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INDIAN CONSTITUTION AT WORK

Chapter 1 Constitution: Why and How?

Chapter 2 Rights and Duties in the Indian Constitution

Chapter 3 - Election and Representation

Chapter 4 - Executive

Chapter 5 - Legislature

Chapter 6- Judiciary

Chapter 7- Federalism

Chapter 8 - Local Governments

Chapter 9- Constitution as a Living Document

Chapter 10 - The Philosophy of the Constitution

Chapter 1 Constitution: Why and How?

A constitution is a written set of laws and fundamental principles to develop a relationship between the people and the government which comprises a number of articles about the state.

We need a constitution:

- To provide a set of basic rules to allow minimal coordination amongst the members of a society.
- To specify how the government would be constituted and who has power to make decisions in the society.
- To lay some limitations on government's power by guaranteeing rights to the citizens.
- To enable the government to fulfill aspirations of a society and create conditions for a just society.
- To express the fundamental identity of people.

Constitution of India was framed by the Constituent Assembly in 1946 under the **Cabinet Mission Plan**.

- Constituent Assembly spent 2 years 11 months and 18 days to prepare the constitution to be adopted on November 26, 1949 and came into force on 26 January, 1950.
- Constitution of India is the Supreme Law to be accepted and respected by all the citizens as well as institutions of the country.
- Constitution of India is a blend of flexibility and rigidity as it is federal in form but unitary in spirit.
- Main federal features of the Indian Constitution are written and flexible constitution, distribution of powers between the center and the states, supremacy of judiciary and existence of bi-cameral legislature.

Framers of Indian Constitution have borrowed a number of provisions as per the suitability of the nation from different countries, i.e. the British Constitution, the American Constitution, the Constitution of Canada, the Constitution of Ireland, the French Constitution, etc. along with the Government of India Act, 1935.

Important terms:

- **Promulgation:** To announce publically at the starting of a law.



- **Deliberation:** Considerations during the framing of Constitution.
- **Disparity:** A lack of equality and similarity in a war that is not fair.
- **Suppressed:** To prevent to express the feelings of someone.
- **Sects:** Different groups within a community.
- **Laws:** A set of rules governing the administration of country to be enforced by political authority.
- **Integration:** A harmonious relation with the feelings of brotherhood.
- **Objective Resolution:** Resolution to define aims of Assembly.

Chapter 2 Rights and Duties in the Indian Constitution

Rights are the favorable conditions and guarantees to be provided by a state to its citizens to live up a dignified life.

These rights can be categorized as Social Rights, Political Rights and Fundamental Rights to procure equality, liberty and social justice into society.

- Fundamental Rights are specially protected to ensure that they are not violated even by the government. Because these are protected by the constitution of the country.

There are **6 Fundamental Rights** guaranteed by Indian Constitution to its citizens:

- Right to Equality
- Right to Freedom
- Right to Freedom of Religion
- Right against Exploitation
- Cultural and Educational Rights
- Right to Constitutional Remedies

Fundamental Rights except the Right to Life and personal liberty may be suspended only during the emergencies like foreign attacks or internal disturbances.

- South African Constitution grants most extensive range of rights to its citizens including even right to dignity, privacy,

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fair labour practices, healthy environment, adequate housing, information, etc.

- Indian Constitution contains Directive Principles of State Policy also to establish a welfare state along with the Fundamental Rights.
- The judiciary has the power to enforce the Fundamental Rights but the Directive Principles of State are not enforceable by law.
- By the 42nd amendment, in 1976, the Fundamental Duties have also been inserted which are ten in numbers to defend our country, promote harmony and protect the environment.

The inclusion of fundamental duties has not changed the status of our fundamental rights.

Important terms:

- **Rights:** These are guarantees to citizens to live up a social life in a dignified manner.
- **Duties:** A performance towards others or society to enjoy rights.
- **Constitutional Remedies:** Protective arrangements to citizens by the Constitution against any exploitation.
- **Exploitation:** The act of doing injustice with others in any manner.
- **Begar:** A forced labour without payment.
- **Minorities:** These are the groups having common language or religion and in a particular part of the country or in a country as a whole, these are out-numbered by some other social sections.
- **Marginalized Communities:** Communities left ignored like Dalits, OBCs, Weaker sections,, etc.

Chapter 3 - Election and Representation

Modern period is considered as the age of democracy where participation of people ensured at every level of government. In the words of Abraham Lincoln. **"Democracy the government of the people, for the people and by the people"**.

Democracy can be classified into two types, i.e. Direct Democracy and Indirect Democracy.



Ancient times, the direct democracy was prominent due to small sizes of kingdoms but , iow the states are vast along with higher population.

- In an indirect democracy, the people do not participate directly but they participate indirectly through their elected representatives who act in accordance with the wishes of the people.
- Indian Electoral System experiences some unique features as Universal Adult Franchise, Joint Electorate, Combination of direct and indirect elections, secret Ballot system, Election petition, etc.
- By Universal Adult Franchise, we mean every person above the age of maturity (18 years and above) is entitled to enjoy the right to vote in elections irrespective of caste, creed , colour, race, language, religion, etc.
- The age of attaining maturity is fixed by the state. In India, England and Russia, it is 18 years, in Switzerland 20 years and in America 21 years and in Norway it is 23 years.
- Adult franchise has many merits. It provides political training and education as well as creates the feelings of self-respect among the people. It ensures participation of people in governance.
- Constitution of India appoints our Election Commission also to perform election related activities, i.e. to prepare voters' list, provide recognition to political parties, declares constituencies and control over the machinery of election.
- Election process begins with the election notification issued by the president under section 14 of the People's Representation Act, 1951, which is followed by the announcement of election dates by the Election Commission.

Though Election Commission performs its duties very well, despite the following discrepancies have been observed during elections:

- Use of money and use of power by candidates has become dominant.
- In actual, voters do not create much interest in the elections.
- Misuse of public funds and facilities.
- Even the candidate less than majority of votes becomes victorious.

The following suggestions might be there to remove the drawbacks mentioned above:



- To control money and muscle power
- The participation of women should be encouraged.
- The persons from criminal background should be prohibited.
- During election campaign, the candidates should not use words related to any caste, religion, language, etc.

Important terms:

- **First Past the Post System (FPTP):** In this system whoever has more votes than all other candidates is declared elected.
- **Proportional Representation (PR):** Large geographical areas are demarcated as constituencies.
- **Universal Adult Franchise:** Every person above the age of maturity enjoys the right to vote without any discrimination.
- **Democracy:** A rule or government of the people, for the people and by the people.

Chapter 4 - Executive

In a democracy, the Government is divided into three organs:

- **The Legislative**
- **The Executive**
- **The Judiciary**

Legislature and the executive are interdependent in a parliamentary system. The legislature frames the laws and the executive enforces them to run the administration.

In such a manner, the legislature controls the executive and in turn it is controlled by the executive.

Different types of executives are Parliamentary, Semi-Presidential, Presidential, Monarchical or Ceremonial, etc.

A distinction can be made between the parliamentary and the presidential executives.

In a parliamentary system, the real head of executive is the Prime Minister and the President is the nominal head.

The Prime Minister is assisted by the Council of Ministers and advises the President.

The President enjoys the right to be informed of all important matters and functioning of the council of ministers.



The Vice President is the ex-office Chairman of Rajya Sabha and acts for the President when the office of the President falls vacant.

The council of minister is responsible collectively to the house of the people and it shall not exceed 15% of total number of members of the house of the people.

The President appoints the Prime Minister who is the leader of the majority party in the Lok Sabha.

The executive, thus, includes the Prime Minister, the ministers and large administrative machinery. 13. The bureaucrats implement the decisions of ministers.

These bureaucrats are skilled and trained officers who work as a permanent employees of the government and assist the government in formulating and implementing the policies.

Important terms:

- **Electorate:** The people who elect the representatives using votes.
- **Constituency:** An area comes under parliament and a member is elected from there.
- **Components:** Parts or organs
- **Insolvent:** The one who is unable to pay one's debts.
- **Harmonious:** Balanced.
- **Tenure:** A fixed period of office.
- **Impeachment:** An act of officially accusing for a serious crime or offence.
- **Minimum Wages Act, 1948:** An Act to provide for fixing minimum rates of wages in certain employment.
- **Nominate:** To propose formally that somebody should be chosen for a position, an office, etc.

Chapter 5 - Legislature

In India, the parliamentary form of government is adopted at the centre by adopting bicameral legislature.

Legislature helps people in holding the representatives accountable.

In India, there are two houses of parliament Lok Sabha and Rajya Sabha.



- Lower House of Parliament is called the Lok Sabha which consists of 545 members.
- Members of the Lok Sabha are called Members of Parliament (MPs), who are elected on the basis of universal adult franchise.
- Two Anglo-Indians are nominated by the president if he feels that Anglo-Indians have not been represented suitably in the parliament.
- Lok Sabha has a speaker who presides over its session.
- Upper House of Parliament is called the Rajya Sabha having 250 members out of which 238 are elected by State Legislative Assemblies and 12 members are nominated by the President.
- Vice President of India is the ex-office Chairperson of the Rajya Sabha.
- Lok Sabha enjoys the powers of making laws, to enact Money or non-Money Bills, approves taxation, budgets and annual financial statement, amends constitution, etc.
- Rajya Sabha enjoys the powers to suggest amendments to Money Bills, exercise control over executives and can give power to make laws on matters included in the state list.
- Parliament uses the various devices to have a parliamentary control over its executives as financial control, deliberation and discussion, approval or refusal of laws and no confidence motion, etc.

Important terms:

- **Bill:** A bill is a draft of the proposed law, which can be of different types.
- **Defection:** If a member remains absent in the House, when asked by the party leadership to remain present or votes against the instructions of the party or voluntarily leaves the membership of the party.
- **Budget:** It is the detail of income and expenditure of a country's income from taxes and how it will be spent, i.e. on annual government statement.
- **Deadlocks:** A statement in mutual negotiations.
- **Ordinance:** An order, rule of law made by government or authority who is entitled for the same.
- **Question Hour:** A period of time to put up with the questions by members of parliament to the ministers.
- **Zero hour:** It starts at twelve noon immediately after the question hour.



Chapter 6 - Judiciary

Judiciary is an independent body to settle down the disputes arisen between the individuals or groups or government on the basis of the rule of law.

- Rule of laws ensures supremacy of law which safeguards the rights of individuals, settles disputes and ensures that democracy does not give way to individual or group dictatorship.
- A judiciary should be independent means executive or legislature should not interfere either in the functioning or decisions of the judiciary as well as judges could perform their duties without any fear or favour.
- Constitution of India has the provision for single integrated judicial system.
- Provisions for Supreme Court of India have been made consisting a Chief Justice and 25 other judges.
- Judges of the Supreme Court are appointed by the President after consultation with such of judges of the Supreme Court and of the high courts in the states as the President may deem necessary for the purpose.
- Judges of the Supreme Court holds the office till the age of 65 years.
- Judges' salaries (Supreme Court) are determined by the Parliament by law, which are specified in the second schedule.
- A judge of the Supreme Court or the high court can be removed only on the ground of misbehaviour or incapacity. If some charges are imposed against the judges, it must be approved by special majority in both the houses.
- When the office of Chief Justice falls vacant, the duties may be performed by the other judge of the same category to whom the President may appoint for the same purpose.
- Supreme Court exercises its jurisdiction in the form of Original, Writ, Appellate, Advisory and Special Powers.

Original: To settle disputes between the union and the states and among states.

Writ: Can issue constitutional writs to protect fundamental rights of the people.

Appellate: Tries appeals in civil, criminal and constitutional cases.



Advisory: Advises the President on the matters of public importance and law.

Special powers: Can grant special leave to an appeal from any judgement or matter passed by any court in the territory of India.

- Decisions of Supreme Court are binding on all courts. It can transfer the judges of high courts, can move cases from any court to itself or can transfer cases from one high court to another.
- High court hears appeals from lower courts, can issue writs to resort fundamental rights, can deal with the cases within jurisdiction of the states and exercise control and superintendence over its subordinate courts.
- District court deals with the cases arising in the district, consider Appeals on decisions given by lower courts and decides cases involving serious criminal offences.
- Subordinate courts to Supreme Court and high courts consider cases of civic and criminal nature.
- The Supreme Court is considered as the guardian of the constitution.
- Judicial review stands for the power of the Supreme Court to examine the constitutionality of any law.
- Public Interest Litigation or Social Action Litigation is to hear cases where case is not filed by aggrieved person but by others on their behalf or consideration of an issue of public interest.

Important terms:

PIL or SAL: Public Interest Litigation or Social Action Litigation.

Lok Adalats: The popular courts to decide cases at quicker speed.

Original Jurisdiction: A power granted to a court to hear cases in first instance.

Appellate Jurisdiction: A power granted to a higher court to hear appeals against judgement of lower court.

Election Petition: To request to a court to reconsider the fairness of election's results.



Chapter 7- Federalism

Federalism is a distribution or share of power or an institutional mechanism to accommodate two sets of politics one at the regional level and the other at the national level.

- A culture of trust, cooperation, mutual respect and restraint helps federation to function smoothly.
- Federation is an instrument to bind various states into one bond, i.e. it appeals unity in diversity.
- The constitution of India has made provisions for unitary and federal forms of government.
- The one government is created for the entire nation, i.e. national government and other for each unit known as the state government.
- The federal features of constitution are written constitution, partly rigid and partly flexible, Division of powers between the central and state governments and Bicameral Legislature.
- The constitution of India has provided the division of power on the basis of matters and lists of the subjects, i.e. the union list, the state list and the concurrent list.
- On the subjects of union list, the central government enjoys the power to pass the laws and the subjects are of national importance, i.e. defense of the country, foreign affair, currency, etc.

State government can legislate the laws on the subjects in the state list which are important for a state, i.e. police, local government, to maintain law and order, etc.

On concurrent list, both the central and state governments can legislate laws which include education, marriage, divorce, economic planning, etc.

Relationship between the center and state can be classified into the legislative, administrative and financial relation.

Finance commission of India is an independent commission created by the constitution of India, to make recommendations on the distribution of finances between the center and the states.



Most extra-ordinary feature of federal arrangements created in India is that many states get a differential treatment, i.e. Jammu and Kashmir where the central government enjoys only limited powers and other powers listed in the union list and concurrent list can be used only with the consent of state government. (Art. 370)

Division of powers in the constitution of India has been referred as follows:

- **Union list**-Defense, Atomic Energy, Foreign Affairs, War and Peace, Banking, Railways, Post and Telegraph, Airways, Ports, Foreign Trade, Currency and Coinage to be made laws by union legislature only.
- **State list**-Agriculture, Police, Prison, Local Government, Public health, Land, Liquor, Trade and Commerce, Livestock and Animal Husbandry, State public services to be made laws by the State legislature.
- **Concurrent list**-Education, Transfer of property other than Agricultural land, Forests, Trade unions, Adulteration, Adoption and succession to be made laws by both the union and State legislature.

Residuary powers include all other matters not mentioned in any of the lists. Cyber law, hence, union legislature alone has power to legislate laws on such matters.

Indian constitution has created a strong central government to handle the social- economic problems of the counting in cooperation with the state governments.

Many states as well as the political parties have demanded that states should have more autonomy.

Role of governor has always been a controversial issue between the central and state governments especially when two different parties are in power at the centre and the state, his role becomes more controversial.

There are the disputes when states demand more autonomy from the centre and on the issues like share in revenue resources as well as disputes have been arisen between two states and among more than two states.

Constitution has some special provisions for some states given their peculiar social and historical circumstances,



i.e. the eastern states like Assam, Nagaland, Arunachal Pradesh, Mizoram, etc.

Chapter 8 - Local Governments

Local government is the government at the village and district level involving the day- to-day life and problems of ordinary citizens.

- Local government ensures people's participation in the meaningful manner to run the administration.
- Development at any place can be done through the cooperation of the people living at that particular place only.
- Earlier the self-governing village communities existed in the form of 'Sabhas' (Village assemblies) and later on it was converted into 'Village Panchayat' (an assembly of five members)
- Under the Government of India Act 1979, Village Panchayats were established in a number of provinces and continued after the Government of India Act, 1935.
- During India's freedom movement, Mahatma Gandhi strongly pleaded for decentralization of economic and political power to ensure local involvement to be successful.
- Central or State Governments cannot tackle the problems faced by people in such a large country, hence the involvement of local authorities was felt to sort out the local problems known as local self-government.
- Local self-government manages the local affairs by the representatives who knows the best about local needs and aspiration of people.
- In the big cities of India like Delhi, Mumbai, the Municipal Corporation look after the interests of the people and in small cities, Municipal Committees look after the interest of the people.

In 1882, the Viceroy of India, Lord Ripon, created the local boards in the form of local government.

- In 1992, the 73rd and 74th constitutional amendments were passed by the parliament.
- The 73rd amendment is about rural local governments known as Panchayati Raj institutions, it demarcated the levels of Panchayati Raj in Gram Panchayat the base, Panchayat (Block) intermediary and the Zila Panchayat apex.



- The 73rd amendment included the three tier structure (mentioned above), elections at every regular interval of five years, reservations for SC's, ST's and OBC's and 29 subjects from state list in eleventh schedule of constitution were transferred to Panchayati Raj Institutions (PRI).
- The 74th Amendment dealt with the Urban local bodies or Nagarpalikas. This is a repetition of the 73rd amendment except that it applies to the Urban areas only.

Sometimes, the formation of the local bodies is criticized on the ground not to change the way in which decisions are taken at the central and state level and the people at the local level do not enjoy much power of choosing allocation of resources.

The dependence of local bodies on the state governments and Central Government for financial support has greatly eroded their capacity to operate effectively.

Chapter 9 - Constitution as a Living Document

Constitution of India was adopted on November 26, 1949 and its implementation started from January 26, 1950.

- Since 1950, the same constitution has been continuing to function under the framework to be operated in the country.
- Basic structure of our constitution cannot be changed and has been made as per the suitability of the country.
- Article 368 states that parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this constitution in accordance with the procedure laid down in this article.
- Constitution of India is partially rigid and partially flexible because some amendments can be made by a simple majority of Parliament and some require at least 2/3 majority of parliament with ratification by the legislatures of at least one half of the states.
- Some amendments require a special majority of Parliament in both the houses separately.
- A living constitution refers to the amendments made without changing the basic structure of the constitution, which has been resulted due to judicial interpretation.



As a '**Living Constitution**', it responds to the experiences arisen in different situations from time to time.

- For example, the Supreme Court held in the case of reservations, which cannot exceed 50% of total seats in jobs and educational institutions.
- This was the only decision of the Supreme Court to emerge creamy layer who were not entitled to be benefited under reservations.
- Supreme court even gave the Keshavanand ruling in 1973. In the past three decades, this ruling has governed all interpretations of the constitution and all institutions in the country have accepted the theory of the basic structure.
- On 26 January, 2014, the constitution of India completed 64 years and it has been amended a number of times, but its basic structure has not been changed, only explanations took place.

Chapter 10 - The Philosophy of the Constitution

The laws and moral values are interrelated with each other.

Hence, the Constitution of India is democratic, secular, federal, liberal, egalitarian, open to community values as well as sensitive towards the needs and aspirations of the peoples to maintain integrity of the county.

Philosophy of the constitution does not contain only moral content but mediate between the various interpretations of the core value of Indian polity.

- Constitution of India has made the arrangements to protect the rights and interests of SCs, STs, Minorities by providing the reservation of seats in the legislatures for them.
- Same reservations have been made for them even in government jobs also to secure their interest.
- Constitution of India is a supreme law to be respected and accepted by the institutions and citizens both because only this protects the fundamentalities of citizens and country.
- Constitution of India experiences the federal character because it distributes the powers between the central government and its constituent units, it is a written document, it is partially flexible and partially rigid.



Notes

- Judiciary of India is supreme, and the bi-cameral legislature exists in India.
- Constitution has a centralized idea of national unity as its preamble outlines the objectives of constitution by providing justice, equality, fraternity, liberty and unity and integrity of the country.

The philosophy of the constitution can be approached by getting the concept of constitution in a clear manner, grasping or analyzing the set of ideals in constitution as well as a detailed justification for the same.

Philosophy of the constitution mainly emphasizes on peaceful and democratic measures to develop a democratic transformations in the form of equality, freedom and national unity and integrity.



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