

# The Comparisons of Constitution, Fundamental Rights and Constitutional Identity on Some Countries

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## Abstract

The main goal of our study is comparing for different constitution, fundamental rights and constitutional identity in Asian some countries such as Japan and India. The constitution is to establish a framework for governance that delineates the structure and powers of government, ensuring a system of checks and balances among its branches to protect against tyranny and abuse of power. At the legal system level, striking a balance between the two perspectives: defending fundamental rights and preserving national identity, is a subject of concern.

The relationship between fundamental rights and national identity is complex, involving legal, political, and cultural elements. Legal interpretations, cultural dynamics, and changing socioeconomic conditions all pose threats to fundamental rights. We compared and studied the views of scholars on the basic terminology and concepts such as constitution, fundamental rights and constitutional identity within the chosen topic, made our own conclusions, and presented our proposed solutions.

**Keywords:** Constitution, Fundamental Rights and Constitutional Identity

## 1. The Historical Evolution Of Factors Our Study

The main concept of our study are constitution, fundamental rights and constitutional identity. We studied the historical evolution of constitution, fundamental rights and constitutional identity as below:

### 1.1. The Historical Evolution of Constitution

We collected definition of main concepts as constitution, our research work. The constitution is a foundational legal document that outlines the fundamental principles and established precedents governing a state or organization. Asian countries have a rich and diverse history of constitutional development, with each nation having its unique legal frameworks that govern their political structures and citizen rights.

**INDIA:** Known for its comprehensive democratic framework. India is recognized for its comprehensive democratic framework, characterized by a blend of formal political structures and

grassroots participation. Democratic Structure: India is a Sovereign Socialist Secular Democratic Republic with a parliamentary system. It features a federal structure that includes a Council of Ministers headed by the Prime Minister at the national level and Chief Ministers at the state level, all accountable to elected representatives.

Indian electoral process has conducted over 65 successful elections, demonstrating a stable electoral process. Elections are not just about voting but also involve fulfilling social and economic aspirations, making democracy integral to everyday life.

Challenges and Accountability despite its achievements, Indian democracy faces challenges, including questions about the accountability and competence of elected representatives. Recent trends indicate a shift towards centralization of power and diminishing civil liberties, raising concerns about the health of democratic institutions.

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India's cultural context model of democracy is distinct from Western paradigms, rooted in its unique historical, social, and cultural contexts. The coexistence of traditional practices with modern democratic principles reflects the complexity of Indian society.

**JAPAN:** Features a parliamentary system with a strong emphasis on civil liberties. Japan features a parliamentary system characterized by a strong emphasis on civil liberties and democratic governance. Parliamentary Structure: Japan's legislative body, known as the National Diet, is bicameral, consisting of the House of Representatives (lower house) and the House of Councillors (upper house). The Diet is considered the highest organ of state power, responsible for making laws and overseeing the government. Members of both houses are directly elected by the populace, reflecting the principle of popular sovereignty.

The Prime Minister, executive leadership elected by the house of representatives, serves as the head of government and is responsible for appointing ministers and executing laws. The emperor serves as a ceremonial figurehead without political power, symbolizing the unity of the state.

We concluded and summarized that India's democratic framework is multifaceted, combining formal institutions with grassroots participation while facing ongoing challenges that require vigilance and reform to maintain its vibrancy and inclusiveness. Japan operates under a parliamentary system that balances executive power with legislative oversight while strongly emphasizing civil liberties through its constitutional guarantees.

### 1.2. The Historical Evolution of Fundamental Rights

The historical evolution of fundamental rights in India and Japan reflects their unique socio-political contexts and constitutional frameworks. The historical evolution of fundamental rights can be traced back to ancient civilizations, where early concepts of justice and fairness emerged, such as in the laws of the Old Testament and Roman law. Significant developments occurred during the Enlightenment, with philosophers like John Locke and Jean-Jacques Rousseau advocating for natural rights, influencing landmark documents like the United States Declaration of Independence (1776) and the French Declaration of the Rights of Man (1789), which formally recognized individual rights.

The aftermath of World War II led to the adoption of the Universal Declaration of Human Rights in 1948, establishing a global standard for protecting fundamental rights, which further influenced constitutional frameworks worldwide, including India's struggle for independence and its eventual constitution.

The historical evolution of fundamental rights in Japan and India has been shaped by their unique cultural, political, and social contexts. We detailed that overview of key milestones in the development of fundamental rights in both countries as below:

**INDIA:** Various legislative acts laid the groundwork for rights,

such as the Government of India Act (1919) and the Government of India Act (1935), which introduced limited self-governance but did not guarantee comprehensive rights for all citizens. Constitution of India (1950), adopted on January 26, 1950, this constitution enshrined a comprehensive list of fundamental rights in Part III, including the right to equality, freedom of speech, and protection against discrimination.

The rights are justiciable and enforceable through the judiciary, reflecting India's commitment to democracy and human dignity.

**JAPAN:** Established during Japan's modernization, this constitution created a constitutional monarchy with the emperor holding supreme authority. While it introduced some rights, such as freedom of religion and equality before the law, these were granted at the emperor's discretion and lacked enforceability mechanisms.

The Imperial Diet had limited power, restricting citizen participation in governance. Adopted on November 3, 1946, following World War II, this constitution marked a significant transformation by enshrining fundamental human rights in Article 11. It guaranteed freedoms such as speech, assembly, and religion while establishing a parliamentary democracy with sovereignty vested in the people. The new constitution emphasized equality and justice, significantly expanding civil liberties compared to the Meiji Constitution.

### 1.3. The Historical Evolution of Constitutional Identity

The concept of constitutional identity refers to the core principles and values that define a nation's constitution, shaping its legal and political identity. Its evolution is influenced by historical events, societal changes, and ideological movements, with significant moments such as the Magna Carta and the French Revolution playing pivotal roles in establishing foundational principles of rights and governance. Over time, constitutions adapt through amendments and judicial interpretations, reflecting contemporary societal values while maintaining their core identity, as seen in various countries' efforts to integrate human dignity and democratic principles into their constitutional frameworks.

**INDIA:** Various legislative acts laid the groundwork for rights, such as the Government of India Act (1919) and the Government of India Act (1935), which introduced limited self-governance but did not guarantee comprehensive rights. Constitutional Assembly (1946), the assembly began drafting the Indian Constitution, aiming to include a wide array of fundamental rights to ensure equality, justice, and freedom for all citizens. Constitution of India (1950), adopted on January 26, this constitution enshrined a comprehensive list of fundamental rights in Part III, including the right to equality, freedom of speech, and protection against discrimination. It established justiciable rights enforceable through the judiciary.

**JAPAN:** Established during Japan's modernization, this constitution introduced a constitutional monarchy but limited citizens' rights, with significant power retained by the emperor.

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Rights were granted at the discretion of the emperor, lacking enforceability mechanisms.

Adopted after World War II, this constitution marked a significant shift by enshrining fundamental human rights in Article 11, guaranteeing freedoms such as speech, assembly, and religion. It established a parliamentary democracy with sovereignty vested in the people, emphasizing equality and justice.

We concluded that both countries experienced significant shifts from limited rights under earlier constitutions to more comprehensive protections post-World War II (Japan) and post-independence (India).

## 2. The Relationship Between Fundamental Rights and National Identity

The relationship between fundamental rights and national identity is intricate, encompassing legal, political, and cultural dimensions. Legal interpretations of fundamental rights often reflect the underlying national identity, as seen in the European Union's Article 4(2) TEU, which mandates respect for the national identities of member states while grappling with diverging conceptions of rights<sup>13</sup>. Cultural dynamics and socioeconomic conditions can influence how fundamental rights are perceived and implemented, posing challenges to their protection and enforcement, particularly when national identity is invoked in legal contexts.

The relationship between fundamental rights and national identity in Japan and India is complex and multifaceted, shaped by historical, cultural, and legal factors such as below:

**JAPAN:** Japan's modern constitutional framework emerged after World War II, with the 1946 Constitution emphasizing fundamental human rights as universal and inherent to all individuals. This constitution was seen as a rebirth of national identity, promoting individual dignity and equality under the law, which diverged from traditional collectivist values centered around the state and Emperor.

The Japanese Constitution reflects a tension between traditional values and modern democratic principles. Conservative factions, such as the Liberal Democratic Party (LDP), argue that the current constitution undermines "traditional Japanese values" and advocate for amendments that align fundamental rights with these

values. They believe that the protection of individual rights should not come at the expense of societal harmony and national identity.

Legal interpretations of fundamental rights in Japan have evolved to prioritize individualism, as seen in articles that guarantee equality and prohibit discrimination. However, ongoing debates about constitutional amendments reveal underlying conflicts between preserving national identity and ensuring comprehensive protections for individual rights.

**INDIA:** India's struggle for independence from colonial rule was deeply intertwined with the assertion of fundamental rights. The Indian Constitution, adopted in 1950, enshrined a wide array of fundamental rights aimed at promoting equality, justice, and freedom for all citizens, reflecting the diverse cultural identities within the nation. India's national identity is characterized by its pluralism, encompassing various religions, languages, and ethnicities. The Constitution's emphasis on fundamental rights serves to unify these diverse identities under a common framework while acknowledging their distinctiveness. This balance is crucial for maintaining social harmony in a multicultural society.

The Indian judiciary has played a significant role in interpreting fundamental rights, often expanding their scope to address contemporary issues such as social justice and equality. Landmark judgments have reinforced the idea that fundamental rights are essential to India's national identity, ensuring that all citizens can participate fully in democratic processes<sup>14</sup>.

In both Japan and India, the interplay between fundamental rights and national identity reveals significant challenges and opportunities. In Japan, there is an ongoing struggle to reconcile traditional values with modern democratic ideals, while in India, the challenge lies in maintaining unity amidst diversity through robust protections for individual rights. Ultimately, both nations illustrate how fundamental rights can shape and be shaped by national identity, reflecting broader societal values and aspirations.

## 3. The Comparisons of Factors our Study

The constitutions of Japan and India represent significant historical milestones in the establishment of democratic governance in their respective nations. We did and analyzed the comparative evolution of both constitutions on table 1.

Year	India	Japan
1868	The Indian Rebellion of 1857 leads to direct British governance, setting the stage for future constitutional reforms.	The Meiji Restoration marks the beginning of modernization efforts in Japan, leading to constitutional development.
1889	The Indian Councils Act 1861 introduces limited self-governance at local levels.	The Meiji Constitution (Imperial Constitution) is promulgated, establishing a constitutional monarchy.
1946	The Constituent Assembly meets on December 9 to draft the Constitution for independent India.	On November 3, the new Constitution of Japan is promulgated, emphasizing popular sovereignty and peace.
1947	The Indian Independence Act is enacted, granting India independence and allowing the Constituent Assembly to frame a new constitution.	The Allied Occupation influences constitutional drafting; significant amendments are proposed by General MacArthur.
1949	The Constitution of India is adopted on November 26, establishing India as a sovereign democratic republic.	The Constitution is adopted by the National Diet, emphasizing democracy and human rights.
1950	The Constitution comes into effect on January 26, celebrated as Republic Day in India.	The Japanese Constitution comes into effect on May 3, emphasizing peace and renunciation of war.

*Noted by: The results of our study.*

**Table 1. The comparison constitution revolution between Japan and India**

We concluded our comparisons of comparison constitution revolution between Japan and India, in 1868, the Meiji Restoration initiated Japan's modernization and constitutional development, while the Indian Rebellion of 1857 led to direct British governance, paving the way for future constitutional reforms. By 1889, Japan promulgated the Meiji Constitution, establishing a constitutional

monarchy, whereas India saw the Indian Councils Act of 1861, which introduced limited self-governance. The post-World War II period marked significant changes, with Japan adopting its new constitution on May 3, 1947, emphasizing democracy and peace, while India adopted its constitution on January 26, 1950, establishing itself as a sovereign democratic republic.

Year	Japan	India
1946	The new Japanese Constitution is promulgated on November 3, emphasizing fundamental rights, including freedom of speech, assembly, and the right to life.	The Constituent Assembly begins drafting the Indian Constitution, aiming to include comprehensive fundamental rights for all citizens.
1947	The Constitution comes into effect on May 3, reinforcing individual rights and prohibiting discrimination.	The Indian Independence Act is enacted, leading to the establishment of a framework for fundamental rights in the new constitution.
1950	The Japanese Constitution emphasizes peace and individual dignity, with a strong commitment to human rights, including equality before the law.	The Constitution of India is adopted on January 26, enshrining a wide range of fundamental rights in Part III, including the right to equality and freedom from discrimination.
1976	Amendments to the Japanese Constitution reinforce the protection of individual rights and freedoms.	The 42nd Amendment expands the scope of fundamental duties alongside rights, emphasizing the responsibilities of citizens towards the state.
2004	Judicial interpretations continue to evolve, reinforcing protections for civil liberties and human rights.	Landmark Supreme Court judgments further interpret and expand fundamental rights, ensuring their enforceability and relevance in contemporary society.

*Noted by: The results of our study.*

**Table 2. The comparison fundamental rights revolution between Japan and India**

We concluded our comparisons of fundamental rights revolution between Japan and India that in 1946, Japan promulgated a new constitution emphasizing fundamental rights such as freedom of speech and assembly, while India began drafting its constitution to include comprehensive fundamental rights for its citizens. By 1950, both nations had adopted their constitutions, with Japan

focusing on peace and individual dignity, and India enshrining a wide range of rights aimed at ensuring equality and justice. Over the years, judicial interpretations in both countries have evolved, reinforcing the protection of civil liberties and expanding the scope of fundamental rights in contemporary society.

Aspect	Japan	India
Historical Context	The Meiji Restoration (1868) initiated modernization efforts, leading to the promulgation of the Meiji Constitution in 1889, which established a constitutional monarchy.	India's struggle for independence culminated in the adoption of the Constitution in 1950, reflecting a commitment to democracy and social justice.
Constitutional Framework	The post-World War II Constitution (1946) emphasized individual rights, democracy, and peace, marking a significant shift from the imperial system.	The Indian Constitution (1950) is one of the longest in the world, enshrining fundamental rights and directive principles aimed at promoting justice and equality.
Cultural Influences	Japanese constitutional identity integrates Western democratic principles while maintaining elements of traditional culture, such as harmony and collective well-being.	Indian constitutional identity is shaped by its pluralistic society, incorporating diverse cultural, religious, and linguistic identities into a unified framework.
Fundamental Rights	The 1946 Constitution guarantees fundamental rights such as freedom of speech, assembly, and equality before the law, reflecting modern democratic values.	The Indian Constitution guarantees a wide range of fundamental rights in Part III, including equality, freedom of expression, and protection against discrimination.
Judicial Role	The Japanese judiciary interprets constitutional provisions to protect individual rights while balancing traditional values; however, there are ongoing debates about constitutional amendments.	The Indian judiciary plays a crucial role in interpreting and expanding fundamental rights through landmark judgments, ensuring their relevance in contemporary society.
Current Challenges	Japan faces challenges related to gender equality and debates over constitutional amendments that may redefine national identity.	India grapples with issues such as social inequality, gender discrimination, and ensuring that fundamental rights are upheld for all citizens amidst diverse identities.

*Noted by: The results of our study.*

**Table 3. The comparison historical evolution of constitutional identity between Japan and India**

We conclude from table 3, the historical evolution of constitutional identity in Japan and India reflects their unique paths toward establishing governance and protecting rights. Japan's Meiji Restoration in 1868 initiated modernization, leading to the 1889 Meiji Constitution, which established a constitutional monarchy, while India's struggle for independence culminated in the adoption of its Constitution in 1950, emphasizing democracy and social justice. The post-World War II Japanese Constitution (1946) marked a significant shift by prioritizing individual rights and peace, whereas the Indian Constitution enshrined a comprehensive set of fundamental rights, reflecting its diverse cultural identity and commitment to justice and equality.

#### 4. Conclusion

We concluded that our research, the interplay between fundamental

rights and national identity is shaped by historical contexts and evolving legal frameworks, requiring a balance that respects both individual liberties and the collective identity of nations.

Japan's constitution, enacted in 1947, is founded on principles that prioritize human rights, democracy, and peace. It guarantees fundamental civil liberties such as freedom of speech, assembly, and religion, ensuring that individual rights are protected against government infringement.

Japan's judicial independence is independent, with the Supreme Court holding ultimate authority to interpret the constitution and review laws. This structure reinforces the protection of civil liberties within the legal framework. Japan's constitution explicitly prohibits discrimination based on race, creed, sex, social status,



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family origin, education, property, or income. This commitment underscores a robust framework for civil rights that aims to foster equality and protect individual freedoms.

The historical evolution of constitutional identity in Japan and India illustrates their distinct journeys toward establishing governance and protecting rights, with Japan's Meiji Restoration leading to the 1889 Meiji Constitution and India's independence struggle culminating in the adoption of its Constitution in 1950. Both countries emphasize individual rights within their constitutional frameworks, with Japan's post-World War II Constitution prioritizing peace and democracy, while India's Constitution enshrines a comprehensive set of fundamental rights that reflect its diverse cultural identity and commitment to justice and equality.

Finally, the interplay between fundamental rights and national identity in Japan and India highlights the importance of historical contexts and evolving legal frameworks in shaping governance. Japan's post-World War II constitution prioritizes individual rights, democracy, and peace, while India's constitution enshrines a comprehensive set of fundamental rights that reflect its diverse cultural identity and commitment to social justice, illustrating how both nations strive to balance individual liberties with their national identities.

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