

CONSTITUTIONAL CONVENTIONS: AN EXPLORATORY STUDY IN THE LIGHT OF INDIAN CONSTITUTION SYSTEM

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Abstract

This paper examines the idea of constitutional conventions within the framework of the Indian Constitution, highlighting their importance in the functioning of the political system. Although unwritten and often overlooked, constitutional conventions are crucial for guiding the behaviour of constitutional actors and facilitating smooth governance. The study provides a comprehensive analysis of these conventions, including their definitions and key characteristics that distinguish them from formal laws and constitutional provisions. It also highlights the needs of these conventions in promoting flexibility and adaptability within the constitutional framework while underscoring their crucial role in upholding democratic principles. By analysing significant instances of constitutional conventions in India, the paper demonstrates their practical impact on governance. Additionally, it discusses the judiciary's role in interpreting these conventions, illustrating how court decisions can influence their understanding and application in the Indian context. This exploratory study aims to provide a nuanced perspective on constitutional conventions and their influence on the Indian political system.

Key words: Constitutional Conventions, Unwritten Rules, Democratic Principles, Judicial Interpretation, Constitutional Morality

Introduction

The Constitution of India, as the supreme law of the land, provides the foundational framework for governance and legal authority. However, alongside the written provisions, there exists a set of unwritten norms and practices known as constitutional conventions. These conventions, though not codified, are essential in shaping the operations of the government and ensuring its effective functioning.

Constitutional conventions are established practices that have developed over time, forming a crucial part of the unwritten constitution. They stem from the country's political culture and historical context, reflecting traditional governance practices. Their informal

nature allows them to adapt to contemporary needs while preserving the essential principles of democracy. For example, the convention of collective ministerial responsibility fosters unity within the executive branch and assures the electorate of responsible governance. These conventions become particularly significant during political crises or situations where the Constitution is unclear, providing practical guidance in those contexts.

In certain situations, unwritten conventions hold more significance than written rules. For instance, while the Constitution mandates that the President appoints the Prime Minister, it does not specify who should be selected for the position. Here, constitutional conventions fill the gap, ensuring that the leader of the majority

party in the Lok Sabha is appointed to the post. Given the significant role of the Prime Minister in governance, this convention acquires immense importance, demonstrating how conventions supplement and enhance the Constitution's provisions⁷⁰¹.

However, the reliance on these unwritten norms raises concerns regarding their interpretation, as different political actors may have different views. This highlights the vital role of the judiciary in interpreting these conventions to ensure they are consistent with constitutional principles. Ultimately, constitutional conventions play a significant role in the effective functioning of democracy in India, complementing the written provisions of the Constitution.

Meaning and definitions

Constitutional conventions are classified as unwritten norms, practices, and traditions that develop over time to complement the formal provisions of a constitution. Though they cannot be legally enforced, they possess significant political and moral authority as they govern the actions of constitutional figures, contributing to the effective operation of a political system. A.V. Dicey was the first to discuss the concept, describing conventions as “understandings, habits, or practices that, while influencing the behaviour of sovereign power members, are not enforceable by the courts.” This aspect of constitutional law is often referred to as the “conventions of the constitution” or constitutional morality⁷⁰².

In the UK, conventions are essential in guiding political practices and interactions. In India, despite having a written Constitution, many conventional practices are still observed for effective governance. For instance, the appointment of chief justice of India, where the most senior judge of the Supreme Court

becomes the Chief Justice of India—though not explicitly stated in the Constitution, this practice is consistently followed.

According to Sir Ivory Jennings, establishing a constitutional convention involves addressing three fundamental questions.

1. What are precedents?
2. Do political actors feel bound by such a rule?
3. Is there a valid reason for the rule's existence?

If a precedent has a good reason and a sense of obligation, it becomes a valid rule. However, these questions are helpful but do not serve as a strict test to determine what qualifies as a constitutional convention.

While there is no precise or exhaustive definition for constitutional conventions, several attempts have been made by the jurists to define them. Among these are the following:

Hood and Phillips in his book⁷⁰³ describe it as “Rules of political practice which are regarded as binding to those whom they apply but which are not laws as they are not enforced by the courts or by the houses of parliament.”

According to John Austin, the Constitutional Convention is the “positive morality of the Constitution.”

Fenwick, H., defines it as “non-legal, generally agreed rules about how government should be conducted and, in particular, governing the relations between different organs of government.”⁷⁰⁴

Keeton describes them as unwritten principles which, though they could never be enforced by the law in the courts are nonetheless rules since in fact the players of the constitutional game do observe them, for if they are not observed, then constitutional game would degenerate the political farces or worse still a bloody revolution.

⁷⁰¹ Constitutional Conventions Preserving Legal Structure of Government Constitutional Law Essay, Law Teacher, (Jun 7, 2019) <https://www.lawteacher.net/free-law-essays/constitutional-law/constitutional-conventions-preserving-legal-structure-of-government-constitutional-law-essay.php>

⁷⁰² A.V. Dicey, Introduction to the Study of the Law of the Constitution (10th ed. 1959)

⁷⁰³ O. Hood Phillips & Paul Jackson, Constitutional and Administrative Law (7th ed. 2001).

⁷⁰⁴ Helen Fenwick & Gavin Phillipson, Text, Cases & Materials on Public Law & Human Rights (2d ed. 2003)

Constitutional conventions are characterized by voluntary adherence to established practices that evolve naturally over time. Although there is no definitive timeframe for their formation, this lack of a fixed duration complicates the identification of specific conventions. Their flexibility in adapting to changing political environments highlights their significance in guiding constitutional actors and maintaining governance stability. Therefore, a nuanced understanding of these conventions is crucial for navigating political complexities and upholding democratic values.

Characteristics of constitutional conventions

The key characteristics of constitutional conventions⁷⁰⁵ are as follows:

Conventions outline the non-legal rights, powers, and duties of office-holders in the three branches of government, as well as relationships between government organs. They are generally stated in broad terms, with their application being clear in some circumstances but uncertain or debatable in others. The framers of the Constitution deliberately left certain matters to the discretion of contemporary leaders, allowing for the development of constitutional conventions.

While conventions differ from legal rules, they may be equally or more important, sometimes influencing the application or enforcement of laws. In certain cases, conventions are more critical than written constitutional provisions, such as guiding the President in appointing the Prime Minister when the Constitution provides no specific instructions. New conventions can occasionally develop to address particular procedural challenges in governance.

In S.P Anand case, Ahmadi, C.J⁷⁰⁶ said that conventions grow from longstanding accepted practice or by agreement in areas where the law is silent and such a convention would not breach the law but fill the gap.

⁷⁰⁵ Parliamentary Conventions, Journals of India (Sept. 14, 2020), <https://journalsofindia.com/parliamentary-conventions/>.

⁷⁰⁶ S.P. Anand, Indore v. H.D. Deve Gowda, A.I.R. 1997 S.C. 272, (1996) 6 S.C.C. 734 (India).

Need and significance

Constitutional conventions play a pivotal role in maintaining flexibility within the legal framework of the Constitution. While the Indian Constitution is written and detailed, it deliberately leaves certain matters to be governed by conventions. This flexibility allows governance to adapt to the evolving political and social climate.

In India, conventions help regulate the relationships between various branches of government i.e, the legislature, the executive and the judiciary. Though not legally enforceable, these conventions hold significant moral and political authority, guiding the behaviour of constitutional actors in a manner that is often as important as the written provisions of the Constitution itself.

According to Dicey, Constitutional Conventions secure the ultimate supremacy of the electorate by guiding the exercise of discretionary powers in a manner consistent with democratic principles. Jennings further highlights that Conventions "provide the flesh which clothes the dry bones of the law; they make the legal constitution work; they keep it in touch with the growth of ideas", ensuring that the legal framework remains dynamic and responsive to the growth of ideas and changing circumstances.

In recent years, conventions that were respected in the past have been disregarded, and there is a growing trend toward extra-constitutional methods to resolve political issues. This deviation poses a serious threat to the integrity of the democratic system, as the failure to adhere to conventions can result in constitutional crises.⁷⁰⁷

While conventions act as safeguards against the rigidity of written laws, offering a flexible means of addressing ambiguities and filling governance gaps, their neglect or misuse can

⁷⁰⁷ Constitutional Conventions Preserving Legal Structure of Government Constitutional Law Essay, Law Teacher, (Jun 7, 2019) <https://www.lawteacher.net/free-law-essays/constitutional-law/constitutional-conventions-preserving-legal-structure-of-government-constitutional-law-essay.php>

destabilize the system. Therefore, it is vital that those in constitutional roles are skilled and dedicated to honouring both the letter and spirit of the Constitution to preserve their essential function.

Instances of conventions

Constitutional conventions play an essential role in regulating the relationship between the executive and the legislature in India. Below are key instances that illustrate the significance of these unwritten norms:

1. Hung Lok Sabha Situations

In a hung Lok Sabha, where no party achieves a clear majority, constitutional conventions guide the process of government formation.

The President of India is responsible for inviting a leader to form the government. While traditionally this leader is the head of the largest party, the convention has evolved to favor the leader who can command majority support, regardless of party size.

It is now generally accepted that the leader who can build a coalition with other parties will be invited to form the government. This practice acknowledges the reality of coalition politics and emphasises the need for collaboration among parties for effective governance.

Despite calls for codifying these conventions into law, no formal measures have been taken to date, leaving room for ambiguity and controversy during elections.

2. Appointment of the Prime Minister

The appointment of the Prime Minister is outlined in Article 75(1) of the Indian Constitution which states that the President will appoint the Prime Minister, while other Ministers are appointed by the President based on the Prime Minister's advice.

Generally, the President selects the leader of the party that has a majority in the Lok Sabha to serve as Prime Minister. In exceptional circumstances, such as the resignation or death of a Prime Minister, the President must exercise

discretion to identify a leader capable of garnering support from the House. For instance, in 1979, President Giani Zail Singh invited Charan Singh to form a government following the Janata Party's collapse, illustrating the President's role in navigating political complexities.

3. Dissolution of the House

The dissolution of the Lok Sabha and Vidhan Sabha can occur at the end of their five-year terms or under certain circumstances before that.

The decision to dissolve the House rests with the President or the Governor, based on established conventions. There is ongoing debate regarding whether the President acts with full discretion or adheres to the advice of the Council of Ministers. Article 74(1) states that the President typically follows ministerial counsel, but exceptions are acknowledged. In the *Shamsher Singh vs. State of Punjab* case, the court indicated that the President could reject unconstitutional advice, underscoring the critical role of conventions in safeguarding the Constitution.

Other parliamentary conventions include:

- The Speaker of the Lok Sabha derives powers and duties from parliamentary practices.
- The role of the whip in maintaining party discipline.
- The classification of the Council of Ministers into a three-tier structure to facilitate decision-making.

A notable instance of constitutional conventions occurred on January 9, 2023⁷⁰⁸, when the Governor of Tamil Nadu omitted significant portions from the prepared speech for the Legislative Assembly, which referenced social justice and leaders like Periyar and Ambedkar. This act sparked a political controversy, with the

⁷⁰⁸ Siddharth Jha. The Tamil Nadu Governor and Constitutional Conventions, *Constitution of India* (Feb. 25, 2023), <https://www.constitutionofindia.net/blog/the-tamil-nadu-governor-and-constitutional-conventions/>.

ruling party claiming a breach of convention. The Governor's address follows the established convention outlined in Articles 87 and 176 of the Constitution, which directs the Governor to present the legislative agenda prepared by the Council of Ministers. Deviating from this norm disrupts the expected cooperation between the Governor and the elected government, revealing underlying tensions and potentially undermining inter-institutional trust. Such breaches can lead to diminished adherence to conventions and invite unnecessary judicial intervention in political matters.

Role of judiciary in interpreting constitutional conventions

Constitutional conventions, though not legally enforceable, play a critical role in the smooth functioning of democratic governance. When disputes arise regarding their interpretation or application, the judiciary often steps in to clarify their scope and relevance within the constitutional framework. Indian courts have been instrumental in recognizing and interpreting these conventions, particularly in cases where ambiguities or gaps exist in the written law. The judiciary adopts a pragmatic approach, acknowledging that these unwritten norms are crucial for maintaining the balance of power between different branches of government, ensuring they align with the democratic ethos and the spirit of the Constitution.

The Judges' Cases serve as a crucial example of how the Indian judiciary has played a significant role in interpreting constitutional conventions. In the First Judges' Case⁷⁰⁹ the Supreme Court held that the appointment of judges by the President or Governor must follow consultation with the Chief Justice of India (CJI) and the Chief Justice of the High Court. The court also made it clear that conventions that conflict with constitutional principles or the intention of the law cannot be regarded as valid constitutional conventions.

In the Second Judges' Case⁷¹⁰ the Supreme Court reversed its earlier ruling, stating that "consultation" with the CJI should mean "concurrence." The court emphasized that once a convention is established and in operation, it becomes as binding as constitutional law. Justice Kuldip Singh reinforced this by equating constitutional conventions with constitutional law, asserting that both are equally binding in their respective domains.

The Third Judges' Case⁷¹¹ upheld the earlier decisions but introduced the concept of a collegium, further embedding judicial independence in the process of judicial appointments. When the 99th Constitutional Amendment sought to replace the collegium with the National Judicial Appointments Commission (NJAC), the Supreme Court struck it down, reaffirming that appointments must continue according to the existing constitutional convention. The court highlighted the binding nature of the pre-existing conventions, rejecting the NJAC as inconsistent with them.

Through these rulings, the Supreme Court not only recognized but reinforced the binding character of constitutional conventions, showing how they become entrenched in constitutional law when they operate within the constitutional framework.

In *S.R. Bommai v. UOI*⁷¹² the Supreme Court sets crucial guidelines to prevent arbitrary dismissals of state governments, reinforcing the significance of constitutional conventions in maintaining India's federal structure. Dr. B.R. Ambedkar, during the drafting of the Constitution, expresses hope that Article 356 would remain a "dead letter," only to be invoked sparingly in extreme situations. However, political realities see frequent misuse of this provision for partisan purposes. This case challenged this misuse and establishes that the imposition of President's Rule must be based on

⁷⁰⁹ S.P. Gupta v. President of India, (1982) AIR1982 SC 149 (1) SCC 87 (India)

⁷¹⁰ Supreme Court Advocates-On-Record Assn. v. Union of India, (1994) 1 SCC 446 (India).

⁷¹¹ In re: Under Article 143(1) of the Constitution, (1998) 5 SCALE 629 (India).

⁷¹² S.R. Bommai v. Union of India, 1994 AIR 1918, 1994 SCC (3) 1.

constitutional grounds and not political motivations. This judgment emphasizes that the dissolution of a state assembly and the declaration of President's Rule are subject to judicial review. The court affirms its authority to strike down such proclamations if they are based on irrelevant or unconstitutional grounds, marking a significant shift in protecting state governments. The case also underscores that India's federalism is an integrated system, not based on agreements between states, making it crucial for conventions and political morality to guide the exercise of constitutional powers. This case strengthened the role of constitutional conventions in ensuring that the balance of power between the Union and states is respected and that Article 356 is used responsibly, only when there is a genuine breakdown of constitutional machinery.

In the *Shamsher Singh vs State of Punjab* case⁷¹³, the Supreme Court examined the scope of presidential discretion under Article 74 and highlighted the importance of constitutional conventions in guiding the President's actions. The Court clarified that the President's discretion is limited and that conventions, such as acting on the advice of the Council of Ministers, are binding unless the advice is unconstitutional. This case underscored the judiciary's role in ensuring that constitutional conventions are respected and followed, even when they are not codified.

In *K. Lakshminarayanan v. Union of India*⁷¹⁴ it was established that constitutional conventions develop and are recognized through the way the Constitution is practiced. The main purpose of these conventions is to ensure that the Constitution functions in line with its values and moral principles. They aim to achieve the higher ideals and goals that the Constitution promotes. Conventions are not fixed; they can evolve as constitutional values and interpretations change. However, no convention can be recognized or followed if it goes against

the clear provisions of the Constitution or the fundamental goals that the Constitution seeks to achieve.

The judiciary's role in interpreting constitutional conventions is pivotal in ensuring that these unwritten norms continue to guide the functioning of India's political system. While conventions are flexible and evolve over time, the judiciary acts as a safeguard against their misuse or misinterpretation. Through landmark judgments, Indian courts have acknowledged the importance of conventions, providing clarity on their application and ensuring that they operate in harmony with the written Constitution. In this way, the judiciary upholds both the letter and spirit of the Constitution, preserving the democratic fabric of the nation.

Conclusion

Constitutional conventions play an indispensable role in the functioning of the Indian political system. As unwritten rules that guide the behaviour of political actors, these conventions fill the gaps left by the written Constitution, ensuring the smooth operation of governance. From the appointment of the Prime Minister to the dissolution of the Lok Sabha, conventions provide essential frameworks that uphold democratic norms and practices.

This study has highlighted the significance of these conventions in maintaining political stability, promoting accountability, and facilitating the interpretation of constitutional provisions. The judiciary's role in interpreting these conventions underscores their importance in legal discourse and political practice, as judicial decisions have often relied on these unwritten rules to resolve ambiguities within the constitutional framework.

Furthermore, the need for conventions becomes even more pronounced in situations where the Constitution is silent or ambiguous, demonstrating their relevance in navigating complex political scenarios. While constitutional conventions may not be legally enforceable, their observance is crucial for upholding

⁷¹³ *Shamsher Singh & Ors. v. State of U.P.*, (1994) Supp. (1) SCC 512 (India).
⁷¹⁴ *K. Lakshminarayanan v. Union of India*, AIR SC 825 (2018) 15 SCALE 644 (India)

democratic values and fostering trust in the political system.

Ultimately, a deeper understanding and recognition of these conventions are essential for both legal scholars and practitioners in navigating the intricate landscape of constitutional law and politics in India.

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