

CONSTITUTION DESIGN

CONSTITUTION AND WHY DO WE NEED IT

◆ **What is Constitution?**

The set of basic rules according to which the government of a country runs is called a constitution. It deals with the relations of the Centre with the States., between one estate and the other, between the different organs of the government (like Legislative, Executive and Judiciary) and between the Government and its citizens and their rights and well-being.

◆ **Why do we need a Constitution ?**

A Constitution of a country is a set of written rules that are accepted by all people living together in a country. Constitution is the supreme law that determines the relationship among people living in a territory (called citizens) and also the relationship between the people and government. A constitution does many things:

- (i) First, it generates a degree of trust and coordination that is necessary for different kind of people to live together.
- (ii) Second, it specifies how the government will be constituted, who will have power to take which decisions.
- (iii) Third, it lays down limits on the powers of the government and tells us what the rights of the citizens are.
- (iv) Fourth, it expresses the aspirations of the people about creating a good society.

All countries that have constitutions are not necessarily democratic. But all countries that are democratic will have constitutions. After the War of Independence against Great Britain, the Americans gave themselves a constitution. After the Revolution, the French people approved a democratic constitution. Since then it has become a practice in all democracies to have a written constitution.

SOUTH AFRICA'S STRUGGLE FOR INDEPENDENCE AND ITS DRAWING UP THE NEW CONSTITUTION

The drawing up of a common constitution for South Africa after its independence in 1994 is regarded as a marvel in the annals of world history. Mainly because two divergent types of people, the Whites and black - completely forgot their past hostile memories, showed a great deal of a maturity and agreed on certain common things. Their spirit of forgetfulness and compromises received a world-wide acclaim. Let us study the freedom struggle of the Blacks against the White oppressive regime and the drawing up of a common Constitution for their country.

◆ **Freedom struggle in South Africa 1994 :**

South Africa was the last state of Africa to get her freedom in 1994. For a very long time, the minority government of the whites, committed many atrocities on the black people. It followed the policy of apartheid (or racial segregation) and kept the black people under its thumb. But ultimately, the good sense prevailed on white government of President F.W. de Klark.

President F.W. de Klark agreed to hold elections on 27th April, 1994. As a result of these elections, Dr. Nelson Mandela won the elections and he became the First President of independent South Africa.

How did the white Minority and the Black Majority agree to draw up a common Constitution for South Africa ? It was not an easy task for the two divergent people of South Africa - the White oppressor and the Black Oppressed ones - to draw up a common Constitution for the country when it became free in 1994. But both sides showed maturity and agreed on many compromises.

1. The Whites agreed to the principle of majority rule.
2. They also agreed to some basic rights for the poor and the workers.
3. The black agreed that majority rule would not be absolute.
4. They also agreed that the majority would not take away the property of the White Minority.

MAKING OF THE INDIAN CONSTITUTION

The making of the constitution for a huge and diverse country like India was not an easy affair.

- (i) The people of India were emerging from the status of subjects to that of citizens.
- (ii) The country was born through a partition on the basis of religious differences. Atleast ten lakh people were killed on both sides of the border in partition related violence.
- (iii) The British had left it to the rulers of the princely states to decide whether they wanted to merge with India or with Pakistan or remain independent. The merger of these princely states was a difficult and uncertain task.
- (iv) When the constitution was being written, the makers of the constitution had anxieties about the present and the future of the country.

◆ The Path to Constitution:

- (i) Our national movement was not merely a struggle against a foreign rule. It was also a struggle to rejuvenate our country and to transform our society and politics.
- (ii) The familiarity with political institutions of colonial rule also helped develop an agreement over the institutional design. The experience gained by Indians in the working of the legislative institutions proved to be very useful for the country in setting up its own institutions.
- (iii) Many of our leaders were inspired by the ideals of French Revolutions, the practice of Parliamentary democracy in Britain and Bill of Rights in USA. So they incorporated some good points of the Constitution of these countries in the Indian Constitution.
- (iv) They also got inspiration from the Constitution drafted by Moti Lal Nehru and eight other Congress leaders in 1928, and the outlines of the Indian Constitution prepared by the Indian National Congress at its Karachi session in 1931.

◆ The Constituent Assembly :

Composition of the Constituent Assembly- The Constitution of our country was framed by the Constituent Assembly which was constituted in 1946 under the provisions of the Cabinet Mission Plan. This Assembly had 389 members in all, mostly elected by the Provincial Assemblies and some nominated by the rulers of the native states. As a result of the partition of the country, its membership was reduced to 308 in 1947. However, this Assembly represented people of all shades and opinions, regions and communities. It included eminent persons like Dr. Rajendra Prasad, Pt. Jawaharlal Nehru, Sardar Patel, Maulana Azad, Dr. Ambedkar, K.M. Munshi, Rajagopalachari, Dr. H.C. Mukherjee, Frank Anthony, Dr. H.P. Modi, Sardar Hukam Singh, Sardar Baldev Singh and many other. Thus this Constituent Assembly represented the people of all castes and creeds. Besides the Hindu, the Muslims and the Sikhs, there were Christians (like Dr. H.C. Mukherjee), Anglo-Indians (like Frank Anthony). Parsees (like Dr. H.P. Modi) etc. Women members like Sarojini Naidu, Durgabai Deshmukh and Renuka Rai also played an important part in the Constituent Assembly. In short the Constituent Assembly was the mirror of the nation.

◆ **Framing the Constitution :**

The Constituent Assembly started its work of framing the Constitution of India on December 4, 1946 much before the political turmoil and then the problem of the partition of the country, it seriously began its work after the independence of the country. It worked under the Presidentship of Dr. Rajendra Prasad.

On 29th August, 1947, the Constituent Assembly appointed a Drafting Committee under the chairmanship of Dr. Ambedkar, one of the prominent intellectuals of the country. After a period of about six months, this Committee prepared a Draft Constitution of India by February, 1948. The Indian people were provided enough time to study and express their views on the Draft Constitution. Next, the Constituent Assembly met in November 1948 to consider the provisions of the Drafting Committee clause by clause. This work of second reading of the different clauses was completed by 17 October, 1949. Then began the third reading to give a final shape to the Constitution which was adopted on November 26, 1949. It then received the signatures of the President and was declared as passed. Thus it took about 2 years, 11 months and 18 days to prepare the Constitution of Free India but actually the Constituent Assembly only met for 166 days.

But the Constitution came into force on January 26, 1950, because it was on this day of 26th January 1930, about twenty years ago, when Complete Independence was declared as the ultimate goal of the national movement in the Lahore Session of the Indian National Congress.

◆ **Preamble of the Indian Constitution :**

Taking inspiration from the American model, most countries of the modern world have chosen to begin their Constitutions with a preamble. India has also done so. The preamble to the Indian Constitution incorporates all the guiding values inspired and nurtured by the Freedom Struggle. The Preamble to the Indian Constitution runs like this -

WE THE PEOPLE OF INDIA, hereby solemnly resolved to constitute India into SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to all its citizens :

1. Justice, social, economic and political
2. Liberty of thought, expression, belief, faith and worship
3. Equality of status and of opportunity; and to promote among them all
4. Fraternity assuring the dignity of the individual and the unity of the Nation ;

In our Constituent Assembly, this twenty-sixth day of November, 1949, do HEREBY ADOPT, Enact and Give to Ourselves this Constitution.

◆ **Importance of the Preamble to the Constitution of India :**

The Constitution of the Republic of India is introduced to us through a wisely formulated Preamble. It is an introductory part of the Constitution, though not a legal section of the Constitution. No one can sue the government in the Court of Law and can say that the government has not enforced the Preamble. Still it has great importance of its own because it shows the way the government ought to run and the kind of system the Constitution wishes to set up in India. It makes the intentions of our Constitution quite clear through the following point :

1. It declares India to be Sovereign, Socialist, Secular, Democratic Republic.
2. It envisages justice - Social, Economic and Political - for all the citizens of the republic.
3. It would ensure all types of freedom necessary for the individual i.e., freedom of thought and expression, freedom of faith, freedom of belief and of worship, etc.
4. It would strive for equality of status and opportunity to all individuals and safeguard their dignity irrespective of their religious belief or sect.
5. It would promote a sense of brotherhood among the citizens.
6. Unity of the nation would be the hallmark of the efforts of the Government.

Thus, we find that the Preamble to our Constitution is the real index to the provisions-to-come in the Constitution of the Republic of India.

SALIENT FEATURES OF THE INDIAN CONSTITUTION

The Constitution Assembly under the Presidentship of Dr. Rajendra Prasad framed the Indian constitution after a good deal of labour extending over to about three years and enacted it on 26th November, 1949. The new Constitution was, however, adopted on 26th January, 1950 when India was declared as a Sovereign, Democratic, Republic with Dr. Rajendra Prasad as its first President. All the ideals envisaged in the Preamble to the constitution of India, such as Sovereignty, Socialism, Secularism, Democracy, Republicanism, Justice, Liberty, Equality and Fraternity etc. guide all the articles of the Indian Constitution. As such this constitution has become remarkable for certain unique features of its own, which are as follows :

- ◆ **Written and Detailed Constitution :** Like the Constitution of the United States of America, the Indian Constitution is a written one and is available in book form. The framers of this constitution tried to put in black and white everything about the three organs of the Government i.e., Executive, Legislature and Judiciary, Citizenship, Fundamental Rights, Directive Principles of the State policy, Relations between the Centre and its Units, the Public Services and about what not. Consequently, the Indian Constitution has become the most voluminous Constitution in the world. It consists of 395 Articles, 9 Schedules and several Amendments. Following are the reasons for the extreme length of the Indian Constitution :
- 1. **Jennings and Young write,** "The Constitution is long and complicated, because the Government of India Act, 1935, on which it was in large measure founded, was long and complicated."
- 2. **Both Rigid and Flexible :** The Indian Constitution is partly rigid and partly flexible. The procedure laid down for the amendment of the Indian Constitution is neither as easy as in England nor very difficult as in the case of the United States. It strikes a golden mean and avoids the extreme rigidity of the American Constitution and the extreme flexibility of the English Constitution.
- 3. **Federal in Structure and Unitary in Spirit :** The Indian Constitution is federal in structure. In the words of Mr. G.N. Joshi, "The Indian Union exhibits all the normal characteristics of a federation : a written Constitution, a dual policy and distribution of powers between the national government and state governments and supreme Court". Although the Indian Constitution is federal in structure, it has made the central government so powerful that it has been pointed out that it has become almost unitary in essence. During emergency the President can do away with any State Government and assume all its powers. The Governor of a state is appointed and dismissed by the President alone and not by any provincial government. Again, no province can withdraw from the federating and frame its own constitution. According to Dr. B.R. Ambedkar, "The Union is not strictly a federal polity but a quasi-federal polity with some vital and important elements of unitariness".
- 4. **Parliamentary Form of Government :** The Indian Constitution has established a parliamentary form of Government, both at the Centre and the States. As in England the Executive here is responsible to the Legislature. Though the President is the head of the Executive, the real powers are vested with the Cabinet which is responsible to the Lok Sabha. The Executive here is not all powerful but is responsible to the Legislature and is a part of it.
- 5. **A Secular State :** The new Constitution has declared India to be a secular state where all the citizens enjoy equal rights irrespective of their cast, colour, creed, religion or sex. Anybody in India can practise any religion he or she chooses and no distinction would ever be made on this account. The State has no religion of its own and such no one would either suffer or enjoy special rights on the basis of his or her religion. Everybody is equal before law and enjoys equal rights no matter to which faith, caste, colour and sex he or she belongs.
- 6. **A Socialist State :** The word 'Socialist' was added to the Preamble later on to lay stress on the resolve of the nation to strive for socialism that envisages equitable distribution of national income to all sections of the people. The 24th Amendment lays down that the term "Socialism," means that there is freedom from all forms of exploitation - social, political and economic.

7. **A Sovereign Democratic Republic :** India is not responsible to any foreign power either for its internal policy or for its external affairs and so it is Sovereign or an Independent State. Similarly, it is a Democratic State because the real power emanates from the people. Likewise, the Executive Head of India i.e., the Queen or King of England, but an elected one and so India has been described a Republic. Thus the Constitution of India established a Sovereign Democratic Republic in the country.
8. **Universal Adult Franchise :** Right to express one's choice by vote is called franchise. When the right to vote or franchise is given to every adult, it is called the Universal Adult Franchise. In India, this right is given to every Indian citizen who has completed 18 years of age. He has right to take part in elections and vote for any candidate of his choice standing for the Central, State or local governments.
9. **Fundamental Rights of the Citizens :** Like the Constitution of the U.S.A., the Indian constitution has guaranteed several Fundamental Rights to all its citizens. Among these rights the most important are those of Equality, Liberty, Freedom of Religion. Cultural and Educational Rights, right against Exploitation and Right to Constitutional Remedies, etc. These rights are inviolable and are binding both on the Legislature and the Executive.
10. **Supreme Court as the Guardian :** The Constitution has established the Supreme Court as the Guardian of the citizen's rights. It can declare as null and void any law passed by the legislature or the executive if it violets any of the Fundamental Rights guaranteed to the citizens by the Constitution. Again the Supreme Court settles the dispute arising between the Centre and the States or between two states.
11. **Single Citizenship :** Although India is a federation, its citizens have not been provided with double citizenship (one for the Federal Government and the other for the State Government) as in the case of U.S.A. All Indians irrespective of their domicile enjoy one citizenship. They are first Indians and then anything else (i.e., the Punjabis, Bengalis or the Tamilians, etc.).
12. **Official Language :** For a vast country like India, it is quite necessary to declare some common language as the national language of India. It is quite necessary for the sake of unity and nationalism. So the Constitution has declared Hindi in the Devanagri script as the official language of India. As it is not so easy to replace English, 15 years (upto 1965) had been provided for this switch-over from English to Hindi. This period has already been elapsed, yet this switch over has not been possible due to various reasons.

INDIAN CONSTITUTION IS A LIVING DOCUMENT

Indian Constitution has been called as a living document because it can be changed according to the need of the time. It has a special amending procedure of its own. It has three categories of amending procedures.

- (i) In the first category amendments can be carried out by a simple majority of the members present and voting before sending it to the President for his assent.
- (ii) In the second category amendments can only be carried out by two-thirds majority of the members present and voting of each House before it is sent to President for his assent.
- (iii) In the third category, an amendment is a some what difficult task. Not only the two thirds majority of the two Houses of the Parliament is required but also such an amendment is to be approved by at least 50 per cent of the state legislatures before it is sent to the President for this assent.

That is why Indian Constitution is called federal in structure but unitary in form or spirit.

IMPORTANCE OF CONSTITUTION FOR A DEMOCRATIC COUNTRY

As discussed above, the set of rules which decides the composition and functions of a government, is called the constitution of a country. The Constitution is quite important for each and every country. But it has more importance in a democratic form of government because of the following reasons :

1. It is according to the Constitution that the Government in a democratic country is formed and its work is conducted.
2. The Constitution delimits the scope of activity of the various organs of the Government. Democracy is a government of the people, by the people and for the people. It must work for the people and in no case misuse its powers, and minimise the chances of confrontation among them.
3. In a democratic country, powers of a democratic government are clearly defined in a constitution and as such it cannot misuse them.
4. In a democratic form of government, the rights of the people have a great importance of their own. It is the Constitution which safeguards the rights of the citizens.
5. Constitution is an index of the aspirations of the people. It is not a mere document. It constantly goes on growing and evolving according to the needs and aspirations of the people as well as the functioning institutions.

GLOSSARY

1. **Constitution** : The fundamental legal document according to which the government of a country functions. This contains the basic laws or set of rules which define the main organs and their jurisdiction as well as the basic rights of the citizen.
2. **Cabinet Mission** : In February 1946, the British government sent the cabinet mission to India. It proposed the formation of a federation, with a union government and three types of states and also proposed the formation of a Constituent Assembly and an interim government.
3. **Objective Resolution** : On December 13, 1946 Jawaharlal Nehru moved a resolution in the constituents Assembly proposing the main objectives or aims of the new constitution to be made for free India. It is known as the Objective Resolution.
4. **Drafting Committee** : A committee set up to draft a constitution.
5. **Amendment** : The term means change or modification. It is used in connection with changes made in the constitution of a country. The procedure of amendment of the Indian constitution is given in Article 368 of the constitution itself.
6. **Democracy** : A form of government which is chosen by the people to work for their welfare and can be changed by them.
7. **Preamble** : It is an introduction to the constitution which explains the aims and objectives of the constitution.
8. **Republic** : A country in which the head of the state is elected and not hereditary.
9. **Secularism** : It implies religious freedom. The state does not have any official religion of its own. Everyone has the right to preach, practice & profess any religion.
10. **Universal Adult suffrage** : It refers to the right to vote for all the adult citizen of a country without any discrimination on the basis of caste, creed, colour, sex or education. It is based on the principle of the one person one vote.
11. **Apartheid** : A system of reagggregation of whites from blacks on the basis of race. Each group had to live in separate areas, go to separate schools and non white had no voting rights.
12. **Constituent Assembly** : An assembly of people's representatives that writes a constitution for a country.
13. **Philosophy** : The most fundamental principles underlying one's thought and actions.
14. **Treason** : The offence of attempting to overthrow the government of the state to which the offender owes allegiance.
15. **Tryst** : A meeting or meeting place that has been agreed upon.