

## Constitution Of Peoples Republic Of China Salient Features Of Constitution OF PRC 1982

### HISTORY OF CONSTITUTIONAL DEVELOPMENT SINCE 1949

On 1st October 1949, China was declared to be "The Peoples Republic of China", a socialist state. This marked the end of the era of traditional constitutionalism. The Communist Revolution ushered China into a new revolutionary era in which socialist constitutionalism got initiated. The ideology of Marxism-Leninism and the thoughts of Mao provided the philosophical basis to this exercise. The successful realisation of the revolution proved the utility of communist ideology as interpreted, supplemented and used by the great leader Mao Tse-tung. Naturally, it provided ideological foundations for the initiation of the process of socialist constitutionalism. It began with the Common Programme set forth by Mao and the Organic Law consisting of 31 Articles.

#### (A) Constitutionalism between 1949-54.

After the Revolution, the communists did not base their government on any constitution. They preferred to wait for a formulated constitution and decided to rely upon Mao's leadership and People's Democratic Dictatorship as conceived, explained and guided by him. A Chinese People's Political Consultative Conference, consisting of 662 delegates who represented all political groups and mass organisations, was created to legalise the system created for carrying out Mao's Common Programme. The Organic Law consisting of 31 Articles was promulgated and it outlined the structure and functions of the governmental machinery. It was given the responsibility of fulfilling the common programme. The arrangement continued till 1954.

#### (B) Constitutionalism between 1954-75.

It was in 1953 that the People's Republic of China decided to have a written constitution. A committee under the chairmanship of Mao Tse-tung was created for this purpose. This committee proposed the draft of a constitution which was submitted to the people of China and their organisations for a full national debate. The Chinese People's Government incorporated several amendments in the draft for incorporating the views of the people. The amended draft was presented to the National People's Political Conference in September 1954. After its adoption, the Constitution led to the formation of a new government on 4th November, 1954.

The 1954-Constitution affirmed the resolve of the people of China to overthrow colonialism, feudalism and capitalism. While enumerating the socio-economic political

the Constitution enumerates the Fundamental Duties of all citizens. These include the duty to preserve and protect the unity of the country, to abide by the Constitution, to defend the motherland, to pay taxes, and to safeguard the honour of China.

The Right to Personal Property and inheritance has also been recognised by the Constitution. Article 13 states : "The state protects the right of the citizens to own lawfully earned income, savings, houses and other lawful property. The state protects by law the right of the citizens to inherit private property."

12. **A Unitary State.** Despite being a big and multi-cultural society, the Chinese have decided to keep the state a unitary state. Despite accepting the need for democratisation and decentralisation, the 1982 Constitution, maintains the unitary character of the state. However, it seeks to effect a balance in relations between the central and local authorities. The local authorities entry the right to take initiative under the unified leadership of the central authorities.

13. **National People's Congress: A Unicameral Legislature working as the Highest Organ of State Power.** The 1982 Constitution, like the constitutions of 1954, 1975 and 1978, maintains the unicameral character of the national legislature—the National People's Congress. It represents the nation and consists of some 3000 (2974 in 1998) deputies elected by the people. The Constitution declares it to be the highest organ of state power with sole legislative authority of the country. It alone can amend the constitution. It elects the President and Vice-President of the Republic, decides the choice of the Premier (PM), Vice-Premiers, State Councilors, Ministers, Auditor General and all other high ranking officers of the state. It elects its Standing Committee which exercises all its powers during its absence. The government is responsible to the National People's Congress for all its activities. At the regional and local levels, the directly elected Congresses, work under the overall leadership, guidance and control of the National People's Congress.

14. **A sort of Parliamentary System.** The 1982 Constitution lays down a system of government which resembles the parliamentary form of government. The Cabinet is called the State Council and the Prime Minister is called the Premier. It is the real executive of the state. The Premier is chosen by the National People's Congress upon the nomination made by the President of the Republic. All other members of the State Council are appointed by the National People's Congress upon the nominations recommended by the Premier. Since the State Council is the most powerful organ of the government, the top leaders of the Communist Party are usually its members.

15. **Provision for the Institutions of Local Government.** The administration of China, which is a unitary state, stands divided into several provinces and municipalities, cities, units, districts, sub-divisions etc. to all local levels, local people's congresses have been established. Further, Autonomous Regions, Autonomous Prefectures and Autonomous Counties have also been established. These have been created on the basis of the location of different nationalities within China. These act as the instruments of local government. Some of these have been created by the Constitution, while others are directly under the central government.

16. **General Principles of Governance** Another vitally important salient feature of the 1982 Constitution is the incorporation of the General Principles of the Constitution. In its first chapter, Article 1 describes China as a socialist state under peoples democratic dictatorship led by the working class and based on the alliance of workers and peasants. Further, it states that the socialist system is the basic system and sabotage of this system by any organisation or individual is prohibited. No mention of the leadership of the Communist Party has now

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una colonialism, works to strengthen the unity with the people of other countries, supports  
the oppressed nations and the developing countries in their just struggle to win and  
preserve their national independence, and develop their national economies and strives to  
safeguard world peace and promotes the cause of human progress."*

**5. Written and Enacted Constitution.** The 1982 Constitution is a written and enacted constitution. It was drafted by the National Constitution Revision Committee, discussed by the Standing Committee and the people at large and passed by the National People's Congress on 4th December, 1982. Unlike its predecessors, the 1982 Constitution is quite comprehensive and contains 138 Articles. The Constitutions of 1954, 1975 and 1978 had respectively 106, 30 and 60 Articles only.

138 Articles of the 1982 Constitution stand divided into four chapters. The first chapter has 32 Articles (Article 1 to 32) and it describes the general principles of the Constitution. The second chapter has 23 Articles from Art. 33 to 55 and it enumerates the rights and duties of the citizens. The third chapter has 79 Articles (56 to 135) and it lays down the organisation and powers of the organs of government, and finally the fourth chapter has only three Articles (136 to 138) and it describes the national flag, the national anthem and the capital of the country.

been made. In the 1978 Constitution Article 2 described the Communist Party as the core of leadership but the 1982 Constitution has dropped this reference altogether.

Article 3 of the 1982 Constitution provides for a direct election of the National People's Congress and all Congresses at different levels. It also defines the relation between the people and their representatives. Further, it provides guidelines for the relations between central and local organs. The local organs are to have the initiative under the unified leadership of the central organs.

Article 31 of the Constitution provides that "the State may establish special administrative regions when necessary." The system thus instituted in the special administrative regions is to be prescribed by law enacted by the National People's Congress. The Constitution further describes it as the duty of the Chinese people, including the compatriots of Taiwan, to accomplish the great task of unifying the motherland.

17. Provisions regarding Economic Policies. The Constitution reaffirms faith in socialist economy but tacitly accepts the emergence of a private sector working within the socialist system. Public ownership of the means of production continues to be the basis of China's socialist economic system but the constitution calls for the development of Chinese economic forms i.e. state, collective and individual forms. Upholding the authority of the state sector continues to be a priority. The stress is on socialist ownership. Nevertheless, the Constitution allows for the coordinated growth of the national economy through a comprehensive balancing of a planned economy with the supplementary role played by market supply and demand. It seeks to dilute the rigid and excessive state control over the economic system by providing for a role in decision-making to the state and collectively owned enterprises. The "Open Door" policy involving limited and gradual economic liberalisation continues to be the official policy.

These provisions have helped the Chinese to assimilate some sort of private sector within the socialist system. Collaborations with foreign private enterprises have been permitted. China now stands for Market Socialism. These policy changes have been designed to accelerate the production of goods and commodities. In 2002, the 16th Party Congress, announced that now rich business people were welcome to apply for party membership, China has been slowly but definitely adopting limited and planned privatisation. Now the party, the government and private business are expected to join hands to secure the goal of rapid development in the 21st century.

18. China as a Multi-national State. The Constitution declares that the People's Republic of China is a single multi-national state. There are 56 nationalities who have integrated to form the modern Chinese nation. Article 4 declares that all nationalities are equal. Discrimination against and oppression of any nationality stand prohibited. All acts that undermine the unity of the nationalities or instigate their secession are legally banned. The Constitution grants and protects the right of all nationalities to protect and develop their languages and customs.

**China now describes its economic model of development as 'Market Socialism.'**

With all these features, the 1982 Constitution of China has been in several ways different from the 1978 constitution. It has been successfully in operation since 1982. Taking into account the past history of constitutionalism in China, it can be predicted that this Constitution is destined to get revised in the next few years. Constitutionalism in China is always tailored to incorporate the new ideas of the top leadership of the Communist Party.



1954-75. It praised the Communist Party and Chairman Mao for successfully and ably guiding the People's Republic of China in its march towards the achievement of the socialist goals and towards meeting the threat of imperialism (American and Western) and social imperialism (Soviet). The threat, however, was still not over and hence "can be resolved by depending upon the theory of continued revolution, under the dictatorship of the Proletariat and in practice under its guidance."

The Preamble of the 1975-Constitution called upon the people of China to follow the policies of the Communist Party, maintain continued revolution, and consolidate the unity of the people of all nationalities based on the alliance of workers and peasants, and develop the revolutionary front. It further voiced full support for proletarian internationalism and expressed the resolve to meet the menace of continued exploitation of people by capitalist states.

The Constitution of 1975 recognised the leading and direct role of the Communist Party in exercising state power for securing socialist goals. The National People's Congress was described as the highest organ of state power under the leadership of the Communist party. It abolished the office of the Chairman of the Republic and vested the powers of the head of the State in the Standing Committee of the National People's Congress.

It maintained the list of the Fundamental Rights and Freedoms of the citizens with some improvements. It gave the right to freedom of procession and freedom of strike to the people. It curtailed the list of duties.

#### (E) The Constitution of 1978

**Constitutionalism under the influence of the ideas of Hua Guo-Feng.** The 1975-Constitution had a short life of three years. The death of Mao Tse-tung in 1976 and the ensuing power struggle within the hierarchy of the Communist Party brought into prominence the leadership of Hua Guo-Feng. This struggle for power gave rise to the need for a new constitution. The National People's Congress, in its February 1978 session passed a new constitution. This meeting of the NPC was attended by several old leaders who had been previously considered disloyal to Mao. The new constitution came into force on 5th March, 1978 and advocated the need for liberalisation in policies.

The 1978 Constitution made several major changes in the 1975 constitution. Its stated objective was : *"The Consolidation of the socialist economic base" and "development of the production forces at high speed."* It accepted *"Socialist Democracy as the goal which was to be achieved by arousing the socialist enthusiasm of the people of all our nationalities to strive for the fulfillment of the central task for the new period."*

The Preamble of the 1978 Constitution placed on record the services of the highest order that Mao Tse-tung had rendered to the People's Republic of China first towards its birth and thereafter towards its consolidation and development as a socialist state marching fast on the road to political, economic, cultural and military development. The constitution gave recognition to the role of the army by providing that the Chinese Liberation Army is workers' and peasants' own armed force led by the Communist Party. "It was the pillar of dictatorship of the Proletariat." It called for further efforts towards revolutionisation of the Army with a view to strengthen it for safeguarding the socialist revolution and reconstruction being done in China.

The 1978 Constitution further extended the list of Fundamental Rights and Freedoms of the Chinese and now it came to include the right to "speak out freely, air the views and hold great debates."

productive. China started emerging as a third power in the world particularly after its admission to the United Nations with a permanent seat and veto power status in the UN Security Council.

The theory of constitutionalism written in this constitution was however never really followed in actual practice. People's Democratic Dictatorship was used as a smoke screen for maintaining and strengthening the all-powerful leadership of the Communist Party Chairman Mao. The Cultural Revolution that was initiated by Mao after the failure of the Great Leap Forward (1958), produced several big upheavals in the Chinese society and political system. It was designed to reform the people by making them true socialists—both in thought and action. Mao's Red Guards, the committed soldiers of the Cultural Revolution, became active for eliminating capitalism and 'capitalist road-takers'. These youthful volunteers of the Chinese Cultural Revolution were supposed to usher Chinese society into a full fledged socialist society. In actual practice, however, the Cultural Revolution resulted into violence, anger, revenge, destruction and destabilisation. Further, it brought to light the struggle between the Mao and the Liu Shao-Chi factions. The Army also came to assert its role by organising new revolutionary committees.

By 1969, China had to terminate the Cultural Revolution in favour of a new struggle for achieving socialist goals. It, however, resulted in the defeat of Liu Shao-Chi faction. Mao and his loyalists continued to be most powerful. After Mao's death, the ultra leftists, the Shanghai group—'the Gang of Four' led by Mao's wife Chiang Ching fell into background. The formal end of the era of the Cultural Revolution, however, came in 1975, when a new constitution was adopted and implemented in China.

### (C) The Constitution of 1975 and Chinese Constitutionalism.

Constitutionalism in China registered a change in 1975 under the impact of the results of the Cultural Revolution. Further, this change was considered essential because the 1954—Constitution had been formulated for a transitional period of 20 years. The exercise for a change of the constitution was therefore initiated.

In 1975, the official Chinese news agency, Hsinhua disclosed that the Central Committee of the Communist Party has held a plenary session of the National People's Congress on 18th January 1975 for revising the 1954 Constitution. It was again announced that a session of the Fourth National People's Congress was held from 15th to 17th January. It was attended by 2804 Deputies, out of a total of 2885, who had been elected after extensive consultations and repeated discussions. The session reviewed the progress of the past 21 years and resolved that China was to be built into a powerful modern socialist country in another 20 years or so. The resolution recorded that the first phase, which was to continue till 1980, should see "an independent and relatively comprehensive industrial economic system." The second phase, commencing after 1980 and continuing up to the end of the 20th century, should register "modernisation of agriculture, industry, national defence, science and technology so that the national economy will be advancing into the front ranks of the world."

Officially, nothing was said about the new constitution and yet by February 1975, a new constitution came to replace the 1954 Constitution.

### (D) The Constitution of 1975

In several ways, the Constitution of 1975 was a natural result of the evolution of the 1954—Constitution. However, it consisted of only 30 Articles divided into only 4 chapters, It had a very long Preamble. The Preamble narrated the past achievements of China during

provided for a socialist democratic system with a uni-cameral National People's Congress (NPC) as the highest organ of state power. NPC was given the power to choose the members of its State Council were to be appointed by the NPC upon the recommendations of its Standing Committee. The powers of the NPC were to be exercised by its Standing Committee during the interval between its two sessions. The State Council was made responsible before the NPC, and during its absence, it was to be responsible before the Standing Committee of the NPC. The constitutional arrangement, thus made, was similar to the one in operation in the USSR.

The 1978-Constitution expressed full faith in the ideology of Marxism-Leninism and Mao Tse-Tung's thought. It once again committed the nation to the promotion of arts and science and to bring about a flourishing socialist culture. Article 16 of Constitution prescribed that all the personnel of the state should study Marxism-Leninism-Maoism, whole heartedly serve the people, endeavour to perfect their professional competence, take an active part in collective productive labour, accept supervision by the masses, be role models in observing the constitution and law, correctly implement the policies of the state, seek the truth from facts and must not have recourse to deception or exploit their position and power to seek personal gains."

The 1978 Constitution accepted fully the paramount role of the Communist Party. It declared that *the Communist Party of China was the core of the leadership of the whole Chinese people and "the working class exercised leadership over the state through its vanguard, the Communist Party."* The Central Committee of the Communist Party was given a key role in determining the choice of high ranking officers of the state including the Premier. Chairman of the Central Committee of the party was to command the armed forces. Hence, the Communist Party continued to be the bed-rock of the Chinese Political System.

**(F) The Constitution of 1982 : New Constitutionalism.**

The power struggle within the Communist Party that had emerged after the death of Mao, brought into reality another big change in the Chinese leadership and consequently in Chinese Constitutionalism. By 1981, Hua Guo-Feng lost power and Deng Xiaoping emerged as the strongman along with General Secretary Zhao ZhLang. Chairman Hua was charged with erecting a personality cult. The new leadership then decided to phase out Hua and provide a new constitution to China with several liberalising changes.

The attempt was designed to ensure that China would not be in future rocked by political eruptions that had occurred under Mao, which had produced drastic consequences for the people of China. The Cultural Revolution was criticised. The separation of the government and Party was affected, concentration of powers in individual hands was curtailed, the concept of collective leadership was accepted and the need to give due share to the younger generation leadership was recognised.

A new emphasis on decentralisation and liberalisation of the economy also became evident from both the discussions that were held and the decisions that were made. The private sector in China's socialist economy was assigned a role. China decided to go in for a 'multi-faceted economy', including private sector. "Joint Socialist Private Enterprises" in which public stock was to be owned by the workers, came to be an accepted new principle of Chinese economy.

Thus, the 1982 Constitution accepted Marxism-Leninism-Maoism but along with it a





However, this separation is only on papers. In reality, the leadership of the Communist Party continues to hold full and firm control over all the offices of the government. It states: "*The Constitution of the Republic. The 1982*"

**9. Restoration of the Republican Character of the State.** The 1975 constitution abolished the office of the President of the Republic who used to work as the head of the state under the 1954 constitution. The duties of the head of the state were carried out by the Chairman of the Standing Committee of the National People's Congress. The 1982 Constitution restores the office of the President of People's Republic of China and provides for his election by the National People's Congress for a term of 5 years. However, while restoring this office, the 1982 Constitution has not restored all the powers which belonged to him under the 1954 constitution.

**10. Faith in the Sovereignty of the Popular Will.** Article 2 categorically states that all power in China belongs to the people. The people administer state affairs and manage economic, cultural and social affairs in accordance with the law. The Constitution represents the sovereign will of the people. Article 5 states "*All state organs, the armed forces, all political parties and public organisations and all enterprises and undertakings must abide by the Constitution and the law.*"

**11. Fundamental Rights and Duties of the People of China.** The 1982 Constitution places added emphasis on the rights, freedoms and duties of the people of China. In its Chapter 2, it incorporates an impressive Bill of Rights. Every citizen now enjoys the rights enshrined in the Constitution. The Chinese Bill of Rights now includes Right to Equality, Political Rights, Right to Basic Freedoms, Freedom of Religious Belief, Right to Work, Right to Material Assistance, Equality of women and several other rights. Along with these rights,

achievement made by China during 1949-54, the Preamble to the Constitution recorded deep gratitude for the help given by the (erstwhile) USSR. It pledged China's indestructible friendship with all peace loving people of the world. It proclaimed that China was all out for destroying imperialism.

The Constitution of 1954 was a brief document with only 106 Articles. It was designed to serve the people of China for a transitional period of 20 years. A very interesting feature of this constitution was that it, unlike other socialist constitutions, it did not give a constitutional recognition to the status and role of the Communist Party of China. The Preamble and Article 19 of the Constitution acclaimed the vital role of the Communist Party in achieving revolution against imperialism and exploitation but did not give it a constitutional recognition. The Constitution, further, accepted the principle of democratic centralism, and expressed the resolve to safeguard the people's democratic system. However in actual practice, the power of the state continued to be fully controlled and managed by the Communist Party of China. The Communist Party dominated the political system and was itself dominated by the "proletarian head-quarters" of Mao. It was this 'head-quarter' which controlled all power and it consisted of a small group of Mao loyalists.

Through this Constitution, the Chinese accepted the concept of granting of fundamental rights and duties to the citizens. It recognised seven fundamental freedoms of the citizens, their social, economic and political rights, and duties towards the socialists. Like the Stalin Constitution of the (erstwhile) USSR, the Constitution made an attempt to demonstrate that China respects fundamental rights and freedoms. Even while forbidding capitalism, it recognised the right to private property of the citizens.

This Constitution declared that the People's Republic of China was a single multinational state consisting of several nationalities that stood integrated into a family. Despite its multinational character and vast size, China continued to be a unitary state. Mao's concept of People's Democratic Dictatorship was translated into law by making National People's Congress the supreme organ of state power. However in reality all powers were concentrated in the hands of the top caucus of the Communist Party, which was itself dominated by Mao Zedong and Chou-en-lai.

The Constitution of 1954 fully reflected that:

1. China upheld the ideology of Marxism-Leninism as understood, interpreted, explained and applied by Mao.
2. China upheld the type of constitutionalism which prevailed in the (Erstwhile) USSR under the Stalin Constitution.
3. China stood for anti-imperialism, anti-capitalism, world peace and international communism.
4. The Chinese decided to keep the Communist Party as an extra-constitutional, but all powerful institution in the Chinese political system.

Till the adoption of a new constitution in 1975, China continued to be governed by this constitution. During this period, the Chinese usurped Tibet and got involved in boundary disputes with India and her other small Asian neighbours. It, committed aggression against India in 1962 and got involved in 'cold war'—with the USSR. It began developing nuclear weapons and conducted its first nuclear test in 1964. It accepted Panchsheel and participated in Afro-Asian Solidarity Conference—the Bandung Conference 1955, developed its military might and witnessed a big Cultural Revolution which, however, proved to be counter