

THE INDIAN CONSTITUTION

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INTRODUCTION

The Constitution lays down the basic structure of the government under which its people are to be governed. The Constitution is a fundamental legal document according to which the government of a country functions. A Constitution is superior to all the laws of a country. Every law enacted by the government machinery, has to be in conformity with the constitution.

DEFINITION

Constitution is the set of rules according to which the government is run.

FRAMING OF INDIAN CONSTITUTION

The cabinet mission came to India in 1945 and discussed the framework for the Constitution and laid down some details of the procedure to be followed by the constitution making body. Elections for the 296 seats assigned to the British-Indian provinces were completed by July-August 1946. With the Independence of India, the Constituent Assembly became a fully sovereign body. The Assembly started working from the ninth-day of December 1946. The Assembly had the benefit of a galaxy of outstanding leaders. Their farsightedness and visionary statesmanship found expression in the Constitution which is the supreme law of the land. Dr Rajendra Prasad was elected President of the Constituent Assembly. A Drafting committee was appointed to draft the Constitution. Dr. B.R. Ambedkar was appointed the Chairman of the Drafting Committee. The Constituent Assembly met for 166 days spread over a period of 2 years, 11 months and 18 days. The Constitution was passed by the Assembly on 26 November 1949. It came into being on 26 January 1950.

The Indian Constitution is a living document. The constitution gets amended according to the need and aspiration of the society. Certain changes are brought in the constitution through a procedure called an Amendment.



NEED OF CONSTITUTION

Most countries in the world have a constitution. While all democratic countries are likely to have a constitution. It is not necessary that all countries that have a constitution are democratic. The constitution serves several purposes.

- (i) It lays out certain ideals that form the basis of the kind of country that we as citizens aspire to live in. Constitution tells us the fundamental nature of our society.
- (ii) A country is usually made up of different communities of people who share certain beliefs but may not necessarily agree on all issues. A constitution helps serve as a set of rules and principles that all persons in a country can agree upon as the basis of the way in which they want the country to be governed.
- (iii) Constitution includes not only the type of government but also an agreement on certain ideals that the people believe the country should uphold

◆ Nature of political system

The second important purpose of a constitution is to define the nature of a country's political system. In countries that have adopted a democratic form of government or polity, the constitution plays a crucial role in laying out certain important guidelines that govern decision-making within these societies. In a democracy, we choose our leaders so that they can exercise power responsibly on our behalf. However, there is always the possibility that these leaders misuse their authority and the constitution usually provide safeguards against this misuse of power by our political leaders. This misuse of authority can result in gross injustice. In the case of the Indian Constitution many of these laws are

contained in the section on Fundamental Rights. The Indian Constitution guarantees the right to equality to all person and says that no citizen can be discriminated against on grounds of religion, race, caste, gender and place of birth. The right to equality is one of the Fundamental Right guaranteed by the India Constitution.

◆ Safeguards the Rights of Minority

Another important function that a Constitution plays in a democracy is to ensure that a dominate group does not use its power against other less powerful people or groups. The Constitution usually contains rules that ensure that minorities are not excluded from anything that is routinely available to the majority. Another reason why we have a Constitution is precisely to prevent domination by the majority of a minority. This can refer to one community dominating another, i.e. intercommunity domination, or members of one community dominating others within the same community, i.e. intra-community domination

◆ Check on strong decisions :

The third significant reason why we need a Constitution is to save us from ourselves. This may sound strange but what is meant by this is that we might at times feel strongly about an issue that might go against our larger interests and the Constitution helps us guard against this.

Similarly, the Constitution helps to protect us against certain decisions that we might take that could have an adverse effect on the larger principles that the country believes in. For example, it is possible that many people who live in a democracy might come to strongly feel that party politics has become so acrimonious that we need a strong dictator to set this right. Swept by the emotion, they may not realise that in the long run, dictatorial rule goes against all their interests. A good Constitution does not allow these whims to change its basic structure. It does not allow for the easy overthrow of provisions that guarantee rights of citizens and protect their freedom



THE INDIAN CONSTITUTION : KEY FEATURES

◆ Ideals and Goals in front of the Constitution Making Assembly :

- ◆ During the freedom struggle the nationalists had devoted a great deal of time to imagining and planning what a free India would be like. Under the British, they had been forced to obey rules that they had very little role in making. The long experience of authoritarian rule under the colonial state convinced Indians that free India should be a democracy in which everyone should be treated equally and be allowed to participate in government
- ◆ What remained to be done then was to work out the ways in which a democratic government would be set up in India and the rules that would determine its functioning. This was done not by one person but by a group of around 300 people who became members of the Constituent assembly in 1946 and who met periodically for the next three years to write India's Constitution. Finally the constitution was passed by the constituent assembly on 26 November 1949.
- ◆ When the constitution was being written, India was going through considerable turmoil. The partition of the country into India and Pakistan was imminent, some of the Princely States remained undecided about their future, and the socioeconomic condition of the vast mass of people appeared dismal. All these issues played on the minds of the members of the Constituent Assembly as they drafted the Constitution. They rose to the occasion and gave this country a visionary document that reflects a respect for maintaining diversity while preserving national unity.
- ◆ The final document also reflects their concern for eradicating poverty through socio-economic reforms as well as emphasizing the crucial role

the people can play in choosing their representatives.

◆ Key features of Indian Constitution :

Keeping above factors in mind, the framers of Indian constitution tried to balance these concerns such as diversity, unity, socio economic reform and representation with their commitment to transforming independent India into a strong democratic society

◆ Federal Features :

- (i) This refers to the existence of more than one level of government in the country. In India, we have governments at the state level and at the centre. Panchayati Raj is the third tier of government. The vast number of communities in India meant that a system of government needed to be devised that did not involve only persons sitting in the capital city of New Delhi and making decisions for everyone. Instead, it was important to have another level of government in the states so that decisions could be made for that particular area. While each state in India enjoys autonomy in exercising powers on certain issues, subjects of national concern require that all of these states follow the laws of the central government.
- (ii) The Constitution demarcates the power of the central and the state government into different lists subjects. These lists are called the Union list, the State list and the Concurrent list.
- (iii) Subjects of national importance like defence, foreign affairs, atomic energy, banking, post and telegraph are included in the Union List. The central government can pass laws on the subjects mentioned in the union list. The union list has 99 subject
- (iv) The State list comprises those important subjects on which the state government can

pass laws. Subjects like police, local government, trade and commerce within the state, agriculture are included in the State List. It has 66 subjects

- (v) In order to avoid any kind of ambiguity in the distribution of functions, the Constitution provides for a third list which is called Concurrent List. These are the subjects which are of common concern both to the centre and the state governments. The Concurrent list has got 52 subjects
- (vi) In addition, the constitution also specifies where each tier of government can get the money from for the work that it does. Under federalism, the states are not merely agents of the federal government, but draw their authority from the constitution as well. All persons in India are governed by laws and policies made by each of these levels of government.

◆ **Parliamentary form of Government :**

The different tiers of government consist of representatives who are elected by the people. The Constitution of India guarantees universal adult suffrage for all citizens. When they were making the Constitution, the members of the constitution assembly felt that the freedom struggle had prepared the masses for universal adult suffrage and that this would help encourage a democratic mindset and break the clutches of traditional caste, class and gender hierarchies. This means that the people of India have a direct role in electing their representatives. Also every citizen of the country, irrespective of his/her social background, can also contest in elections. These representatives are accountable to the people.

◆ **Separation of Powers :**

According to the Constitution, there are three organs of the State. These are the legislature, the executive and the judiciary. The legislature refers to our elected representatives. The executive is a smaller group of people who are responsible for implementing laws and running the government. The judiciary refers to the system of courts in this country. In order to prevent the misuse of power by any one branch of the State, the Constitution says that each of these organs should exercise different powers. Through this each organ acts as a check on the other organs of the State and this ensures the balance of power between all three.

◆ **Fundamental Rights :**

The section on Fundamental Rights has often been referred to as the 'conscience' of the Indian Constitution. Fundamental Rights protect citizens against the arbitrary and absolute exercise of power by the State. The Constitution, thus, guarantees the right of individuals against the State as well as against other individuals. The Constitution classifies the Fundamental Rights under seven groups. According to the 14th amendment of the Constitution, the right to property is now a legal right. Recently there are 6 fundamental rights. These are as follows –

◆ **Types of Fundamental Rights**

- (i) **Right to Equality:** All persons are equal before the law. This means that all persons shall be equally protected by the laws of the country. It also states that no citizen can be discriminated against on the basis of their religion, caste or sex. Every person has access to all public places including playgrounds, hotels, shops etc. The State cannot discriminate against anyone in matters of employment, but there are exceptions to this. The Constitution provides for special provisions in the form of reserved posts while guaranteeing right to equality. Reserved posts are provided for scheduled caste, scheduled

tribes and other backward classes. Similarly, special provisions are provided for women and children. The practice of untouchability has also been abolished.

- (ii) **Right to Freedom** : This Includes the right to freedom of speech and expression, the right to assemble peaceably and without arms, the right to form associations or unions, the right to move freely through-out the territory of India, the right to reside in any part of the country, and the right to practice any profession, occupation or business.
- (iii) **Right against Exploitation** : The Constitution prohibits human trafficking forced labour, and children working under 14 years of age.
- (iv) **Right to Freedom of Religion**: Religious freedom is provided to all citizens. Every person has the right to practice, profess and propagate the religion of his \ her choice.
- (v) **Cultural and Educational Rights**: The Constitution states that all minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture.
- (vi) **Right to Constitutional Remedies**: This allows citizens to move the court if they believe that any of their Fundamental Rights have been Violated by the State.

◆ **Protection of Minorities :**

Moreover, the various minority communities also expressed the need to include right that would protect minority group. The Constitution, therefore, also guarantees the right of minorities against the majority. As Dr. Ambedkar has said about these Fundamental Rights. their object is two-fold, The first objective is that every citizen must be in a position to claim those rights. And secondly, these rights must be binding upon every authority that got the power to make laws.

◆ **Directive Principles of State Policy :**

In addition to Fundamental Rights, the Constitution also has a section called Directive Principles of State Policy. This section was designed by the members of the Constituent Assembly to ensure greater social and economic reform and to serve as a guide to the independent Indian State to institute laws and policies that help to reduce the poverty of the masses.

◆ **Secularism :**

India is a secular state. All citizens, irrespective of their religious beliefs are equal in the eyes of the law. The government cannot formulate such policies which discriminate between various religious communities which live in India.

➤ **FUNDAMENTAL DUTIES**

By 42nd Amendment in 1976, the Fundamental Duties were incorporated in the Indian Constitution. The fundamental duties are to promote patriotism among the citizens and to help them to strengthen the nation. The fundamental duties are :

- (i) To Abide by and respect the Constitution, the National Flag and the National Anthem
- (ii) To Enrich and follow the noble ideals of the freedom struggle
- (iii) To uphold and protect the sovereignty, unity and integrity of India
- (iv) To defend the country and render national service when required
- (v) To promote common brotherhood of all people in India and renounce practices derogatory to the dignity of women

- (vi) To value and preserve the rich heritage of the nations composite character
- (vii) To protect and improve the national environment and have compassion for living creatures.
- (viii) To develop scientific temper, humanism and a spirit of inquiry
- (ix) To safeguard public property and abjure violence
- (x) To Strive for excellence in all spheres of individual and collective activity



THE PREAMBLE OF THE INDIAN CONSTITUTION

The Indian Constitution begins with the Preamble. The entire philosophy of the Constitution of India is explained in the Preamble. The word preamble means an introduction. In the introduction, the aims and objectives of the Constitution are mentioned. The Preamble is the guiding principles of the Constitution but it is not a part of the Constitution, and it is not enforceable in a court of law.