

# Constitution: Why and How

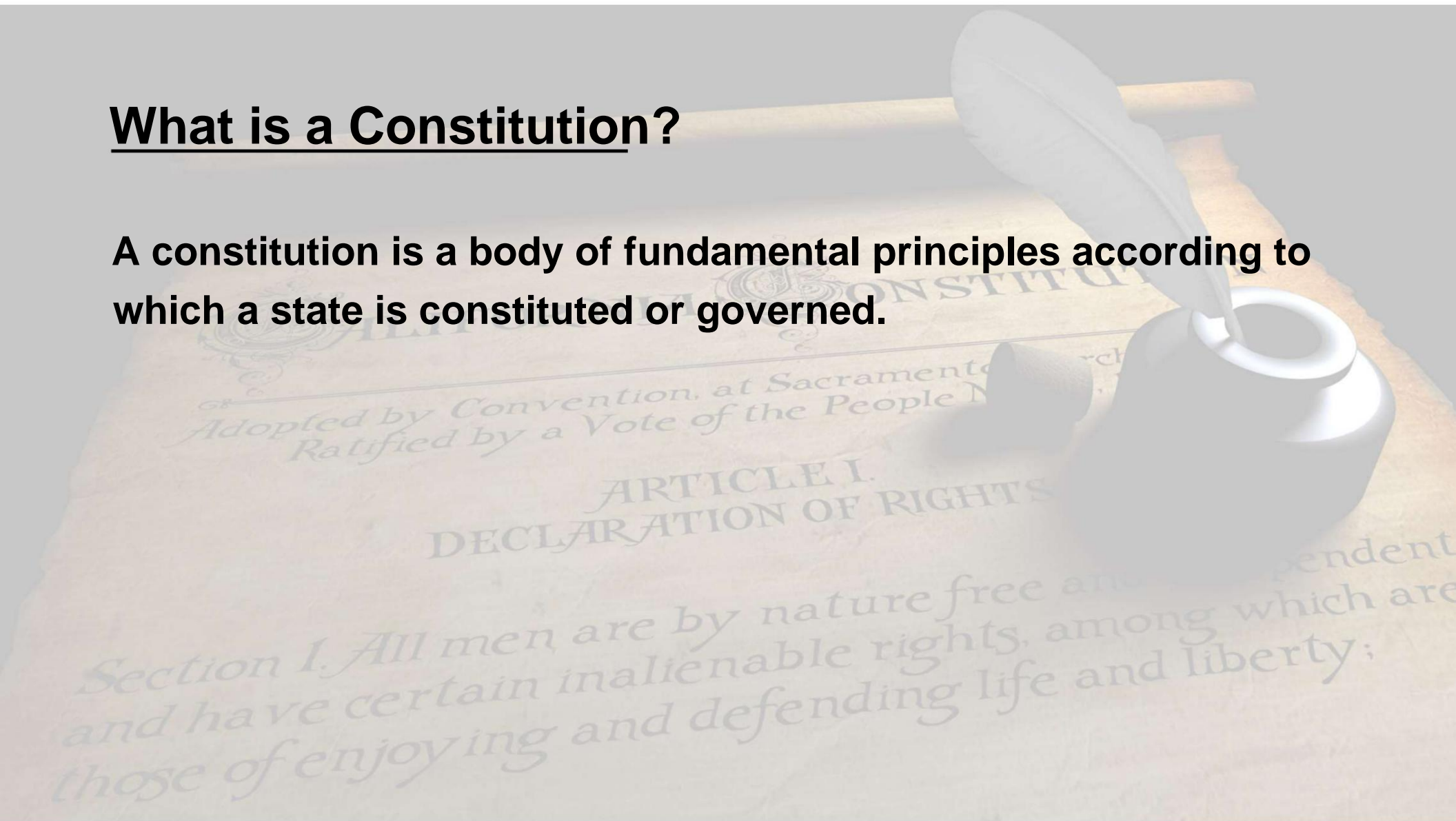
by Deepak Sir

## ARTICLE I. DECLARATION OF RIGHTS

Section 1. All men are by nature free and independent  
and have certain inalienable rights, among which are  
those of enjoying and defending life and liberty;

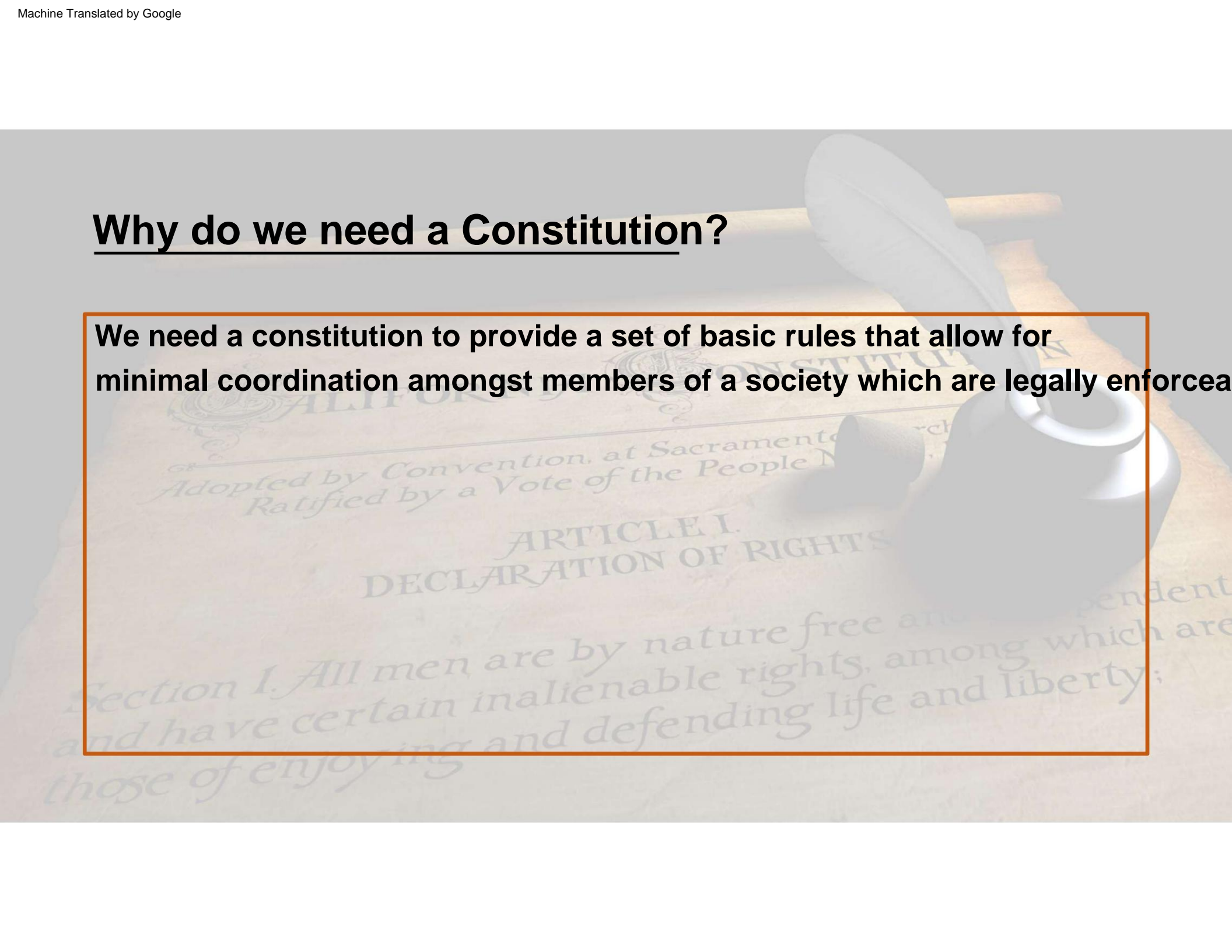
# What is a Constitution?

**A constitution is a body of fundamental principles according to which a state is constituted or governed.**



## Why do we need a Constitution?

**We need a constitution to provide a set of basic rules that allow for minimal coordination amongst members of a society which are legally enforceable**



Adopted by Convention, at Sacramento  
Ratified by a Vote of the People

### ARTICLE I. DECLARATION OF RIGHTS

Section 1. All men are by nature free and independent  
and have certain inalienable rights, among which are  
those of enjoying and defending life and liberty;

## Who can decide which rules are the best to suite for a society?

- a) The constitution specifies the basic allocation of power in a society.
- b) It decides who gets to decide what the laws will be.
- c) In the Indian Constitution, it is specified that in most instances, Parliament gets to decide laws and policies, and that Parliament itself be organized in a particular manner.



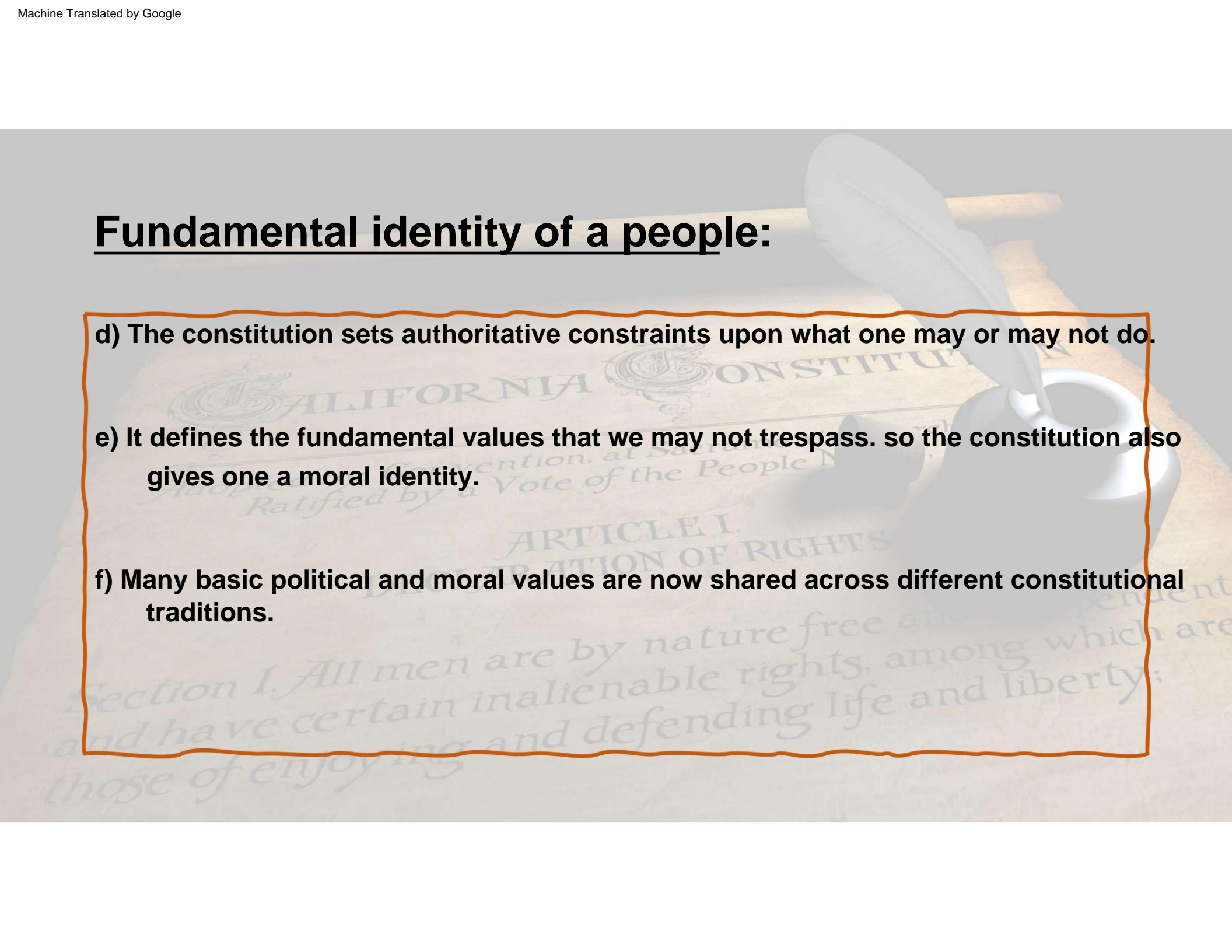
## Functions of the Constitution:

- The first function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society.
- The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted.
- The third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them.
- The fourth function of a constitution is to enable the government to fulfil the aspirations of a society and create conditions for a just society.

## Fundamental identity of a people:

- a) The Constitution expresses the fundamental identity of a people.
- b) The people as a collective entity come into being only through the basic constitution.
- c) Constitutional norms are the overarching framework within which one pursues individual aspirations, goals and freedoms.

## Fundamental identity of a people:

- 
- d) The constitution sets authoritative constraints upon what one may or may not do.
- e) It defines the fundamental values that we may not trespass. so the constitution also gives one a moral identity.
- f) Many basic political and moral values are now shared across different constitutional traditions.



# Mode of promotion

**This refers to how a constitution comes into being. Who crafted the constitution and how much authority did they have?**



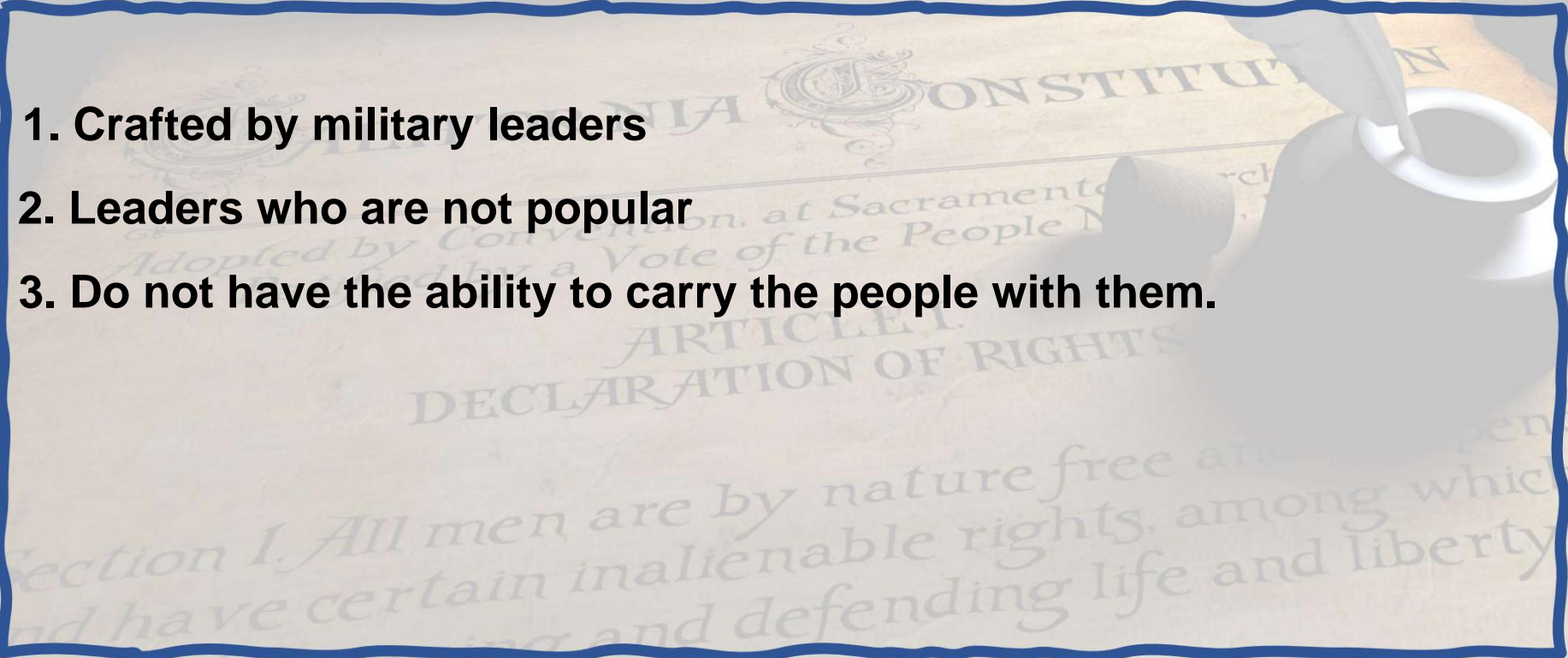
Adopted by Convention, at Sacramento  
Ratified by a Vote of the People

## ARTICLE I. DECLARATION OF RIGHTS

Section 1. All men are by nature free and independent  
and have certain inalienable rights, among which are  
those of enjoying and defending life and liberty;

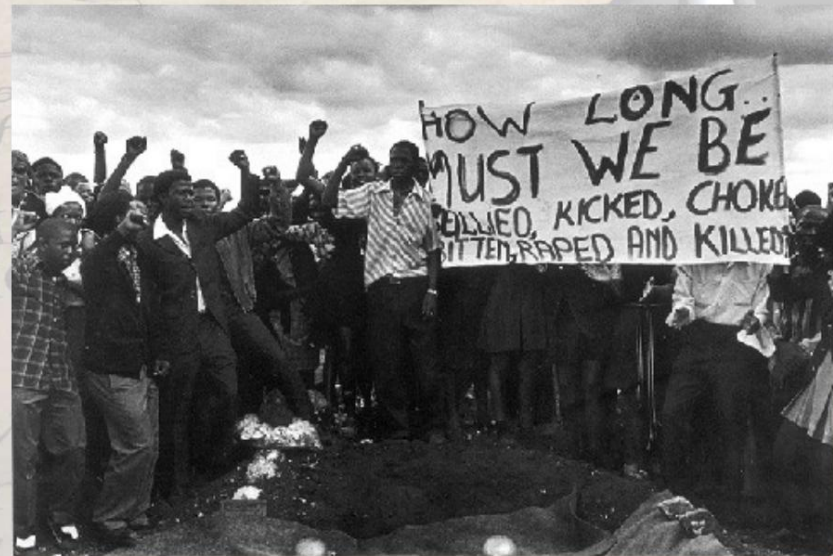


## Why do constitutions in many countries remain defunct?

- 
1. Crafted by military leaders
  2. Leaders who are not popular
  3. Do not have the ability to carry the people with them.

# Why Countries like India, South Africa and the United States are the most successful constitutions?

Created in the aftermath of popular national movements.



## Indian Constitution overview:

- Formally created by a Constituent Assembly between December 1946 and November 1949.
- Drew upon a long history of the nationalist movement that had a remarkable Ability to take along different sections of Indian society together.



## **Indian Constitution overview:**

**Drew enormous legitimacy from the fact that it was drawn up by people who enjoyed:**

- 1) Immense public credibility.**
- 2) Who had the capacity to negotiate and command the respect of a wide cross-section of society.**
- 3) Who were able to convince the people that the constitution was not an instrument for the aggrandizement of their personal power.**

## **Provisions of the Constitution:**

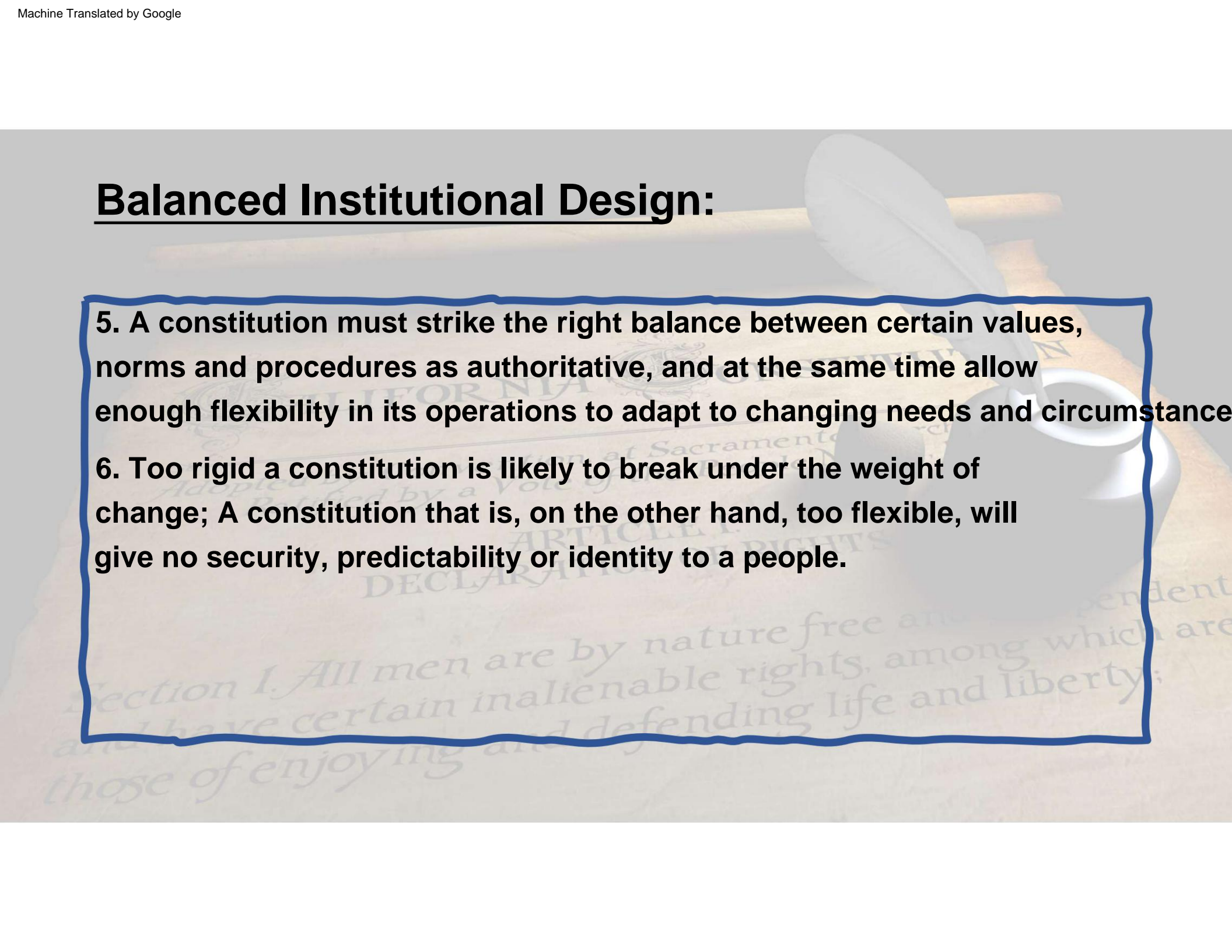
- 1. It gives everyone in society some reason to go along with its provisions.**
- 2. Allowed permanent majorities to oppress minority groups within society.**
- 3. Systematically privileged some members at the expense of others, or that systematically entrenched the power of small groups in society, would cease to command allegiance.**
- 4. The more a constitution preserves the freedom and equality of all its members, the more likely it is to succeed.**

## **Balanced Institutional Design:**

- 1. Designing of a constitution is to ensure that no single institution acquires monopoly of power.**
- 2. The Indian Constitution horizontally fragments power across different institutions like the Legislature, Executive and the Judiciary and even independent statutory bodies like the Election Commission.**
- 3. This ensures that even if one institution wants to subvert the Constitution, others can check its transgressions.**
- 4. An intelligent system of checks and balances has facilitated the success of the Indian Constitution.**



## **Balanced Institutional Design:**

- 
5. A constitution must strike the right balance between certain values, norms and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances.
6. Too rigid a constitution is likely to break under the weight of change; A constitution that is, on the other hand, too flexible, will give no security, predictability or identity to a people.

## How was the Indian Constitution made?

- 1. The Constitution was made by the Constituent Assembly which had been elected for undivided India.**
- 2. First sitting on 9 December 1946 and re-assembled as Constituent Assembly for divided India on 14 August 1947.**
- 3. Members were elected by indirect election by the members of the Provisional Legislative Assemblies that had been established in 1935.**
- 4. The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission.**