organisation and functions of a number of government agencies.
- (ii) The orders issued by the President on some occasions for giving practical shape to the statutes made by the Congress.
- (iii) The judicial decisions interpreting the Constitution through a system of judicial review. For example, the Supreme Court has increased the scope of federal jurisdiction through the doctrine of 'implied powers.'
- (iv) The political conventions which have grown gradually around the Constitution. For example, the Cabinet of the President is totally a product of convention.

Thus, the American Constitution or constitutional system, as it exists today, is a product of the 1787 constitutional document and subsequent amendments, the congressional statutes, executive orders, judicial interpretations and the political conventions.

Rigid Constitution Unlike the British Constitution, the American Constitution is a rigid one. It cannot be amended by the Congress in the same manner as the ordinary laws are made. It can be amended by the Congress only by means of a special process provided by the Constitution for that purpose. Therefore, in the USA, there exists a distinction between a constitutional law and an ordinary law.

The American Constitution, the most rigid constitution in the world, lays down the following two methods for its amendment.

- (i) An amendment can be proposed by two-third votes of both the Houses of the Congress. It should be ratified by the legislatures of three-fourths (38 out of 50) of the states within a

seven-year time span.

- (ii) Alternatively, an amendment can be proposed by a constitutional convention called by the Congress on the petition of two-thirds (34 out of 50) of the state legislatures. It should be ratified by the convention in three-fourths (38 out of 50) of state legislatures.

Hence, the procedure prescribed by the American Constitution for its amendment is very difficult, complicated and slow. Its rigid character is evident from the fact that it has been amended only 27 times since its promulgation in 1789.

Federal Constitution USA is a federal state. In fact, the USA is the first and the oldest federal state in the modern world. It is a federal republic comprising 50 states (originally 13 states) and the District of Columbia. The Constitution provides for division of powers between the federal (central) government and the state governments. It confers limited and specified powers on the Centre and vests the residuary powers (which are not enumerated in the Constitution) in the states. Each state has its own Constitution, elected legislature, governor and Supreme Court.

Presidential Government Unlike the British Constitution, the American Constitution provides for the presidential form of government. The features of the American presidential system of government are as follows.

- (i) The American President is both, the head of state and the head of government. As the head of state, he occupies a ceremonial position. As the head of government, he leads the executive organ of government. The President of the USA is the chief real executive.
- (ii) The President is elected by an electoral college for a fixed tenure of four years. He cannot be removed by the Congress except by impeachment for a grave unconstitutional act.
- (iii) The President governs with the help of the Cabinet or a smaller body called 'Kitchen' Cabinet. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him and are responsible only to him. They can also be removed by him any time.
- (iv) The President and his secretaries are not responsible to the Congress for their acts. They neither possess membership in the Congress nor attend its sessions.
- (v) The President cannot dissolve the House of Representatives—the lower House of the Congress.

Separation of Powers The doctrine of separation of powers is the basis of the American constitutional system. The legislative, executive and judicial powers of the government are separated and vested in the three independent organs of the government. The first three articles of the Constitution clearly manifest this feature of the Constitution. Article I says that all legislative powers herein granted shall be vested in the Congress. Article II states that the executive powers shall be vested in the President. Article III provides that the judicial powers shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

Checks and Balances The system of checks and balances in the American Constitution is an outcome of the adoption of the principle of separation of powers. It enables each organ of the government to exercise partial control on others so that no organ becomes autocratic and irresponsible. This means that no organ of government has unrestricted powers even in its own sphere.

Some aspects of the working of the system of checks and balances in the American Constitutional system are:

- (i) The President can veto the bills passed by the Congress. He enjoys two kinds of vetos—Pocket veto and Qualified veto.
- (ii) The Senate confirms the higher appointments made and international treaties concluded by the President.
- (iii) The Congress determines the organisation and appellate jurisdiction of the judiciary.
- (iv) The President appoints the judges with the consent of the Senate.
- (v) The Supreme Court can declare the congressional laws and Presidential orders as *ultra vires*.

Supremacy of Constitution and Judicial Review The American Constitution embodies the principle of 'hierarchy of laws.' The written Constitution is regarded as the highest (supreme or fundamental) law of the land. The statutes of the Congress and state legislatures must conform to this supreme law. If these statutes are against the provisions of the Constitution, they can be declared by the Supreme Court as *ultra vires* and hence, null and void. The Supreme Court thus acts as the custodian of the Constitution through its power of judicial review.

Bill of Rights The American Constitution is the first Constitution in the world to carry the Bill of Rights. It guarantees a large number of rights to the people. It says that no person is to be deprived of life, liberty and property without due process of law. These rights impose restrictions on the authority of the government. The Supreme Court acts as the protector of these rights through its power of judicial review. This Bill of Rights was added to the original Constitution in 1791 through the first ten amendments.

Bicameralism The American Federal Legislature called the Congress is bicameral, that is, it consists of two Houses namely the Senate and the House of Representatives. The Senate is the upper House while the House of Representatives is the lower House. The Senate consists of 100 members, two being elected from each state to serve for a fixed six-year term. The House of Representatives consists of 435 members elected from single member constituencies to serve for a fixed two-year term. The Senate is the more powerful chamber of the Congress. In fact, the American Senate is the most powerful second chamber (upper House) in the world.

American President

Mode of Election The American Constitution provides for an indirect election of the President. However, the growth of political parties and political conventions has converted it into a direct election.

Constitutionally, the President is elected by an electoral college constituted for the purpose. The members of this college (called as Presidential Electors) are elected directly by the people of all the states. The number of presidential electors in each state is equal to the number of its members in the Congress (both in the House of Representatives and the Senate). It means that the electoral college consists of as many members as is the total strength of the two Houses of the Congress. Additionally, three votes have been given to the District of Columbia, a federal enclave and not a state. Thus, the total strength of the electoral college is 538 (435 is the strength of the House of Representatives, 100 is the strength of the Senate and 3 members of the District of Columbia). A candidate in order to win

the presidential election needs 270 votes, that is, 269 (half of the total votes of 538) plus 1.

It must be stressed here that the members of the electoral college are not the members of the Congress. The college is a special body which is formed only for electing the President and it gets dissolved after this.

If no candidate secures the requisite majority, the House of Representatives elects the President from among the three candidates securing the highest votes in the electoral college. There have been three such occasions (1800, 1824 and 1876).

Qualifications, Term and Removal According to the Constitution, a candidate for the presidency must have the following three qualifications:

- (i) He must be a natural born citizen of the USA. A naturalized citizen is not eligible.
- (ii) He must have attained the age of 35 years.
- (iii) He must have been a resident of the USA for 14 years (not necessarily consecutive).

The President holds the office for a fixed tenure of 4 years. He is eligible for re-election but only once. The 22nd Amendment Act of 1951 has fixed the maximum total term for any President at 10 years. In other words, it bars any person from being elected as President more than twice. The presidential term of 4 years begins on 20 January.

The President may be removed from the office before the expiry of his normal tenure of 4 years through impeachment for treason, bribery or other high crimes and misdemeanors. The House of Representatives initiates the impeachment proceedings by a majority vote. The case is then tried by the Senate. During this trial period, the Senate acts as a judicial tribunal and is presided over by the Chief Justice of the Supreme Court (and not the Vice-president). If the Senate also passes the impeachment resolution by a two-thirds majority, the President stands impeached. So far, no American president has ever been removed by impeachment. But, there have been three impeachment attempts—Andrew Johnson (1868), Richard Nixon (1974) and Bill Clinton (1998).

Powers and Functions The American presidency is one of the strongest democratic office in the world. Lord Bryce regards it as “the greatest office in the world”. Munro observed that “the American President exercises the largest amount of authority ever wielded by any man in a democracy”. Ogg regards him as “the greatest ruler of the world”. Harold Laski remarked: “the President of the United States is both more and less than a King, he is also both more and less than a Prime Minister”.

The President derives his powers and functions from four sources: Constitution, Acts of Congress, judicial interpretations and political conventions. These are mentioned below:

1. He has to enforce the Constitution, federal laws and treaties, and judicial decisions throughout the country.
2. He is the supreme commander of the armed forces of the US.
3. He appoints the Supreme Court judges, ambassadors, heads of executive departments, diplomatic officials, consuls and other top officials.
4. He formulates foreign policy and conducts foreign affairs of the US.
5. He can grant pardon and reprieve for offences against federal laws (except in cases of impeachment).
6. When a Bill approved by both the Houses of the Congress is sent to him for his assent, he has three options before him:

- (i) He may give his assent to the Bill and the Bill then becomes an Act.
 - (ii) He may reject the Bill and return it to the Congress within 10 days. But, if the same bill is re-passed by the Congress by a two-thirds majority, then the Bill becomes a law and the president has to sign it. This is known as 'Qualified Veto'.
 - (iii) He may reserve the Bill with him. Then, the Bill becomes a law after the expiry of ten days without his assent. But, if the Congress ends session before ten days, then the Bill automatically dies. This is known as 'Pocket Veto' and it is absolute.
7. He can send messages to the Congress proposing some legislative measures; either orally delivered to the House or sent in the form of a document.
 8. He can call special sessions of the Congress for consideration of urgent matters.
 9. He prepares the national budget and submits it to the Congress for approval.
 10. He is empowered to make rules and regulations in the form of executive orders. This is known as delegated legislation.
 11. He is empowered to adjourn the Congress, when there is a disagreement between two Houses on the date of adjournment.

BRITISH CONSTITUTION

The British Constitution is the Constitution of the United Kingdom of Great Britain and Northern Ireland. Great Britain consists of England, Wales and Scotland. England and Wales were united in 1535 and Scotland joined them to form the state of Great Britain in 1707, while the United Kingdom of Great Britain and Northern Ireland was formed in 1921.

The British constitutional system is the oldest in the world and is also the oldest democratic system. In fact, the British Constitution is the 'mother of Constitutions.' The principles and institutions of representative government were first developed in Britain.

The British Constitution is a blend of monarchy, aristocracy and democracy. The salient features of the British Constitution are explained below.

Unwritten Constitution Unlike the American Constitution, the British Constitution is unwritten. In the UK most of the principles governing the distribution and exercise of the governmental powers are not written. Only a small portion of the British Constitution is covered by written documents. The British Constitution is an evolved Constitution, not an enacted one. It is a product of history and a result of evolution. It is a child of chance (accident) as well as wisdom (design). It is not a static constitution but a remarkably dynamic one. Hence, L.S. Amery in his book *Thoughts on the Constitution* says that the British Constitution is "a blend of formal law, precedent and tradition."

The various elements or sources of the British Constitution are explained as follows.

1. Conventions Conventions constitute a major element of the British Constitution. These are the unwritten principles of political practices and customary principles of constitutional behaviour which have developed in the course of time. J.S. Mill described them as the "Unwritten maxims of the Constitution." However, unlike the laws, they are not recognised and enforced by judicial courts. But they play a very significant role in the actual working of the British political institutions. They are generally observed as they are backed by tradition and public opinion. The well-known conventions in Britain are:

- (a) The King or Queen should exercise his/her legal powers on the advise of the Cabinet headed by the Prime Minister.
- (b) The King should appoint the leader of the majority party in the House of Commons as the Prime Minister.
- (c) The King should dissolve the lower House of Parliament on the advise of the Prime Minister.
- (d) The King should give his assent to all the Bills passed by the Parliament.
- (e) The Cabinet is collectively and individually responsible to the House of Commons.

2. *Great Charters* These are also called as constitutional charters or constitutional landmarks. They are historical documents which define the powers of the Crown and liberties of the citizens, and so on. They have a significant bearing on some of the basic aspects of the British Constitution. The important among such charters are the Magna Carta (1215), the Petition of Rights (1628), the Bill of Rights (1689), and others.

3. *Statutes* These are the laws made by the British Parliament from time to time. They define and regulate the principles, structures and functions of many British political institutions. The important statutes in Britain are the Habeas Corpus Act (1679), the Statute of Westminster (1931), Ministers of the Crown Act (1937), the People's Representation Act (1948), and others.

4. *Common Law* It is a body of judge made laws. It has defined some of the significant rules and principles pertaining to the powers of the government and its relationship with the citizens. They are accepted and enforced by judicial courts. Dr. Ogg defines common law as "the vast body of legal precept and usage, which through the centuries has acquired binding and almost immutable character."

5. *Legal Commentaries* These are the commentaries or text books written on the constitutional law of the country by the constitutional experts. They provide insight into the working of the British political institutions. They clarify the meaning and fix the scope of certain constitutional principles. Some of the popular legal commentaries on the British Constitution, are A.V. Dicey's 'Law of the Constitution,' Bagehot's 'English Constitution,' Blackstone's 'Commentaries on the Laws of England,' and others.

Flexible Constitution Unlike the American Constitution, the British Constitution is flexible in nature. It requires no special procedure for its amendment. It can be amended by the Parliament in the same manner as the ordinary laws are made. Thus, in Great Britain, there exists no distinction between the constitutional law and the ordinary law.

Unitary Constitution Great Britain is a unitary state. Hence, all the powers of the government are vested in a single supreme central government. The local governments are created only for administrative convenience and they work under the complete control of the Central Government located at London. They derive their authority from the central government which can also abolish them altogether at any time.

Parliamentary Government The British Constitution provides for parliamentary form of government in which the executive hails from the legislature and remains responsible to it. The features of the British parliamentary system of government are as follows:

- (i) The King is the nominal executive while the Cabinet is the real executive. The King is head of the state while the Prime Minister is head of the government.
- (ii) The party which secures majority seats in the House of Commons, forms the government. The leader of that party is appointed as the Prime Minister by the King/Queen.
- (iii) The ministers are individually as well as collectively responsible to the House of Commons for their acts. They remain in office so long as they enjoy the majority support in the House.
- (iv) The King can dissolve the House of Commons on the advise of the Prime Minister.
- (v) The ministers (members of the executive) are also the members of the British Parliament. This avoids conflicts between the executive and the legislature and facilitates better coordination between them.

Sovereignty of Parliament Sovereignty means the supreme power within the state. That supreme power in Great Britain lies with the Parliament. Hence sovereignty of Parliament (or supremacy of Parliament) is a cardinal principle of the British constitutional law and political system. This principle implies the following things.

- (i) The British Parliament can make, amend, substitute or repeal any law. De Lolme said, “The British Parliament can do everything except make a woman a man and a man a woman.”
- (ii) The Parliament can make constitutional laws by the same procedure as ordinary laws. In other words, there is no legal distinction between the constituent authority and the law-making authority of the British Parliament.
- (iii) The parliamentary laws cannot be declared invalid by the judiciary as being unconstitutional. In other words, there is no system of judicial review in Great Britain.

Rule of Law The doctrine of rule of law is one of the fundamental characteristics of the British constitutional system. It lays down that the law is supreme and hence the government must act according to law and within the limits of the law. A.V. Dicey in his book *The Law of the Constitution* (1885), has given the following three implications of the doctrine of rule of law.

- (i) Absence of arbitrary power, that is, no man can be punished except for a breach of law.
- (ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts.
- (iii) The primacy of the rights of the individual, that is, the Constitution is the result of the rights of individual as defined and enforced by the courts of law, rather than the Constitution being the source of the individual rights. The rights of the citizens of Great Britain flow from judicial decisions, not from the Constitution.

Constitutional Monarchy Great Britain is a monarchical state. It is described as a limited hereditary monarchy. The hereditary monarch (King or Queen) is the head of the state. The Crown is the visible symbol of the supreme executive power. However, the King or Queen only reigns, but does not rule. These powers are actually exercised by the Cabinet headed by the Prime Minister. The cabinet is collectively responsible to the Parliament for its actions and ultimately to the electorate. Hence, what Great Britain has is a “constitutional monarchy.”

The distinction between the Crown and the King is the distinction between the monarchy as an institution and the monarch as a person. In other words, the King is a person whereas the Crown is an institution (i.e. the institution of kingship). The King is mortal whereas the Crown is immortal. This is

clearly expressed by the popular statement in Great Britain that “the King is dead; long live the King.” It means that the person who occupied the throne is dead but the institution of kingship survives.

Bicameralism The British Parliament is bicameral, that is, it consists of two houses namely the House of Lords and the House of Commons.

The House of Lords is the upper house. It is the oldest second chamber in the world. It consist of lords, peers and nobles and hence, represent the aristocratic element of the British political system. At present it has 677 appointed members who fall into four distinct groups. It is mostly a hereditary body.

The House of Commons is the lower House but more important and powerful than the House of Lords. It is the oldest popular legislative body in the world. It consists of the representatives elected by the people on the basis of universal adult franchise. There are at present 659 seats in the House of Commons and these are distributed among England, Wales, Scotland and Northern Ireland.

British Cabinet

Composition As the British Constitution provides for parliamentary system of government, the Cabinet acts as the real executive authority. It consists of the Prime Minister as its head and twenty or so of his most senior ministerial colleagues. It includes the following:

1. Prime Minister and First Lord of the Treasury and Minister for the Civil Service.
2. Chancellor of the Exchequer.
3. Lord Privy Seal.
4. Chancellor of the Duchy of Lancaster.
5. Lord President of the Council.
6. President of the Board of Trade.
7. Lord Chancellor.
8. First Lord of Admiralty.
9. Post Master General.
10. Secretaries of State for Home, Foreign, Defence, Social Services, Environment and Education and Science.
11. Ministers of Agriculture and Fisheries, Health, Pension, Transport and Labour.
12. Secretary of State of Scotland.
13. Secretary of State for Wales.

It must be mentioned here that the Attorney-General, Solicitor-General, Lord Advocate and Paymaster-General are not members of the British Cabinet.

Privy Council There is a close relationship between the Cabinet and the Privy Council. This council, in its present form, came into existence in the fifteenth century as an advisory body to the British monarch. In the course of time, most of its powers were transferred to the cabinet as its inner committee. Presently, it consists of 330 members and includes, *inter alia*, all cabinet ministers (past and present). It is presided over by the Lord President of the Council.

Prime Ministerial Government In the past, the British Constitutional and political experts had described the relationship between the Prime Minister and the Cabinet as ‘Primus inter pares’ (first

among equals). In the recent period, the Prime Minister’s power, influence and position have increased significantly vis-a-vis the cabinet. He has come to play a ‘dominant’ role in the British Politico-administrative system. Hence, the later political analysts, like Crossman, Mackintosh and others have described the British Cabinet Government as ‘Prime Ministerial Government’.

Shadow Cabinet It is a unique institution of the British Cabinet system. It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial office. In Britain, the opposition enjoys an official recognition and is as well organized as the government. It runs a ‘Parallel’ government with its shadow cabinet. In this shadow cabinet, almost every member in the ruling cabinet is ‘Shadowed’ by a corresponding member in the opposition cabinet. The members of the shadow cabinet watch critically the working of the departments assigned to them. They match the cabinet ministers in the parliamentary debates. The shadow cabinet serves as the ‘alternative cabinet’ if there is change of government. That is why Ivor Jennings described the leader of opposition as the ‘alternative’ Prime Minister. He enjoys the status of a Minister and is paid by the government.

FRENCH CONSTITUTION

The French Revolution (1789–1799) had a significant impact on the growth of the French constitutional system. Since the revolution, France has changed its constitution on an average after every 12 years. It adopted three monarchic, two dictatorial, three imperial and four republican constitutions. The present French Constitution, which established the Fifth Republic, came into force in 1958. It was prepared under the instructions of General de Gaulle. It was designed to give France a strong and stable government.

The salient features of the Constitution of the Fifth French Republic are:

Written Constitution Like the American Constitution, the French Constitution is a written Constitution. It contains a Preamble and 92 Articles divided into 15 chapters. It declares ‘Liberty, Equality and Fraternity’ as the motto of the Fifth Republic. Article 2 of the Constitution states that “France is a republic, indivisible, secular, democratic and social.”

Article 1 deals with the adoption of the Constitution by the Republic and the Overseas Territories to set up a community. It is placed under the Preamble itself. The chapters of the Constitution are mentioned in [Table 22.1](#).

Table 22.1 French Constitution at a Glance

Chapter Number	Chapter Title	Articles Covered
I	Sovereignty	2 to 4
II	The President of the Republic	5 to 19
III	The Government	20 to 23
IV	Parliament	24 to 33
V	Relations between Parliament and Government	34 to 51
VI	Treaties and International Agreements	52 to 55
VII	The Constitutional Council	56 to 63

VIII	The Judicial Authority	64 to 66
IX	The High Court of Justice	67 to 68
X	The Economic and Social Council	69 to 71
XI	Territorial Entities	72 to 76
XII	The Community	77 to 87
XIII	Agreements of Association	88
XIV	Revision	89
XV	Temporary Dispositions	90 to 92

Rigid Constitution Unlike the British Constitution, the French Constitution is rigid in nature. It contains a special procedure for amendment. It can be amended by the Parliament by 60 per cent majority vote in both the Houses. Alternatively, the President can call a national referendum on constitutional amendment. However, the republican form of government in France is not subject to amendment. Thus there is no place for monarchy in France.

Unitary Constitution France is a unitary state. There is no division of powers between the central and local or provincial governments. All powers are vested in the single supreme Central Government located at Paris. The local governments are created and abolished by the Central Government only for administrative convenience. In fact, France is more unitary than Britain.

Quasi-Presidential and Quasi-Parliamentary The French Constitution provides neither presidential nor parliamentary government. Rather, it combines the elements of both. On one hand, it provides for a powerful President who is directly elected by the people for a five-year term, on the other, there is a nominated council of ministers headed by the Prime Minister which is responsible to the Parliament. However, the ministers shall not be the members of the Parliament.

Bicameralism The French Parliament comprises the National Assembly (the lower house) and the Senate (upper house). The National Assembly has 577 members who are directly elected for a five-year term. The Senate has 321 members who are indirectly elected for a nine-year term. The National Assembly is more dominant and powerful than the Senate.

Rationalised Parliament The Constitution of France established a rationalised parliament, that is, a Parliament with restricted and limited powers. The powers of the French Parliament are restricted *vis-a-vis* the political executive. It can make laws only on those items which are defined in the Constitution. On all other matters, the government is empowered to legislate by executive decree. The Parliament can also delegate law-making power to the executive branch. These limitations on parliamentary authority were imposed to provide for a strong executive.

The Constitutional Council France has a Constitutional Council. It consists of nine members who are appointed for a term of nine years. It functions as a judicial watchdog and ensures that the executive decrees and parliamentary laws conform to the provisions of the Constitution. However, it is only an advisory body and its opinion is not binding.

Recognition of Political Parties The Constitution of France gives recognition to political parties and their role. It is for the first time in France that a Republican Constitution not only mentions parties but also acknowledges them as a normal part of political life. Article 4 of the Constitution

states that the “parties must respect the principles of national sovereignty and democracy.”

French President

Mode of Election Originally, the Constitution provided for an indirect election of the President. He was to be elected by an electoral college consisting of three types of members—(i) national representatives (members of two Houses of Parliament); (ii) representatives of the local authorities; and (iii) representatives of the overseas territories. But, in 1962, the Constitution was amended through a referendum.

The President is now directly elected by universal suffrage. In order to win the election, a candidate has to obtain an absolute majority of the votes cast. In case no candidate obtains the requisite majority in the first ballot, then a second ballot is held. Only the two candidates who have received the highest number of votes in the first ballot may stand in the second ballot.

Tenure and Removal The President is elected for a term of five years. He is eligible for re-election, as many times as he may like. Moreover, the Constitution has not prescribed any qualifications (including the minimum age limit) for the presidential office.

If the presidency falls vacant, the functions of the president (except submitting a bill to a referendum and dissolution of the National Assembly) are performed temporarily by the president of the Senate and if he is also not in a position, the functions are performed by the government.

The President can be removed from the office before the expiry of his normal tenure of five years through an impeachment for high treason. The impeachment resolution should be passed by both the Houses of Parliament by an absolute majority. After this indictment by the Parliament, the president is tried by the High Court of Justice.

Powers and Functions The president is the pivot of the Constitution and occupies a dominant position in the system of government. He is the real head of the state, the leader of the nation and the symbol of national unity. His powers and functions are as follows:

1. He appoints the prime minister and accepts his resignation.
2. He appoints and dismisses the other members of the government (Council of Ministers) on the advice of the prime minister.
3. He presides over the meetings of Council of Ministers. This provides him a direct opportunity to influence, guide, direct and control the policies of the government.
4. He makes appointments to civil and military posts of the state.
5. He is the commander-in-chief of the armed forces of the country.
6. He negotiates and ratifies treaties; and sends and receives diplomats.
7. He is kept informed of all the negotiations leading to the conclusion of an international agreement not subject to ratification.
8. He presides over the higher councils and committees of national defence.
9. He presides over and represents the French community.
10. He appoints the president and three members of the Constitutional Council.
11. He promulgates the laws within 15 days following their final adoption by the Parliament and transmission to the government. However, before the end of this period, he can ask the Parliament to reconsider a law. This reconsideration cannot be refused by the Parliament.
12. He can send messages to the Parliament and summon its special sessions.

13. He can submit to a referendum any government bill on the proposal of the government during the parliamentary sessions or on the joint proposal of the two Houses of the Parliament. If the bill is approved in the referendum, the President should promulgate it within 15 days.
14. He signs the ordinances and decrees that have been considered by the Council of Ministers.
15. He has the right to pardon.
16. He presides over the Higher Council of the judiciary. He also appoints nine members to it.
17. He is the protector of the independence of the judicial authority.
18. He is vested with special powers to deal with emergencies. During this period, he can take the required measures after consulting the Prime Minister, the presidents of the two Assemblies (Houses) of the Parliament and the Constitutional Council.
19. He can dissolve the National Assembly, after consulting the Prime Minister and the Presidents of the two Assemblies (Houses of the Parliament). The Constitution, however, imposes two limitations: (i) He cannot dissolve the National Assembly more than once in twelve months; and (ii) the National Assembly cannot be dissolved during an emergency. Notably, the president is not required to follow the advice of the prime minister and the presidents of the two Assemblies. Further, the president can refuse dissolution when asked by the Prime Minister.

JAPANESE CONSTITUTION

The modern state of Japan came into existence with the Meiji Restoration in 1868. The Meiji Constitution remained in force for 58 years (i.e., from 1889 to 1947). This Constitution was based on the ideals of autocracy, authoritarianism, and monarchy.

After the Second World War (1939–45), Japan was placed under Allied Occupation from 1945 to 1952. The U.S. General Douglas MacArthur was the Supreme Commander of the Allied Powers in Japan. Under his direction, Japan adopted a new democratic constitution in 1946. This Constitution is based on the ideals of democracy and peace, as conceived by the Occupation Authorities.

The new and the present Constitution of Japan became operative in 1947. It came to be known both as the MacArthur constitution as well as the Showa Constitution. Showa is the title of the reign of Emperor Hirohito and means ‘Radiant Peace.’ At the time of adoption of the new Constitution, Hirohito was the Emperor and Shidehara was the Prime Minister of Japan.

The salient features of the present Constitution of Japan are as follows:

A Written Constitution Like the American Constitution, the Japanese Constitution is a written Constitution. It contains a Preamble and 103 Articles divided into 11 chapters. It is a unique blend of the American and the British system. The Preamble emphasises the principle of the sovereignty of the people. The chapters of the Constitution are mentioned below in [Table 22.2](#).

Table 22.2 Japanese Constitution at a Glance

<i>Chapter Number</i>	<i>Chapter Title</i>	<i>Articles Covered</i>
I	The Emperor	1 to 8
II	Renunciation of War	9
III	centers and Duties of the People	10 to 40

IV	The Diet	41 to 64
V	The Cabinet	65 to 75
VI	Judiciary	76 to 82
VII	Finance	83 to 91
VIII	Local Self-government	92 to 95
IX	Amendments	96
X	Supreme Law	97 to 99
XI	Supplementary Provisions	100 to 103

Rigid Constitution Like the American Constitution, the Japanese Constitution is a rigid one. It cannot be amended by the Diet (Japanese Parliament) in the same manner as the ordinary laws are made. It can be amended only by means of a special process provided by the Constitution for that purpose. Hence, in Japan, there exists a distinction between a constitutional law and an ordinary law.

The Japanese Constitution lays down the following procedure for its amendment:

- (i) The amendment shall be initiated by the Diet. Such a proposal must be passed by a majority of two-thirds of its membership.
- (ii) After that, it is submitted to the people for ratification at a special referendum or a specific election. It must be approved by the majority of the people.
- (iii) Amendment when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of the Constitution.

It must be mentioned here that the Japanese Constitution has not so far been amended even once. Thus, the Constitution reads today as it did in 1947.

Unitary Constitution Like the British Constitution, the Japanese constitution provides for a unitary state. There is no division of powers between the Central and provincial governments. All powers are vested in the single supreme Central Government located at Tokyo. The provinces derive their authority from the Central Government. The Diet can expand or diminish the authority and jurisdiction of the provinces. Thus the provinces are subordinate units of government and enjoy only those powers which are delegated to them by the supreme Central Government.

Parliamentary Government Japan has shown a preference for the British Parliamentary System rather than the American Presidential System of Government. The features of the Japanese Parliamentary system of government are as follows:

- (i) The Emperor is the nominal executive while the Cabinet is the real executive. The cabinet consists of the Prime Minister as its head and twenty Ministers of State. The Emperor is the head of the state while the Prime Minister is head of the government.
- (ii) The party which secures majority seats in the House of Representatives forms the government. The leader of the majority party or majority coalition invariably becomes the Prime Minister.
- (iii) The Prime Minister is designated from among the members of the Diet by a resolution of the Diet. The Emperor appoints the Prime Minister as designated by the Diet.
- (iv) The Prime Minister appoints the Ministers of State. But, a majority of them should be chosen from among the members of the Diet.
- (v) The Prime Minister can remove the Ministers of state as he chooses.
- (vi) The Cabinet, in the exercise of the executive power, is collectively responsible to the Diet. It

must resign when the House of Representatives passes a no-confidence resolution.

(vii) The Emperor can dissolve the House of Representatives on the advice of the Prime Minister.

An analysis of the above points makes it clear that Japan (though adopted the British Parliamentary pattern) differed from Britain in the following four respects:

- (i) In Britain, the Prime Minister is chosen as well as appointed by the King/Queen, while in Japan, the Prime Minister is chosen by the Diet but appointed by the Emperor.
- (ii) In Britain, the Ministers are appointed by the King/Queen, while in Japan, the Ministers are appointed by the Prime Minister.
- (iii) In Britain, the Prime Minister cannot remove the Ministers, while in Japan, the Prime Minister can remove the Ministers at his will.
- (iv) In Britain, all the Ministers must be members of the Parliament, while in Japan, only a majority of the Ministers must be members of the Diet.

Constitutional Monarchy Japan is a monarchical state. It is described as a limited hereditary monarchy. The constitution, though it preserves the institution of the Emperor, it deprives him of all powers, privileges and prerogatives he formerly exercised and enjoyed. It makes the following provisions with regard to the institution of the Emperor:

- (i) The Emperor is the symbol of the state and of the unity of the people. He derives his position from the will of the people with whom resides sovereign power. Thus, the sovereignty of the Emperor is abolished.
- (ii) The Imperial Throne is dynastic and succeeded to in accordance with the law passed by the Diet.
- (iii) The advice and approval of the Cabinet is required for all acts of the Emperor.
- (iv) The Emperor performs only those acts which are enumerated in the constitution and he has no powers related to government.
- (v) The Emperor can neither give nor receive imperial property without the authorisation of the Diet.

Thus, the Constitution has made the Emperor merely a constitutional head. His authority is strictly limited to ceremonial functions of a constitutional monarch. Like his British counterpart, he only reigns and does not rule.

Supremacy of Constitution and Judicial Review The Japanese Constitution establishes the principle of supremacy of Constitution. The Constitution is regarded as the supreme (highest or fundamental) law of the land. The laws, ordinances, imperial rescript and official acts must conform to this supreme law. If these are against the provisions of the Constitution, they can be declared by the Supreme Court as ultra-vires and hence, null and void.

Thus, the American principle of judicial review is adopted in Japan. But there is a difference. The American Supreme Court does not derive its power of judicial review from the Constitution, whereas the Japanese Supreme Court derives its power of judicial review directly from the Constitution. Article 81 of the Japanese Constitution specifically says that the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation, or official Act.

Fundamental Rights The Japanese Constitution provides for rights on the model of the Bill of Rights in the USA. It guarantees a large number of civil, political and economic rights to the people of

Japan and declares them as 'eternal and inviolate'. The judiciary headed by the Supreme Court acts as the protector of these rights through its power of judicial review.

The rights provided by the Japanese Constitution are more elaborate and definite than the American Bill of Rights. Out of a total of 103 Articles in the Constitution, 31 Articles (i.e., 10 to 40) are devoted to the rights and duties of the people. The rights provided for in the Constitution are:

- (i) Right to equality.
- (ii) Right to freedom.
- (iii) Right to freedom of religion.
- (iv) Right to private property.
- (v) Economic rights.
- (vi) Right to education.
- (vii) Cultural rights.
- (viii) Right to constitutional remedies.

Renunciation of War The Japanese Constitution renounces war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. It prohibits Japan from maintaining land, sea, and air forces, as well as other war potential. It also does not recognise the right of belligerency of the state.

Japan is the only modern state which has constitutionally renounced war forever. It is the most peculiar as well as the most controversial feature of the Japanese Constitution. This provision was got inserted into the Constitution by General MacArthur to see that Japan would never again be allowed to act as a military nation as it did during the period of 1931 to 1945 and to abolish forever the power of Japan as a rival to the US in the far east. However, it does not mean that Japan cannot use arms and other forces for its security and defence. Like any other modern state, Japan has its defence capabilities but the term used is 'self-defence forces' to look constitutionally correct. They are justified on the ground that every state has an inherent right to defend itself against foreign aggression.

Bicameralism The Japanese Diet is bicameral, that is, it consists of two houses namely the House of Councillors (upper house) and the House of Representatives (lower house). The House of Councillors consists of 252 members elected for a term of six years. Out of the total 252 members, 152 are elected on a geographical basis (local constituencies) and the remaining 100 are elected by the nation at large (national constituency). The House of Representatives consists of 512 members elected for a term of four years. The House of Representatives has more powers than the House of Councillors, especially in financial matters.

Constitutionally, the Diet is the highest organ of state power and is the sole law-making organ of the state.

SOVIET CONSTITUTION

The state of the USSR, also called as the Soviet Union, was formed in 1917 following the Russian Revolution (Bolshevik Revolution) led by the charismatic V.I. Lenin. After being a Super Power for more than 70 years, the USSR finally collapsed and disintegrated in 1989–1991 mainly due to

economic crisis. Mikhail Gorbachev's popular reforms called 'Glasnost' (Openness) and 'Perestroika' (Restructuring) could not save the USSR. In December 1991, the constituent units of the USSR formed a Commonwealth of Independent States (CIS). The CIS is an alliance of fully independent states but not a state in itself. It declared itself, in some aspects of international affairs and law, the successor to the erstwhile USSR.

The Russian Revolution of October 1917 created, for the first time ever a socialist state whose goal was Communism. Hence, the Soviet Constitution was the first socialist constitution of the world. Since its formation in 1917, the USSR adopted four Constitutions, that is, in 1918, 1924, 1936 (Stalin Constitution) and 1977 (Brezhnev Constitution).

The constitutional system of the USSR was based on the principles and ideologies of Marxism—Leninism. Thus, the Communist Party dominated the entire political and administrative system of the USSR. As Ferrel Heady said, the system aimed “at monolithic unity under the aegis of the Communist Party.” It was in this respect that the politico-administrative system of the USSR was different from that of the UK, USA and France. As Ferrel Heady puts it, the USSR was “a ‘Totalitarian directed society’, with the state bureaucracy basically subservient to the Communist Party.”

The salient features of the Soviet Constitution of 1977 are explained below.

A Written Constitution Like American and French Constitutions, the Soviet Constitution of 1977 was also a written one. It was drafted by a committee headed by Mr. Brezhnev. It had 20 chapters and 174 articles divided into 9 parts.

A Rigid Constitution The Soviet Constitution of 1977 was rigid in nature. It provided for a special procedure for its amendment. It could be amended by the legislature of the USSR (Supreme Soviet) by a two-third majority in each House.

A Socialist Constitution The Constitution was socialistic in nature and laid down the foundation of a socialist state. It stated that “the Union of Soviet Socialist Republics is a socialist state of the whole people, expressing the will and interests of the workers, peasants and intelligentsia, the working people of all the nations and nationalities of the country.” It further stated that “all powers in the USSR belongs to the people who shall exercise the state power through Soviets of People's Deputies, which constitute the political foundation of the USSR.” It also stated that “the foundation of the economic system of the USSR is socialist ownership of the means of production in the form of state property (belonging to all the people) and collective farm and cooperative property.”

A Federal Constitution The 1977 Constitution provided for a federal state consisting of 15 units called Union Republics. These units of the Soviet Federation were Russia, Ukraine, Byelorussia, Uzbekistan, Kazakhstan, Georgia, Azerbaijan, Lithuania, Moldavia, Latvia, Kyrgyzstan, Tajikistan, Armenia, Turkmenistan and Estonia. The powers were divided between the Centre and the units. The powers of the Centre were enumerated while the residuary powers were given to the units as in the case of the USA. These 15 Union Republics had their own separate Constitutions conforming to the Constitution of the USSR and enjoyed the right to secede from the USSR.

Within several union republics existed autonomous republics (20), autonomous regions (8) and autonomous areas (10). They were vested with a certain amount of autonomy. Hence, the union republics were called as sub-federations within the Soviet Federation and the USSR was called a 'Federation of Federations'.

Parliamentary Government The Constitution provided for a parliamentary form of government in the USSR. The council of ministers was elected by the Supreme Soviet (legislature of the USSR) and remained responsible to it for its policies and acts. The Supreme Soviet could also remove the ministers from their offices. The Constitution stated that “the council of ministers headed by the Premier is the highest executive and administrative authority of the USSR.”

Bicameralism The 1977 Constitution provided for a bicameral legislature for the USSR. Thus, the Supreme Soviet consisted of the Soviet of the Union (lower house) and the Soviet of the Nationalities (upper house). Both the houses had equal number of members (i.e. 750 in each) elected directly every five years. The lower House represented the nation as a whole while the upper House represented the units of the Soviet Federation. The two Houses had equal and coordinate powers in all policy matters.

Presidium The Supreme Soviet, constitutionally the highest body of state authority of the USSR, elected a governing body known as the Presidium. The Constitution termed it as the Standing Committee of the Supreme Soviet. It was a 39-member body consisting of a Chairman, First Vice-Chairman, 15 Vice Chairmen (i.e. the heads of the 15 Union Republics), a Secretary and 21 members. The Chairman (President) of the Presidium was the formal head of the State of the USSR. It functioned as a collective presidency of the USSR. Hence it was called as the ‘Collegial Executive’ or the ‘Plural Executive’ or the ‘Collegiate President’ of the USSR. It combined executive, legislative, diplomatic, military and judicial functions. Because of its multifarious functions and the plural character, the Presidium of the Supreme Soviet of the USSR has been described as the ‘20th Century Innovation.’ This type of institution was not provided by any other constitution of the world.

A One-Party Dictatorship The most important feature of the constitutional system of the USSR was the monopoly of the political power enjoyed by the Communist Party of the Soviet Union (CPSU). It played the most dominant role in the politico-administrative system of the USSR. It was the ‘Supreme maker of policies,’ whether political, economic, social, cultural or foreign. Article 6 of the Soviet Constitution of 1977 stated, “the leading and guiding force of Soviet Society and the nucleus of its political system, of all state organisations and public organisations is the Communist Party of the Soviet Union. The CPSU exists for the people and serves the people. The Communist Party, armed with Marxism-Leninism, determines the general perspectives of the development of society and the course of home and foreign policy of the USSR, directs the great constructive work of the Soviet people and imparts a planned, systematic and theoretically substantiated character to their struggle for the victory of communism.” As Ferrel Heady says “the constitutional structure of the Soviet Union has always been an elaborate facade behind which ‘one-party rule and totalitarianism’ have occupied the political scène.... From the top to the bottom of the Soviet structure the party plays a more important role than the corresponding state organs.”

Democratic Centralism Another salient feature of the Constitution of 1977 was the principle of democratic centralism. Article 3 of the Constitution stated that “the Soviet state is organised and functions on the principle of democratic centralism, namely, the electiveness of all bodies of state authority from the lowest to the highest, their accountability to the people and the obligation of lower bodies to observe the decisions of higher ones. Democratic centralism combines central leadership with local initiative and creative activity and with the responsibility of each state body and official for the work entrusted to them.” This principle was applicable to governmental organisation;

hierarchy of the Soviets and the Communist Party organisation. Vyshinsky says that “the Soviet Union state is built on the principle of democratic centralism sharply opposed to the bureaucratic centralism of the capitalist states.”

Fundamental Rights The Constitution also provided for a large number of economic, social, personal, cultural and political rights to the citizens of the USSR. Ogg and Zinc termed them as “one of the most extraordinary Bill of Rights known to history.” These rights were guaranteed to all the citizens of the country equally irrespective of nationality, race, sex, and so on. The form of the rights granted to the citizens was socialist, not personal, that is, they were meant for the establishment of a socialist system in the USSR. Thus, the enjoyment of these rights by the citizens was not to detriment the interests of society or state or the rights of other citizens.

The list of fundamental rights provided by the Soviet Constitution of 1977 are:

- (i) Right to work.
- (ii) Right to rest and leisure.
- (iii) Right to health protection.
- (iv) Right to maintenance in old age, sickness and disability.
- (v) Right to housing.
- (vi) Right to education.
- (vii) Right to enjoy cultural benefits.
- (viii) Freedom of scientific, technical and artistic work.
- (ix) Right to take part in the management and administration of state and public affairs.
- (x) Right to submit proposals to the state bodies and public and social organisations.
- (xi) Freedom of speech, press, assembly, meetings, street processions and demonstrations.
- (xii) Right to associate in public and social organisations.
- (xiii) Freedom of conscience.
- (xiv) Right to seek family protection.
- (xv) Right to inviolability of person and house.
- (xvi) Right of privacy of citizens.
- (xvii) Right to protection by the court.
- (xviii) Right to appeal against the actions of the officials, state bodies and public bodies.

Fundamental Duties Apart from the fundamental rights, the Constitution also provided for fundamental duties. The Constitution stated that the exercise of these rights and freedoms by the citizens was inseparable from the performance of these duties and obligations. The following is the list of the fundamental duties contained in the Brezhnev Constitution of 1977.

- (i) To observe the Constitution of the USSR and Soviet laws.
- (ii) To observe labour discipline.
- (iii) To preserve and protect the socialist property.
- (iv) To safeguard the interests of the Soviet state.
- (v) To defend the socialist motherland.
- (vi) To render military service.

- (vii) To respect the national dignity of other citizens.
- (viii) To respect the rights and lawful interests of other persons.
- (ix) To protect nature and conserve its richness.
- (x) To preserve historical monuments and other cultural values.
- (xi) To promote and strengthen world peace.

RUSSIAN CONSTITUTION

Russia was the largest constituent unit of the former USSR. It was 75 per cent of the total area of the former USSR and had 50 per cent of its total population. It also contributed about 70 per cent to the total agricultural and industrial output of the former USSR.

After the dissolution of the USSR in December 1991, Russia adopted a new Constitution on December 20, 1993 and thus, established a new politico-administrative system.

The salient features of the Russian Constitution are mentioned below:

1. It declares Russia as a sovereign and multi-ethnic republican state.
2. It provides for a federal state. The Russian Federation consists of 21 Republics, 6 Territories (*Krai*), 49 Regions (*Oblast*), 10 Autonomous Areas (*Avtonomy Okrug*), 2 Cities (Moscow and St. Petersburg) of federal status, and Birobijan (Jewish Autonomous Region).
3. It establishes a liberal-democratic order and guarantees fundamental rights to the citizens. Thus, it discards the earlier totalitarian system.
4. It introduces multi-party system and ensures free and fair periodic elections.
5. It provides for the division of the state power among the legislature, executive, and judiciary. These three organs are independent of one another.
6. It establishes bicameral legislature (Federal Assembly) consisting of Federation Council (upper House) and State Duma (lower House). The Federation Council consists of 178 members, two from each territorial units of the Russian Federation. The State Duma consists of 450 members who are directly elected for a period of four years.
7. It declares President of the Russian Federation as head of the state. The President is elected for a term of four years by universal and direct suffrage. He is head of the executive as well as Commander-in-Chief of the armed forces.
8. It authorises the President of the Republic to appoint the Chairman of the Government as the Prime Minister. The President is to appoint other Federal Ministers on the advice of the Prime Minister. He can also dismiss the Prime Minister or any other Federal Minister.
9. It provides for a 19-member constitutional court. Its function is to decide the constitutionality of the Presidential decrees, government orders and laws of the Federal Assembly.
10. It authorises the Russian legislature (Federal Assembly) to remove the President by way of impeachment, on the charge of high treason or grave crime. The resolution of impeachment should be approved by both the Houses by 2/3rd majority.