## CONSTITUTIONAL COMPARISON

### INDIA AND USA

| Attributes | USA | INDIA |
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| Nature of the constitution (1) | The United States Constitution is the world's shortest and first written constitution. The United States Constitution is a very rigid document with just seven articles and twenty-seven amendments. | India's Constitution is the world's longest written constitution. It consists of 470 articles in 25 parts, 12 schedules, and 5 appendices. 'Elephantine Size' |
| Nature of federalism (3) | • The USA is an indestructible union of indestructible states. The American Constitution is a truly federal constitution, meaning that the federal government and the states each have their own constitutions and do not interfere with each other's functions. 'Dual federalism' → Both operate in exclusive jurisdictions independently.<br>• Symmetrical federalism – all states are given equal representation in the Senate.<br>• States have a stronghold on the legislative federation. There is no elaborate mechanism given for residuary subjects. | • India is an indestructible union of destructible states. Co-op federalism<br>• India has only one Constitution, in which the Central government interferes with the functions of state governments by, for example, appointing governors, reserving state bills for the President's approval, and imposing President's rule in the states.<br>• Asymmetrical federalism: States have been given representation in Rajya Sabha on the basis of their population.<br>• The Indian Constitution's Seventh Schedule divides legislative authority between the national and state governments. The legislature has residuary rights. |
| Government structure (2) | • Presidential form of government in which the people directly elect the executive President. More Stability, More expert Govt<br>• The President is powerful and not accountable to the House of Congress. The term of the American President is 4 years and he can hold the office of the President for only two terms. President enjoys Qualified veto. | • India has adopted a Parliamentary form of government. The President of India is the head of the Indian government's executive branch.<br>• He is not accountable to the Parliament and is indirectly elected by the legislatures of the Centre and the states. The Indian President holds the office for five years.<br>• He can be elected any number of times. The President does not enjoy Qualified veto.<br>• Unlike the US, the Indian Constitution does not prescribe any time limit for signing the bill by the President. |
| Impeachment of the President | • Treason, bribery, and high crimes of misdemeanour are the reasons. | • In the Indian Constitution, there is a system of impeachment for constitutional violations. |

(6) US – Due Process of law
India – PEBL

OnlyIAS Nothing Else

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| **Office of the Vice-president** (9) | • A Vice President may become a President because of a vacancy in the office of the President.<br>• He is the Ex-officio chairperson of the Senate and has a casting vote. | • The office of the Indian Vice President is modelled on the US office, with some differences.<br>• For example he can hold the office of president in case of a vacancy only till the new president is not elected. |
| **Citizenship** (8) | • People in the United States have two citizenships: one as a citizen of the United States and the other as a citizen of their respective state. | • India, on the other hand, has a single constitution and the principle of single citizenship for all of its people. |
| **Legislature** (7) | It consists of two houses: House of Representatives and the Senate.<br>**A. House of Representatives:**<br>• One of the weakest lower house in the world.<br>• **It consists of 435 members**<br>• Representation of people may differ in number from different states<br>**B. SENATE:** The body is permanent<br>• The world's most powerful upper house.<br>• Ordinary bills, amendment bills, and money bills all fall under its jurisdiction.<br>• Senators serve six-year terms. Every two years, one-third of the members/Senators leave.<br>• The terms of the Legislature and the Executive are both fixed and independent of one another.<br>• A member of the Executive cannot be a member of the Legislature. | • The house of representatives and Senate is very much similar to the Lok Sabha and Rajya Sabha of India, respectively.<br>• In India the executive comes from the legislature and falls under its ambit.<br>• The Union Executive includes the President. The true executive, however, is the Prime Minister and the Council of Ministers, since the President must act with the aid and advice of the Council of Ministers. |
| **Fundamental rights** (6) | • **In the United States, no one's life or liberty can be taken away without "due process of law."** – very wide scope of JR<br>• Due process refers to the requirement that the substance and practise of the law be just, equal, and equitable, as determined by the judiciary.<br>• The legislative power to take away a person's liberty is restricted, and the judiciary scrutinises and evaluates it. | • A person's life and liberty can be taken away in India **according to the "procedure established by law."** – Narrow scope of JR.<br>• The phrase "procedure defined by statute" gives the legislature broad discretionary power to limit liberty. |
| **Checks and Balances** (4) | • **The doctrine of separation of powers is enshrined in the US Constitution.** Through judicial oversight of executive and legislative actions, the judiciary keeps an eye on the other branches of government. | • In India the executive and legislature tightly interwoven and the judiciary is acting somewhat independently. |

Dual citizenship

Strict SOP / Watertight SOP.

Flexible SOP due to adoption of Parliamentary Govt.

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| **Emergency** | • The American Constitution **does not use the term "emergency," but it does state that the writ of Habeas Corpus may be suspended in the event of rebellion and invasion of public safety.** | • An emergency may be declared in India if there is a war or armed rebellion. All fundamental rights, with the exception of the right to life (Article 21), may be suspended in an emergency. |
| **Judiciary** | • Judges are appointed by the President and confirmed by the Senate, and they are removed by the Congress and the President by impeachment. President controls their salaries and emoluments.<br>• Judges of the Supreme Court are appointed without regard to any qualifications. | • India, on the other hand, employs a collegium method for appointing judges to the higher judiciary. |
| Amendment of the Constitution (5) | There are two ways to amend the Constitution: Very Rigid Procedure<br>1. Proposed by the Congress and ratified by the States<br>• Amendment to be passed by 2/3rd majority both the Houses<br>• To be ratified by the State Legislatures of at least 3/4th of the States<br>2. Proposed by States and ratified by the States<br>• 2/3rd of the States should pass a resolution to this effect<br>• They will communicate with the Congress. The Congress will call the convention.<br>• In the convention, it has to be ratified by 3/4th of the States. | • India's amendment process is simple and flexible. Blend of Rigidity and Flexibility<br>• In India, only the Parliament has the authority to recommend constitutional amendments, and the states have no say in the matter. – Parl. is Sole Repository of the constituent Power.<br>• Although some of the Articles may be amended with a simple majority, others require a special majority, and some Articles require ratification by more than half of the States. |

## INDIA AND BRITAIN

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| **Nature** | • There is no written constitution in the United Kingdom. The British Constitution does not exist as a codified or formal text. Evolutionary Norms, Procedures.<br>• The British Constitution is an example of how things have evolved over time. There was never a constituent assembly that framed it.<br>• The British Constitution is said to be the product of both wisdom and chance.<br>• The British Constitution is a flexible constitution. It can be passed, amended and repealed by a Simple Majority (50% of the members present and voting) of the Parliament, since no distinction is made between a constitutional law and an ordinary law. | • Indian constitution is codified into various parts and schedules.<br>• Indian Constitution, in contrast, is both flexible as well as rigid. |
| **Nature of state** | • The British Constitution has a unitary character. | Federal nature: Powers is shared by the national and the state governments. |

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| | • All powers of the government are vested in the British Parliament, which is a sovereign body. ↑ Sovereign (De Lolme) → | India parliament is Supreme But not Sovereign. Power of JR is very restricted |
| **Sovereignty of Parliament** | • The British Parliament is the country's only legislative body with unrestricted legislative authority. It has the power to enact, amend, or repeal any statute.<br>• The courts do not have the authority to rule on the legality of legislation passed by the British Parliament. | • Despite the fact that state legislatures exist, the Indian Parliament's legislative power approximately compares to that of the British Parliament.<br>• Judiciary effectively control over parliament and complete mechanism of separation of power exists in India. |
| **Executive** | • Many of the King's rights and authority have been taken away from him. Ministers who belong to the majority party in Parliament and remain in office as long as their party's trust in them is maintained are the true functionaries.<br>• The executive has individual legal responsibility. | • Executive is similar except In India, there is no individual legal responsibility. |
| **Nature of head of the state** | • A constitutional monarchy which is not incompatible with democracy.<br>• The King does not have any discretionary authority. He/she is referred to as 'Golden Zero.'<br>• King enjoys absolute immunity; it's said that King can do no wrong | (India is Republic)<br>• President is the ceremonial head of the state and acts according to the aid and advice of the council of ministers.<br>• **President can be impeached if he or she violates the Constitution.** |
| **Judiciary** | • The rule of law in the United Kingdom is protected by the rule that judges can only be dismissed from office for cause, for serious misbehaviour and in accordance with a protocol that has been developed.<br>• For removal It is necessary to obtain the approval of both Houses of Parliament. | • The idea of 'Basic Structure' has given the judiciary a powerful instrument with which to stifle any Executive or Legislative activity that it considers to be contrary to the Constitution's basic spirit.<br>• Other provisions like appointment and removal are very much similar to the UK's model. |
| **Legislature** | • The British Parliament is bicameral: **the House of Lords (whose power is not fixed) and the House of Commons (whose strength is fixed) (strength fixed at 650 members).**<br>• The House of Lords has the power to recommend and pass amendments. Its powers, however, are limited; if it does not accept a piece of legislation, it can only postpone its implementation for up to a year. | • **Bicameral legislature with fixed seats in both houses.**<br>• **House of lords is very much similar to Rajyasabha and House of commons is similar to the Loksabha.** |
| **Speaker** | • Once a Speaker, always a Speaker is the rule in the United Kingdom. It denotes that a Speaker's local constituency is uncontested.<br>• When a person is appointed Speaker, he formally resigns from his political party. | • **No such provisions/convenstions in India.** It is not necessary for the Speaker to resign from his party. |
| **Prime minister** | • It is a convention in Britain that the PM will always be a member of the House of Commons only. | • PM can be a member of either House of Parliament. |

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| **Shadow cabinet** | • Shadow cabinet members from the opposition party hold a similar portfolio as minister. | • No provision of shadow cabinet |

## INDIA AND FRANCE

| Attributes | France | India |
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| **Nature** | • It has a unitary form of government and a semi-presidential government. | • India is Parliamentary form of democracy with President as its nominal head |
| **Law making power** | • The French Parliament lacks dominance law making.<br>• The legislature has a list of subjects on which it should pass legislation, while the President makes law on the rest of the issues. | • With respect to law making on the Central list as per the seventh schedule where the president has Ordinance making power only. |
| **Parliament** | • The French Parliament is bicameral, consisting of two houses: National Assembly and the Senate.<br>• The French bicameralism is an unequal system since the National Assembly has much broader powers than those of the Senate.<br>**The Senate cannot be dissolved.** | • Rajya Sabha has Limited power as compared to Lok Sabha.<br>• Only in the case of constitutional amendment Rajya Sabha is at equal footing with Lok Sabha in India. |
| **Secularism** | • Follows the **rigid principle of secularism**. The state does not support religious activities but also does not interfere in private religious practices.<br>• It prohibits any visible religious symbols in public space. This model leaves no scope for the idea of the state-supported religious reforms. | • Indian secularism respects all religions equally and is the best example of positive secularism. |
| **Amendment** | • Both the Houses of Parliament have to pass a resolution by 3/5th majority.<br>• So rigid in nature The President may also choose to refer to the amendment to people by referendum. | • Blend of flexible and rigid. No provisions like referendums etc. |
| **President** | • The President is elected for a fixed term (5 years). The President shall be elected by an absolute majority of votes polled **(Second Ballot system)**.<br>• **The High Court of Justice** will enquire about the impeachment causes of the president. | • No such body in India president's impeachment follows constitutional provisions and parliament is body to do so. |
| **Prime minister** | • The French Prime Minister is an advisor to the President **(concept of cohabitation).**<br>• Between the two positions, there is a division of functions rather than a division of power.<br>• **The French President is in charge of foreign affairs and domestic issues.**<br>• The PM, on the other hand, is in charge of the company's day-to-day operations.<br>• Local government and domestic matters | • The Prime Minister is the real head of the government. |