

CONSTITUTION OF INDIA.

MAHARAJA UNIVERSITY

1. What is Constitution?

A constitution means a document having a special legal sanctity which sets out the frame work and principal functions of the government, Constitution of a country gives idea about basic structure of the political system under which its people are to be governed. It defines the powers of the main organs of the state, demarcates their responsibilities and regulates their relationships which each other and with the people. It can also be termed as "Fundamental Law" of a country which reflects people's faith and aspirations.

2. Framing of the Constitution.

1. The Constitution of India was framed by a constituent Assembly set up under the Cabinet Mission Plan of 1946.
2. The Assembly consisted of 389 members representing provinces (292), states (93) the Chief Commissioner Provinces (3) and Baluchistan (1)
3. The Assembly held its first meeting on December 9, 1946, and elected Dr. Sachhidannand Sinha, the oldest member of the Assembly as the Provisional President.
4. On December 11, 1946 the Assembly elected Dr. Rajendra Prasad as its permanent Chairman.
5. The strength of the Assembly was reduced to 299 (229 representing the provinces and 70 representing the States) following withdrawal of the Muslim league members after the partition of the country.
6. The Constituent Assembly set up 13 Committees for framing the constitution. On the basis of the reports of these committees, a draft of the constitution was prepared by a seven-member. Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar.
7. The draft constitution was published in January, 1948 and people were given eight months to discuss the draft and propose amendments. After the draft was discussed by the people, the press, the provincial assemblies and the constituent Assembly in the light of the suggestions received, the same was finally adopted on November 26, 1949 and was signed by the President of the Assembly.

8. Though the major part of the constitution came into force on January 26, 1950 the provisions relating to:
 - Citizenship
 - Elections
 Provisional parliament and temporary and transitional provision came into force with immediate effect viz. from November 26, 1949.
9. The constitution of India was not an original document. The framers of the constitution freely borrowed the good features of the Constitutions.
10. However, while adopting these features they made necessary modifications for its suitability to the Indian conditions and avoided their defects.
11. The constitutions which exercised profound influence on the Indian Constitution were that of UK, USA, Ireland, Canada etc.
 - a). The Parliamentary system of the government, rule of law, law-making procedure and single citizenship were borrowed from the British Constitution.
 - b) Independence of Judiciary, Judicial Review, Fundamental Rights, and guidelines for the removal of judges of the Supreme Court and High Courts were adopted from the U.S constitution.
 - c) The federal system, with a strong central authority, was adopted from Canada.
 - d) Directive Principles of State Policy were borrowed from the constitution of the Republic of Ireland
 - e) The idea of concurrent list was borrowed from the Austrian Constitution.
 - f) The provisions relating to emergency were influenced by the Weimar constitution.
 - g) Above all the Government of India Act 1935, exercised great influence on the Indian Constitution. The federal scheme, office of governors, powers of federal judiciary etc. were drawn from this act.

In short, the Indian constitution incorporated the best features of several existing constitutions.

3. Objectives of the Constitution of India.

The objectives of the constitution were outlined in the objective Resolution moved by Pt. Jawaharlal Nehru and adopted by the constituent Assembly on January 22, 1947. The main principles outlined in the resolution were:

- i) Resolved to proclaim India as an Independent sovereign republic.

- ii) To establish a democratic Union with an equal level of self government for all the constituent parts.
 - iii) All power and authority of the union government and governments of the constituent parts are derived from the people.
 - iv) To guarantee and secure to all people of India. Justice, Social, Economic and Political.
 - equality of status, of opportunity and before law.
 - freedom of thought, expression, belief, faith, worship, vocation association and action.
 - v) Adequate safeguards for minorities backward and tribal areas and depressed and other backward classes.
 - vi) To maintain the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and law of civilized nations.
 - vii) To secure for India its rightful and honoured place in the world.
 - viii) To contribute to the promotion of world peace and the welfare of mankind.
- These objectives incorporated in the Preamble of the constitution.

4. Salient features of the Indian Constitution

1. The Bulkiest constitution of the world.

The constitution, originally consisting of 395 articles, now consists of 444 Articles divided into 25 parts and 12 schedules. The main factors that led to the constitution being bulky were:

- i) Incorporation of good provisions of the constitutions of other countries to avoid future loopholes.
- ii) absence of separate constitutions for the states and provision of both central and state structure in the constitution.
- iii) incorporation of Fundamental Rights, Fundamental Duties and Directive Principles of State Policy.
- iv) provisions regarding peculiar problems facing the country, such as problem of scheduled cases and scheduled tribes, backward classes, official languages etc.
- v) inclusion of emergency provisions in the constitution for the protection of the interests of the country and the people.
- vi) detailed provisions regarding the organization of the judiciary, the services, election and other transitory provision.
- vii) codification of details regarding centre, state relations to eliminate future conflicts.
- viii) enumeration of central practices, which in other countries operate on the basis of conventions.

2. Combination of Rigidity and Flexibility.

The Indian Constitution is a combination of rigidity and flexibility, while some provisions of the constitution can be amended by the

Parliament by a simple majority, other require a two-thirds majority of the members of the Parliament as well as a majority in the state legislatures. Again, some provisions of the constitution can be amended by the Parliament alone by a two-third majority. Further flexibility is introduced in the constitution by the provisions which permit the parliament to supplement the provisions of the constitution by legislation.

3. Parliamentary system of Government.

The constitution provides for a parliamentary system of government under which the real executive power rests with the council of ministers and the President is only a nominal ruler. The council of ministers stay in office as long as they enjoy the confidence of the Parliament.

The framers of the constitution decided to adopt a parliamentary system of government for several reasons.

Firstly, the system was already in existence in India and people were well acquainted with its working.

Secondly, the vast size of the country and the diversity of its culture necessitated the adoption of a parliamentary form of government.

Thirdly, the desire to avoid conflicts between the executive and the legislatures, which was a common features in America also induced the members of the constituent Assembly to opt for a parliamentary system.

4. Federal system with a Unitary Bias.

The Indian constitution provides for a federation with a strong centre.

It is note worthy that the constitution has not used the word 'federation', any when, and has described India as a "Union of States", which implies that the Indian federation is not the result of any agreement among the units and the unit cannot secede from it.

India possesses most of the features of the federation but also several of the unitary features.

The Indian federal structure acquired a unitary character during emergency, where the normal distribution of powers between the centre and the states undergoes vital changes.

5. Fundamental Rights

The constitution contains an elaborate list of Fundamental Right.

The state cannot make laws which take away or abridge any of the fundamental right of the citizens. If it does so, the courts can declare such a law as unconstitutional.

It may be noted that the fundamental rights granted by the constitution are not absolute and are subject to certain restrictions. In other words,

the constitution seeks to strike a balance between individual liberty and social interests.

6. **Fundamental Duties**

The constitution also contains a list of 10 fundamental duties of the citizens.

These duties were added to the constitution by the 42nd amendment in 1976. These duties serve as constant reminders to the citizen that they have to observe certain basic norms of democratic conduct.

7. **Directive Principles of State Policy.**

The constitution outlines certain Directive Principles of State Policy which the government has to keep in mind. While formulating any policy. These principles seek to provide social and economic basis for democracy and the establishment of a welfare state.

Unlike the Fundamental Rights, the Directive Principles of State Policy are non-Justice-able, which implies that no action can be brought against the state before a court of law for its failure to implement the Directive Principles. However, in actually the government has accorded due importance to the Directive Principles in the formation of its policies.

8. **Secular State.**

The constitution makes India a secular state. This means that there is no state religion and state is completely detached from religious dogmas.

It also implies that citizens are free to profess, practice and propagate any religion. However, freedom of religion is not absolute and the same can be regulated in the interest of the public.

9. **Independent Judiciary.**

The constitution provides an independent judiciary which ensures that the government is carried out in accordance with the provisions of the constitution.

It acts as the guardian of the liberties and fundamental Rights of the citizen. It also determines the limits of the powers of the centre and the states.

10. **People as source of Authority.**

The constitution draws its authority from the people and has been promulgated in the name of the people. This is evident from the preamble with states. "We the people of India..... do hereby adopt, enact and give to ourselves this constitution".

11. **Universal Adult Franchise.**

The constitution introduces universal adult franchise and accords the right to vote to all citizens above 18 years of age without discrimination. However it makes reservation of seats for Schedule Castes and Scheduled Tribes to provide them adequate representation.

12. **Emergency Powers.**

The constitution vests extraordinary powers in the President during emergencies arising out of armed rebellion or external aggression, emergency due to breakdown of constitutional machinery in the state and financial emergency where the credit of the country is threatened. In fact during emergency the federal constitution can virtually be converted into a unitary constitution.

13. **Single Citizenship.**

It provides single citizenship. All persons residing in different parts of the country are treated as Indian citizens and are entitled to the same rights of citizenship. There is no separate citizenship of different States.

14. **Bicameral Legislature.**

It provides a bicameral legislature at the centre consisting of the Lok Sabha and the Rajya Sabha. The former contains representatives of the people, while the latter contains representatives of the States.

15. **Special Provisions for minorities.**

The constitution makes special provision for minorities, Scheduled Castes Scheduled Tribes etc. It not only reserves seat for them in the Parliament and state legislatures, but also grants them certain special rights and privileges.

16. **Panchayati Raj.**

The constitution provides constitutional basis to Panchayati Raj institution as well as Urban local bodies. This was achieved through the seventy-third and seventy-fourth amendment to the constitution carried out in December 1992.

Preamble.

1. The constitution of India is preceded by a preamble which outlines its aims and objectives.

It reads:

“We the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all its citizens:

Justice social, economic and political

Liberty of thought, expression, belief, faiths and worship.

Equality of status and of opportunity and to promote among them all.
Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

“In our constituent Assembly this twenty sixth day of November, 1949 we do hereby adopt, enact and give to ourselves this constitution”.

2. Thus

- a) The preamble declares India Sovereign, Socialist, secular, democratic and a republican state which draws its authority from the people.
- b) It intends to provide its citizens social economic and political justice.
- c) It assures them liberty of thought expression, belief, faith and worship.
- d) It assures equality of status and opportunity.
- e) It aims at securing a fraternity based on dignity of the individual and
- f) It aims at securing the unity and integrity of the nation.

3. The word Sovereign means that India is both internally as well as externally free and is not dependent upon any outside authority.

4. The term 'socialism' in the preamble (inserted by the 42nd Amendment) refers to some form of ownership of means, of production and distribution by the state. However, the Indian brand of socialism is quite different and holds faith in a mixed economy.

5. Secularism implies that the state is only concerned with relations between various citizens and is not concerned with relations of man with God.
Further, it means that the state has no religion of its own.

6. The term Democratic implies that the government draws its authority from the people.
The rulers are elected by the people and are accountable to them.

7. The word republic implies that the head of the state in India shall be an elected person and shall hold office for a fixed term. The president of India is the chief executive head of India.

8. The preamble has great value and has been described as the “Key to the Constitution”. It has helped courts to resolve various ambiguous points of the constitution and interpret it in the true spirit in which it was enacted by the framers.

9. Despite the importance of the Preamble, initially it was not regarded as part of the constitution and hence, was not treated as source of any substantive powers.

In the Berubari Case, the Supreme Court specifically held that the Preamble could not override the express provisions of the Act. However, in the Keshavananda Bharati case of 1973, the Supreme Court took the view that the Preamble is part of the constitution.

The then CJI Justice Sikri observed “The Preamble of our constitution is of extreme importance in the light of the grand and noble vision expressed in the preamble”.

The court relied on the Preamble while restricting the amending power of the Parliament under Article 368 of the constitution. It held that the basic element of the Preamble cannot be amended under Article 368. It was further held that since the Preamble was part of the constitution it can be amended subject to the condition that the ‘basic feature’ in the Preamble cannot be amended. The court contended that if any of the basic elements mentioned in the Preamble is removed, the structure will not survive.

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