

Making of the Constitution

CONSTITUTION:

Constitution is a set of written rules that are accepted by all the people living in a state.

According to Gilchrist, "The constitution of state is that body of rules or laws, written or unwritten, which determines the organisation of govt., the distribution of power to the various organs of the govt., and the general principles on which these powers are to be exercised."

According to John Austin, "That which fixed the structure of supreme Govt. is known as constitution."

According to Dicey, "The Constitution of a state consists of all rules which directly or indirectly affect the distribution and exercise of sovereign power in the state."

Constitution is required because of following reasons:

- i. It develops a mutual trust, a coordination which is necessary for different kinds of people to live harmoniously.
- ii. It highlights the structure of governments, their composition and division of powers.
- iii. It specifies the limits on the power of the government.
- iv. It specifies the rights of people guaranteed.

NEED OF A CONSTITUTION: -

The need of constitution can be explained in following points:

i. Constitution allows coordination and assurance: To solve problems of diversity in countries, it is necessary that people should live on the basis of some rationally agreed basic rules. The basic rules would clarify the rights and claims of individuals so that there are no conflicts. Only constitution of a particular country can provide basic rules, which will be helpful in maintaining minimum coordination and assurance amongst members of a society.

ii. Clarifies power of decision-making: Constitution lays down basic principles according to which a state is governed. It clarifies the type of Govt. and established a clear line of hierarchy of division of powers based on decentralization. The powers of law making, independent and impartial judiciary, way of choosing representatives, clear cut demarcation of powers between organ of Govt., centre and state all is specified by the Constitution.

iii. Limitation on the powers of government: The Constitution of a country puts a limit on the powers of the govt. to impose restrictions on its citizens. These limits are necessary as in absence of these limits, Govt., may enact laws which are unfair or prohibit people from freedom of religion, speech, expression, arbitrary arrest, discrimination which puts a limit on the power of a govt. and common way of protecting people is by guaranteeing them fundamental rights which no govt. can violate.

iv. Aspiration and goals of a society: The constitution of a country enables the govt. to fulfill the aspirations of people and lay foundation just society.

v. Fundamental Identity of People: The constitution expresses the basic and fundamental identity of people by agreeing to a set of norms on how one should be governed and who should be governed.

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JOB OF A CONSTITUTION:

- It helps to determine the nature of the Govt. of a country.
- It explains relation between three organs of government.
- It lays down fundamental rights of citizens.
- It lays down detailed description of election process, assessment of the works of president and PM.
- Described function, system and nature of judiciary.
- It lays down fundamental duties and directive principles of state policy.
- Constitution is ultimate source for all the part of govt.

CONSTITUTION DEVELOPMENT OF INDIA:

Actually it began from 1773, with the Regulating Act. Under this act East India Company got right to trade with India and govern it for 20 years.

Pitt's India Act, 1784: - it reduced number of members of Governor General's council from 4 to 3.

Charter Act, 1793: - It provided more powers to Governor General.

Charter Act, 1813: - India was ruled under British rules and laws. Role of Christian missionaries-sum of Rs. 1 lac to be spend on Indian education.

Charter Act, 1833: - Law making powers to Governor- General Council.

Appointment to Govt. services on basis of merit.

Charter Act, 1853: - Authority of East India Company was over.

Govt. of India, Act 1853:

- Govt. authority transferred to British Crown.
- Administration of the Country under Secretary of state.
- Creation of Indian council-15 members 8 by British Govt. and by east India Company.
- British control over budget.

Indian Councils Act, 1861: - Governor General's council enlarged, beginnings of Deptt. system, enlargement of Central Legislative Council, Provincial Legislative Councils, formation of new provinces.

Indian Councils Act 1909 (Morley- Minto Reforms): - Enlargement of Central legislative councils, provincial councils, legislative councils and communal electorate system.

Govt. of India Act, 1919: - Montague Chelmsford Reforms. Increase in powers Council.

Govt. of India Act, 1935: - Full responsible Govt. in the provinces, all India federation, division of powers, safeguard and reservation, federal legislative increase in franchise, federal court, supremacy of British parliament and abolition of Indian Council.

In year 1940, British Govt. accepted demand of constituent assembly and constitution making in August offer of 1940.

1942, Cripps Proposal: - Making of new constitution was to rest solely in Indian hands.

Cabinet Mission plan, 1946: -

- Federation set up.
- Solution of communal questions.
- Provincial subjects.

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- Indian states.
- Rejection of Pakistan demand.
- Constituent Assembly.
- Interim Govt.
- Position of Governor General.
- Transfer of power.

FORMATION OF CONSTITUENT ASSEMBLY:

It was formed in 1946. It had 389 seats in which 292 from British India, 93 from Princely states and 4 from chief provinces. The election system adopted for election of constituent assembly members was indirect system. After elections, 210 seats were won by INC, 73 by Muslim league and 3 by other small parties.

FIRST SESSION OF CONSTITUENT ASSEMBLY:

It was held in December 1946. Sachidamand Sinha presided it and Dr. Rajinder Prasad was unanimously elected as Chairman. Among various committees working for making of Constitution Drafting Committee held its first meeting on Aug. 29, 1947, under Chairmanship of Dr. Bhim Rao Ambedkar. Following were the six members:

- N. Gopalaswamy Ayanger.
- Alladi Krishnaswamy Ayyar.
- K. M. Munshi.
- Mohammad Saadullah.
- N Madhav Rao.
- T. T. Krishnamachari.

DRAFTING COMMITTEE:

It considered all the suggestions by all committees and places final draft before constituent assembly on Feb. 21, 1948. The draft was discussed by Assembly for 8 months and finally on 26th Nov., 1949 was passed and implemented on January 26th, 1950.

EFFECT OF COUNTRY'S PARTITION ON WORKING OF CONSTITUENT ASSEMBLY:

Partition of India affected structure of Constituent Assembly. Now both countries India and Pakistan had to work for their respective constitutions. For some time membership of C. A. was reduced later, seats left by Muslim League were later filled.

29 —→ 235 (states).

93 —→ 89 (Princely States).

OBJECTIVE RESOLUTION BY J. L. NEHRU:

- India is to be an independent, sovereign, republic.
- It is to be democratic union with an equal level of self govt. in all constituent parts.
- All powers and democratic authority of the union govt. And govt. of constituent parts is derived from the people.
- The constitution must strive to obtain and guarantee of the peoples equality of opportunity and equality before law.

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- v. There should be freedom of thought, expressions, belief, faith, worship, rotation, association and action.
- vi. The constitution must provide rights from minorities and people from backward and tribal areas etc, so that they can be equal participants of social, economic and political justice.
- vii. To frame a constitution which should secure for India, a place in world society.

This, resolution was moved on December 13, 1946 and adopted by Constituent Assembly on January, 22, 1947.

SOURCES OF THE CONSTITUTION:

Founding father of Indian constitution wanted a workable constitution, so makers drew inspiration from many sources. These sources are:

- a) **British Constitution**: Parliamentary form of Government constitutional head of state, more powerful lower house, council of ministers responsible to lower house, rule of law.
- b) **USA Constitution**: Preamble, fundamental rights, functions of V-President, amendment of constitution, nature, function and independent states of Judiciary.
- c) **Irish Constitutional**: Directive Principles of state policy, methods of nominating upper house members.
- d) **Australian Constitution**: Three legislative lists, procedure for resolving Centre-State differences.
- e) **Weimer Constitution of Germany**: Powers of President.
- f) **Canadian Constitution**: Provisions of strong Centre, "Union of India".
- g) **South African Constitution**: Procedure of amendment with 2/3rd majority in parliament election of members of Rajya Sabha.
- h) **Government of India Act, 1935**: Federal set up, distribution of powers in three lists, provincial autonomy, office of Governor, Bi-cameral legislature, power of issuing ordinance, structure of Supreme Court.
