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Chapter no. 1

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Making of the Constitution

✓ Meaning of Constitution :- Constitution consists of those rules according to which the various organs and officials of the organisation have to work and functions. In simple words, we can say that constitution is a set of written rules and regulations on the basis of which whole country runs.

Features of Indian Constitution

1) Longest written constitution :-

Constitutions are classified into two categories - written and unwritten. American constitution is unwritten constitution while Indian constitution is a written constitution. The constitution of India is the longest constitution of the world. It includes 450 articles divided into 24 parts and 12 schedules.

2) Blend of Rigidity and flexibility :-

Constitutions are also classified into rigid and flexible. A rigid constitution is one

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that require special procedure for its amendment like American Constitution but Indian Constitution is flexible. Flexible Constitution is one that can be amended in the same manner as the ordinary laws are made.

3) Parliamentary form of Government:-

The parliamentary form of government is based on the principle of cooperation and coordination between the legislative and executive organs while the presidential system is based on the Doctrine of separation of power b/w the two organs.

4) Federal system with unitary base:-

The Constitution of India is based on the federal system of government. It contains all the usual features of federation. For example, two parts, division of powers, supremacy of the Constitution.

5) Integrated and Independent Judiciary

The Indian Constitution established a judicial system that is integrated

as well as independent. The Supreme Court stands at the top of the judicial system in the country. While below it, there are high courts at the state level and district courts etc.

6) Fundamental Rights :-

Part third of the Indian Constitution guarantees six fundamental rights to all the citizens of India.

7) Fundamental duties :-

According to B.R. Ambedkar, the directive principles of State Policy is a noble feature of Indian Constitution. They can be classified into three categories :-

- > Socialist
- > Gandhian
- > Liberal Intellectual

8) Universal Adult Franchise :-

The Indian Constitution adopts universal adult franchise as a basis of Lok Sabha and State Legislative Assembly. In this system, every adult who have completed

18 years of age have the right to cast his/her vote in the election.

Definition of the Constitution

1) Locke said, "The Constitution is the form of any particular state"

2) Woolsey said, "The Constitution of state consists of those of its rules or laws which determine the form of govt, the rights of the governed and the relations b/w the two are adjusted"

Q) Why do we need Constitution?

Ans. We need Constitution for the smooth running of govt. in the country.

Following points throw light on the need of Constitution:

- 1) Coordination and Cooperation
- 2) Decision Making
- 3) Limitations on the power of govt.
- 4) Goals of the Society

Coordination and Cooperation :-

It enables the various organs of the govt. to act in coordination with one another and function within their definite jurisdiction. This arrangement of coordination and cooperation also brings assurance to the people about the actions of the others. The Constitution by prescribing basic rules ensures coordination and cooperation and indicates a feeling of security among the people.

Decision Making :-

It is the govt. who makes the rules and take decisions. It requires that there must be a definite authority empowered to take decisions and make rules. Thus an important function of the Constitution is to satisfy how the govt. would be constituted and how it shall function, how the various authority of the organs of the govt. would coordinate with one another and how the dispute between them would be resolved.

limitations on the power of the govt :

Under non-democratic govt, there is no limitation on the powers of the govt. No one can question the govt, whether the govt. is right or wrong because there is a king who enjoyed absolute authority but in a democratic country there is a proper system working of the govt. because each and every rule is written in the constitution and the govt. functions according to the constitution so the govt. cannot perform any wrong actions.

Goals of the Society :

The Constitution of the state provides for a mechanism which enables the society to realise its aspirations and goals. It grafts the constitution in such a way that it enables the govt. or the authorities to realise those aims and aspirations. These days the goals of the society are well mentioned in the constitution. Constitution provides the opportunities to the society to enjoy their rights, to perform their duties and to achieve their

goals.

Importance of the Constitution

These days every state has its own constitution. The existence of the constitution is very important because it does not let anybody exercise authority or arbitrarily and the security of rights and liberties of the people is ensured. Its importance is clear from the following:

- ① Aims of the govt. clear
- ② Determines the govt.
- ③ Responsible and Accountable govt.
- ④ Rights and liberties of the citizens
- ⑤ Identity of the society
- ⑥ Faith of the whole nation

✳ Aims of the govt. clear

The first and the most important advantage of the constitution is that it makes it clear for what aim the govt. has to work. Those who have to run the govt. are also clear about it. The constitution clearly speaks about what the people expect from the govt.

✿ Determines the govt.

The constitution determines the composition of the various organs of the govt, how they have to be elected, how they have to work, what powers they have to exercise, etc. All these things are clear and definite. They also cannot act arbitrarily. Thus, work of all the organs of the govt. work smoothly.

✿ Responsible and accountable govt.

The constitution is also important for the country because it helps to make the govt. responsible and accountable. Due to the presence of constitution, the govt. cannot work against the will of the people.

✿ Rights and liberties of the citizens

Generally provision of the rights and liberties of the citizens is also made in the constitution and provisions are also made for their security. No officer of the govt. is allowed to act against these. All the rights of

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The citizens are mentioned in the Constitution so no one can exploit the rights and liberties of the citizens.

Identity of the Society:

The Constitution is a set of basic rules, Norms and values upon which the whole society has agreed. Thus, it gives distinctive identity to the society, the nation and the people. Aims and aspirations of the society for which the governmental framework is provided in the Constitution is never seen person identical with those of any other society.

Faith of the whole nation:-

Importance of the Constitution also lies in the fact that it is an article of faith of the whole nation. Constitution belongs not to the majority only it does not ensure the welfare of majority group alone but provide for measures which can bring about the welfare of all the citizens of the society and the nation as a whole.



Composition and working of Constituent

Assembly of India

On 26th January, 1950 Constitution of India came into force which was framed by our Constituent Assembly in 1946 under the Cabinet Mission Plan. After IInd world war, the Labour party came into power in England headed by Clement Attlee who sent a mission named Cabinet Mission to India in Feb, 1946 to talk with Indian leaders and recommend a solution to the problem. It recommended among other things for setting up of a Constituent Assembly which consists of representatives of people of British India provinces and princely states. The Constituent Assembly was to be composed as under:

- Elected representatives from provinces = 292
- Representative from Chief Commissioners provinces = 4
- Representatives from princely state = 93
- Total = 389

① The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted:

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to British India and 93 seats to the princely states.

- ② Each provinces and princely states were to be allotted seats in proportion to their respective populations. Roughly one seat to be allotted to one million.
- ③ Seats allotted to each British province were to be divided among three principle committees - Hindu, Muslims and Sikh.
- ④ The representatives of princely states were to be nominated by the head of the princely states.

✓ Working of the Constituent Assembly

Though ^{Indians} of the members of the Constituent Assembly were ~~in the~~ indirectly elected and 85% of them belong to Indian National Congress yet they did not adopt the method of discussion and decisions to indicate but they were making a constitution only for the majority group. A few characteristics of the style of working of Constituent Assembly are as under:-

- 1) Almost all the members behaved during discussion as if they were representing the whole nation and thus spoke with this thing in mind. that they were discussing over issues for public welfare and national interest.
- 2) Though discussion was held on every issue, view point or every opinion and interest was allowed to present itself freely. No view point was left unrepresented because of time or any other considerations.
- 3) All major issues were thoroughly debated over first in the committee concerned and thereafter in the whole Assembly.
- 4) Discussions were taken ^{not} simply on the basis of majority view, but efforts were made to arrive at some consensus. Every single argument or query or ^{concern} was responded to with great care.
- 5) Every effort was made to meet the apprehension expressed about the safeguard of the minorities.

Drafting Committee

Among all the committees of the Constitutional Assembly, the most important committee was drafting committee set up on 29th Aug, 1947.

It was this committee that was interested with the task of preparing a draft of the new constitution. It consisted of seven members:-

- 1) Dr. B.R. Ambedkar
- 2) M. Gopala Swami Ayyangar
- 3) Asadi Krishna Swami Ayyar
- 4) Dr. K.M. Munshi
- 5) Syed Mohammad
- 6) K. Madhava Rao
- 7) T.T. Krishna Mahari

Enactment of the Constitution

Dr. B.R. Ambedkar introduced the final draft of the Constitution in the Assembly on 4th Nov, 1948. The Assembly had a general decision on it for fighting. The second reading was started on 15 Nov, 1948 and end on 17 October, 1949. During this stage as many as 7653 amendments were proposed and 2473 were actually discussed in the assembly.

The third reading of the draft was started on 14 November, 1949. (Dr. B.P. Ambedkar moved a motion the Constitution as settled by the assembly as passed). The motion on draft Constitution was declared as passed on 26 November, 1949 and received the signature of the members and President. Out of the total 299 members of the assembly only 284 were actually present on the day and signed the Constitution. The Constitution was adopted on 26th Nov, 1949 contain a preamble in 395 articles and 8 schedules. The Constitution of India came into force on 26th Jan, 1950. So, we celebrate every year Republic Day on 26th January.

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Source of the Indian Constitution:-

Following are the sources of Indian Constitution:-

- ① The Government of India act 1935
- ② Foreign Constitutions
- ③ Ideals of National Movement
- ④ Records of National Assemblies
- ⑤ Parliamentary Statutes
- ⑥ The Draft Constitution
- ⑦ Judicial Decisions

The Government of India Act 1935

The most profound influence was exercised by the govt. of India Act 1935. The important provisions of the federal scheme, office of the Governor, power of the federal judiciary, emergency powers were taken from this act.

Foreign Constitutions

The framers of the Indian Constitution studied the constitution of diff. countries which were democratic countries and were gently influenced

by it. They in fact tried to incorporate the best features of these constitutions of in the Indian Constitution.

Ideals of the National Movement

The Freedom Movement by the Indians against the foreign rule was guided by great ideals. Though its main aim was to free the country from the foreign rule. But it would for unity of India, democratic setup in India, to secure liberty, equality, justice, rule of law and belief in constitutional methods. It also would for secular secularism.

Records of Constitutional Assembly

It debated on all the aspects of the Constitution in a detailed manner. and on all its aspects.

The Constituent Assembly accomplished the tremendous task of framing the Constitution in such a short time of three years. This is a great testimony in itself. The Constitution was finally enforced on 26th Jan, 1950.

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Parliamentary Statutes

The Indian Constitution is sometimes considered to be a living document because it goes on increasing day by day in volume. It is because of the powers conferred by the Constitution on the Union Parliament - the power of Amendments of Acts. Since its inception the Constitution has been amended several times and many more acts are also passed to maintain the compatibility of with the changing time. These changes and the acts are known as Parliamentary Statutes.

The Draft Constitution

The Draft Constitution was prepared by the Drafting Committee and was submitted to the Constituent Assembly on 21st February, 1948. It accepted all comments, criticisms and suggestions for the amendment of the Draft Constitution. A second reading of the Constitution was completed on 16th Nov, 1949 and the third reading on 26th Nov, 1949. Adopted the Constitution making draft an invaluable source.

Judicial decisions

India has an independent judiciary with power of judicial review. The High Court and Supreme Court form a single integrated judiciary. They give valuable judgements which act as a source of legislation.