



# Comparative Analysis of Constitutional Frameworks, Fundamental Rights, And National Constitutional Identity: A Focus on Selected Jurisdictions

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**Abstract:** This study offers a comparative analysis of constitutional frameworks, fundamental rights, and the evolving concept of national constitutional identity across selected jurisdictions. By examining the structures, values, and interpretative approaches of constitutions from both common law and civil law traditions, the research highlights how different countries articulate and safeguard fundamental rights within their unique legal and cultural contexts. The analysis explores the role of constitutional courts, separation of powers, and amendment procedures in shaping the national identity embedded in constitutional texts. Special attention is given to doctrines such as basic structure, proportionality, and judicial review, as well as the impact of supranational entities like the European Union on domestic constitutional autonomy. The findings underscore the dynamic interplay between universal human rights norms and nationally rooted constitutional principles, offering insights into how states reconcile global constitutionalism with local democratic legitimacy and historical narratives.

**Keywords:** Constitutional frameworks, fundamental rights, national constitutional identity, comparative constitutional law, judicial review, basic structure doctrine, constitutional courts, separation of powers,

constitutional amendments, legal traditions, global constitutionalism.

**Introduction:** Constitutions serve as the foundational legal documents of sovereign states, articulating the distribution of governmental powers, establishing institutional structures, and, crucially, enshrining the rights and duties of citizens [4, 5]. The study of constitutional law, particularly through a comparative lens, offers invaluable insights into diverse approaches to governance, the protection of individual liberties, and the shaping of national identity [1, 2]. While each constitution is a unique product of its nation's historical, political, and cultural context, examining their similarities and differences allows for a deeper understanding of universal constitutional principles and context-specific adaptations [15].

Fundamental rights, often termed basic or human rights, represent core entitlements deemed essential for human dignity and flourishing. Their inclusion and scope within a constitution reflect a nation's commitment to individual freedoms and social justice [9]. However, the interpretation and enforcement of these rights can vary significantly across jurisdictions, influenced by judicial philosophy, societal norms, and evolving political landscapes [12]. Beyond the explicit text, the concept of "constitutional identity" has emerged as a crucial area of inquiry, referring to the unique character or core values that define a nation's constitutional order and its relationship with its people [7, 8]. This identity often shapes how fundamental rights are perceived and how the constitution itself evolves [13].

This article aims to provide a comparative analysis of constitutional frameworks, the enumeration and interpretation of fundamental rights, and the nuances of constitutional identity, with a specific focus on India and Japan. Both nations, while geographically and culturally distinct, share post-World War II constitutional origins and have evolved democratic systems under the rule of law. By examining their respective approaches, this research seeks to highlight the interplay between constitutional design, rights protection, and the intrinsic character of a nation's legal and political system. It will explore how historical legacies, cultural values, and judicial activism have shaped these vital aspects in each country.

## **METHODOLOGY**

This comparative study employs a qualitative, descriptive, and analytical research methodology to examine the constitutional frameworks, fundamental rights, and constitutional identities of India and Japan. The approach primarily involves in-depth textual analysis of primary legal documents and an extensive review of scholarly literature.

### **2.1. Data Collection:**

The data for this research were systematically collected from authoritative secondary sources, including:

- **Constitutional Texts and Amendments:** The primary constitutional documents of India and Japan were meticulously reviewed to identify their structural organization, key provisions related to governance, and the specific articles enumerating fundamental rights. Any significant constitutional amendments in both countries were also examined to understand their impact on the evolution of rights and identity [10].
- **Academic Books and Journal Articles:** A comprehensive literature search was conducted to gather scholarly works on comparative constitutional law, focusing specifically on India and Japan. This included renowned texts on Indian constitutional law [4] and analyses of the Japanese Constitution's historical evolution and contemporary significance [6, 8, 13]. Articles providing comparative perspectives on fundamental rights, constitutional identity, and governance structures were prioritized [7, 14, 15].
- **Reports from Legal and Research Institutions:** Publications from organizations specializing in constitutional studies and comparative legal analysis, such as those cited by ClearIAS [1], Drishti IAS [2], and SRISIIM [3], were consulted to gain insights into expert comparisons and analyses of the constitutional schemes.
- **Judicial Analysis:** Research on judicial interpretations of fundamental rights in both India and Japan was included to understand

how courts have shaped the scope and application of these rights, identifying trends and challenges in judicial activism or restraint [12].

## 2.2. Research Approach and Analysis:

The collected data were subjected to a rigorous comparative analysis, following these sequential steps:

1. **Categorization of Core Elements:** The research systematically categorized the key constitutional elements for comparison: the overall constitutional scheme (e.g., federal/unitary, parliamentary/presidential), the scope and nature of fundamental rights (e.g., civil and political, socio-economic), and the defining characteristics of constitutional identity.
2. **Point-by-Point Comparison:** For each identified element, a direct comparison was drawn between India and Japan, highlighting similarities, distinctions, and unique features. For instance, the differences in parliamentary systems, the federal structure of India versus the unitary nature of Japan, and the specific rights enumerated were meticulously compared [1, 2].
3. **Contextual Analysis:** Beyond textual comparisons, a contextual analysis was performed to understand the historical, political, and socio-cultural factors that shaped the constitutional choices and the evolution of rights and identity in each nation [4, 6, 15]. This involved examining the influence of colonial legacies, post-war reconstruction, and indigenous philosophical traditions.
4. **Identification of Similarities and Divergences:** The analysis explicitly identified areas where the two constitutions converge in their principles (e.g., commitment to democracy, rule of law) and where they diverge in their specific provisions or practical applications (e.g., the approach to social justice rights, the role of directive principles).

5. **Assessment of Constitutional Identity:** The concept of constitutional identity was explored by synthesizing insights from legal scholarship on how core values, national narratives, and judicial decisions contribute to a distinct constitutional character in both countries [7, 8, 11, 13].

6. **Synthesis and Interpretation:** Finally, the findings were synthesized to draw overarching conclusions regarding the strengths, weaknesses, and unique contributions of each constitutional model, contributing to broader discussions in comparative constitutional law.

By adhering to this systematic methodology, this study aims to offer a nuanced and well-supported comparative analysis, shedding light on the complex interplay between constitutional design, fundamental rights, and national identity in two significant Asian democracies.

## RESULTS AND DISCUSSION

The comparative analysis of the constitutional frameworks, fundamental rights, and constitutional identities of India and Japan reveals both convergent aspirations towards democratic governance and human rights, as well as distinct paths shaped by unique historical and socio-cultural contexts.

### 3.1. Constitutional Structures and Foundational Principles

Both India and Japan adopted their modern constitutions in the post-World War II era, influenced by democratic ideals, yet their structural compositions reflect differing foundational choices and historical legacies.

#### 3.1.1. India's Constitutional Scheme:

The Constitution of India, enacted in 1950, is widely regarded as one of the longest and most comprehensive written constitutions globally. It establishes India as a Sovereign, Socialist, Secular, Democratic Republic, embodying principles of justice, liberty, equality, and fraternity. Key structural features include:

- **Federalism with a Unitary Bias:** India operates as a federal system, distributing powers between

the Union (central) government and state governments, but with a strong centralizing tendency, particularly during emergencies [1, 2]. This balance is a unique feature designed to maintain national unity in a diverse nation.

- **Parliamentary Form of Government:** India adopted a Westminster-style parliamentary system, where the executive (Prime Minister and Council of Ministers) is responsible to the legislature (Parliament) [1, 2].
- **Independent Judiciary:** The Indian Constitution establishes an independent and powerful judiciary with the power of judicial review, serving as a guardian of the Constitution and fundamental rights [12].
- **Amending Process:** The Constitution is designed to be flexible, allowing for amendments, yet certain "basic features" are considered unamendable, a doctrine established by the judiciary to preserve the Constitution's core identity [10].

### 3.1.2. Japan's Constitutional Scheme:

The Constitution of Japan, promulgated in 1947, is notably shorter and more concise, often referred to as the "Peace Constitution" due to its pacifist Article 9. Its foundational principles include:

- **Unitary State with Parliamentary Democracy:** Japan is a unitary state with a parliamentary system, where sovereignty rests with the people, and the Emperor is a symbol of the state and the unity of the people [2, 3, 6].
- **Separation of Powers:** It strictly adheres to the principle of separation of powers among the legislative (Diet), executive (Cabinet), and judicial branches [6].
- **Judicial Review:** While the judiciary possesses the power of judicial review, it has historically exercised this power with greater restraint compared to its Indian counterpart, often deferring to the legislative and executive branches [8, 14].

- **Amending Process:** The Japanese Constitution is notoriously difficult to amend, requiring a two-thirds majority in both houses of the Diet and a majority vote in a national referendum [6]. This rigidity reflects a desire for stability and a strong commitment to its post-war pacifist and democratic tenets.

### 3.2. Fundamental Rights: Scope, Evolution, and Interpretation

Both constitutions guarantee fundamental rights to their citizens, reflecting a commitment to liberal democratic values, but their approaches and the historical evolution of these rights present interesting contrasts.

#### 3.2.1. Fundamental Rights in India:

Part III of the Indian Constitution enshrines a comprehensive list of Fundamental Rights, which are largely justiciable and enforceable through courts. These include:

- **Civil and Political Rights:** Rights such as equality before law (Article 14), freedom of speech and expression (Article 19), protection of life and personal liberty (Article 21), and freedom of religion are robustly guaranteed [9].
- **Socio-Economic Rights (Directive Principles):** Beyond justiciable Fundamental Rights, Part IV of the Constitution contains Directive Principles of State Policy (DPSP). These are non-justiciable guidelines for the state to achieve social and economic justice [9]. While not directly enforceable, the judiciary has increasingly read some DPSP into the ambit of fundamental rights, blurring the lines and emphasizing social justice [9, 12].
- **Evolution through Judicial Activism:** The Indian judiciary has played a highly active role in expanding the scope and interpretation of fundamental rights. Landmark judgments have expanded the "right to life" (Article 21) to encompass various socio-economic entitlements, including the right to live with dignity, right to clean environment, right to education, and right to health [9, 12]. This

judicial dynamism reflects the Constitution's adaptability to societal needs and challenges [12].

- **Limitations and Reasonable Restrictions:** Fundamental rights in India are not absolute and can be subject to "reasonable restrictions" in the interest of public order, morality, and national security, which are often debated and reviewed by courts.

### 3.2.2. Fundamental Rights in Japan:

Chapter III of the Japanese Constitution guarantees a range of fundamental rights, emphasizing individual liberty and dignity. These include:

- **Civil and Political Rights:** Rights such as equality under the law, freedom of speech, assembly, and association, freedom of religion, and the right to life, liberty, and the pursuit of happiness are explicitly guaranteed [6, 8].
- **Socio-Economic Rights:** While present, socio-economic rights in Japan are often framed as duties of the state rather than individual justiciable rights in the same way as India. For instance, Article 25 guarantees the right to maintain minimum standards of wholesome and cultured living, placing a duty on the state to promote public welfare, but its direct enforceability is less robust than some of the expanded rights in India [8].
- **Judicial Restraint:** The Japanese judiciary, while having the power of judicial review, has generally adopted a more deferential approach to legislative intent when interpreting rights. This conservative judicial tradition means that the expansion of rights has primarily occurred through legislative action rather than broad judicial interpretation [8, 14].
- **Public Welfare and Limitations:** Rights are subject to the "public welfare" clause, allowing for limitations necessary to maintain public order and morality, similar to India's reasonable restrictions.

## 3.3. Constitutional Identity and its Shaping Influences

Constitutional identity refers to the core values, principles, and historical narratives that define a nation's constitutional order and its distinctive character [7, 8]. This identity is deeply intertwined with how fundamental rights are understood and how the constitution is perceived by its people.

### 3.3.1. India's Constitutional Identity:

India's constitutional identity is profoundly shaped by its diverse socio-cultural fabric, its colonial past, and the aspirations of its independence movement:

- **Sovereignty of the People and Democratic Republicanism:** The Preamble "We, the people of India..." firmly establishes popular sovereignty and a commitment to democratic republican values [1, 4].
- **Social Justice and Inclusivity:** The commitment to social justice, secularism, and equality, particularly for marginalized communities, is a cornerstone of India's identity, reflected in both Fundamental Rights and Directive Principles [9, 15]. The emphasis on affirmative action for historically disadvantaged groups is a unique aspect.
- **Synthesis of Western and Indigenous Values:** The Indian Constitution draws heavily from Western constitutional traditions (e.g., British parliamentary system, US Bill of Rights), but it also attempts to incorporate indigenous values and address local realities, such as socio-economic disparities and caste-based discrimination [4, 15].
- **"Living Document" through Judicial Review:** The robust power of judicial review and the "basic structure doctrine" have rendered the Indian Constitution a "living document," capable of adapting to changing times while preserving its fundamental essence [10, 12]. This dynamism is a key aspect of its identity.

### 3.3.2. Japan's Constitutional Identity:

Japan's constitutional identity is defined by its post-war transformation, its unique blend of traditional culture and modern democratic principles, and its unwavering commitment to pacifism:

- **Pacifism (Article 9):** The renunciation of war and maintenance of military forces is a central and defining feature of Japan's constitutional identity, deeply rooted in its post-war experience [6, 13]. This unique provision sets Japan apart in international law and shapes its foreign policy.
- **Sovereignty of the People (Popular Sovereignty):** Despite the continued presence of the Emperor, sovereignty was explicitly transferred from the Emperor to the people, marking a fundamental shift in political authority [6, 8].
- **Emphasis on Order and Harmony:** While guaranteeing individual rights, Japanese constitutional identity often emphasizes social order, collective harmony, and duties to the community, reflecting traditional cultural values [11, 15]. This can sometimes lead to a different balancing act between individual freedoms and societal good compared to more individualistic Western traditions.
- **Stability and Rigidity:** The difficulty of amendment contributes to a constitutional identity characterized by stability and a strong adherence to its post-war democratic and pacifist ideals [6, 13]. There is a perceived sanctity of the post-war constitution.
- **Role of the Emperor:** The Emperor's role as a "symbol of the State and of the unity of the people" (Article 1) is a unique aspect of Japanese constitutional identity, blending tradition with modern republicanism [6, 13].
- **Judicial Activism vs. Restraint:** The stark difference in the judiciary's role in constitutional interpretation is a key takeaway [7, 12, 14]. India's activist judiciary has driven significant constitutional evolution, while Japan's more restrained courts mean that constitutional change is predominantly a legislative function.
- **Constitutional Adaptability:** India's Constitution is considered highly adaptable due to its amendability and judicial interpretation, whereas Japan's is notably rigid, underscoring different philosophies on constitutional longevity and responsiveness to change [6, 10, 13].
- **Global Influences and Indigenous Adaptation:** Both constitutions reflect influences from Western democratic models but have successfully adapted these principles to their unique national contexts, creating distinctive constitutional identities [4, 6, 15].
- **Challenges of Modernity:** Both countries face challenges in upholding constitutional values in a rapidly changing world, including issues related to technology, privacy, and economic development, which continuously test the boundaries of fundamental rights and constitutional interpretation.

This comparative study underscores that while universal principles of democracy and human rights underpin constitutionalism globally, their practical manifestation and national identity are profoundly shaped by distinct historical trajectories and cultural narratives.

### **3.4. Comparative Insights and Challenges**

The comparison between India and Japan offers several critical insights into constitutionalism in Asia:

- **Balancing Act:** Both nations constantly navigate the complex balance between individual rights and collective societal interests, though their historical and cultural lenses lead to different equilibrium points [11, 15]. India's strong emphasis on social justice, often through judicial intervention, contrasts with Japan's more cautious approach.

### **CONCLUSION**

The comparative analysis of the constitutional frameworks, fundamental rights, and constitutional identities of India and Japan provides a rich tapestry of insights into the diverse approaches to modern democratic governance. Both nations, emerging from distinct historical circumstances in the mid-20th century, crafted constitutions that reflect their aspirations for popular sovereignty, the rule of law, and the protection of individual liberties.

India's Constitution stands out for its length, its complex federal structure with a unitary bias, and its explicitly



comprehensive list of justiciable Fundamental Rights, dynamically interpreted and expanded by an activist judiciary [1, 4, 9]. Its constitutional identity is deeply rooted in its commitment to social justice, secularism, and democratic republicanism, shaped by its struggle for independence and its diverse societal fabric [9, 15].

In contrast, Japan's Constitution is characterized by its conciseness, its unitary state structure, and its unique and unwavering commitment to pacifism enshrined in Article 9 [6, 8]. While guaranteeing fundamental rights, the Japanese judiciary has historically adopted a more restrained approach to interpretation, and its constitutional identity is often defined by stability, consensus, and a unique blending of traditional imperial symbolism with popular sovereignty [8, 13].

The comparison highlights a critical divergence in judicial roles: India's judiciary has been a proactive force in expanding rights and shaping constitutional identity through doctrines like the "basic structure," while Japan's courts have largely deferred to legislative authority [7, 12, 14]. This also reflects different philosophies on constitutional adaptability, with India's framework proving more flexible compared to Japan's remarkably rigid amendment process [6, 10].

Ultimately, this study reinforces the notion that while universal constitutional principles exist, their implementation and the unique "identity" they forge are profoundly shaped by national context, historical experience, and cultural values [15]. Understanding these comparisons is not merely an academic exercise; it offers valuable lessons for constitutional reform, human rights advocacy, and fostering international understanding in a world grappling with complex governance challenges. The paths taken by India and Japan, though distinct, both underscore the enduring power of constitutionalism as a cornerstone of democratic societies.

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