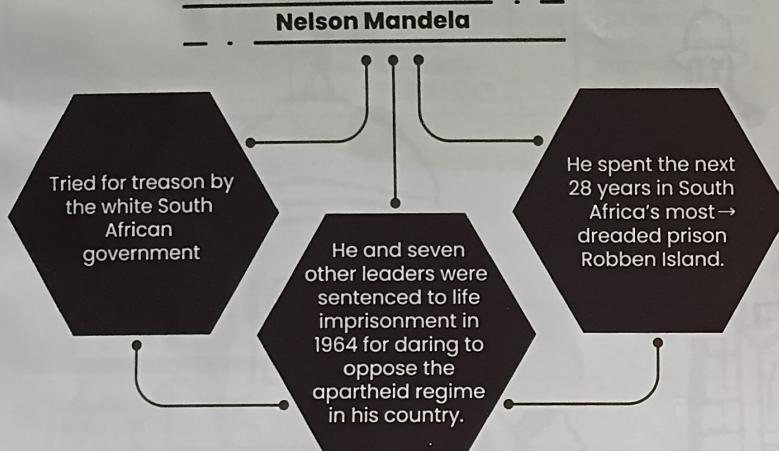


# CONSTITUTIONAL DESIGN



## 1. Democratic Constitution in South Africa



### Struggle against Apartheid

**Apartheid** → name of a system of racial discrimination unique to South Africa

- ✓ Divided the people and labelled them on the basis of their skin colour
- ✓ The native people of South Africa → black in colour → made up about 3/4th of the population → called 'blacks'.
- ✓ There were people of mixed races → called 'coloured' and people who migrated from India.
- ✓ The white rulers treated all non-whites as inferiors → the non-whites did not have voting rights.
- ✓ Since 1950, the Blacks coloured and Indians fought against the apartheid system.
- ✓ The African National Congress (ANC) was the umbrella organisation that led the struggle against the policies of segregation
- ✓ In 1964 → Nelson Mandela and seven other leaders → sentenced to life imprisonment for daring to oppose the apartheid regime in his country.

### Towards a New Constitution

As protests and struggles against apartheid had increased → the white regime changed its policies.

After 28 years of imprisonment → Nelson Mandela released from jail

At the midnight of 26 April 1994 → democracy was adopted as a form of government in South Africa.

After 2 years → A constitution came out → which gave to its citizens the most extensive rights available in any country.

## 2. Why do we need a Constitution?

A constitution is necessary because

It generates a degree of trust and coordination → necessary for different kind of people to live together.

It specifies how the government will be constituted → who will have power to take which decisions.

It lays down limits on the powers of the government & tells us → what the rights of the citizens are.

It expresses the aspirations of the people → about creating a good society.

## 3. Making of the Indian Constitution

Like South Africa → India's Constitution was also drawn up under very difficult circumstances

The country was born through a partition on the basis of religious differences. This was a traumatic experience for the people of India and Pakistan.

### The Path to Constitution

- 1928 Motilal Nehru and eight other Congress leaders drafted a constitution for India.
- 1931 the resolution at the Karachi session of the Indian National Congress → dwelt on how independent India's constitution should look like.

### Factors contributed to the making of our Constitution

Ideals of French Revolution

The practice of parliamentary democracy in Britain

The Bill of Rights in the US

The socialist revolution in Russia

## The Constituent Assembly

July 1946 → Elections to the Constituent Assembly held.

December 1946 → first meeting was held

299 members.

26 November 1949 → adopted the Constitution

26 January 1950 → came into effect → January 26 is celebrated as Republic Day

Dr. Rajendra Prasad was the Chairman of the Constituent Assembly

The Constituent Assembly worked in a systematic, open and consensual manner

First some basic principles were decided and agreed upon

Drafting Committee → chaired by Dr. B.R. Ambedkar → prepared a draft constitution for discussion.

More than 2000 amendments were considered

## Philosophy of Constitution

Explanation of Key terms in the preamble

WE, THE PEOPLE OF INDIA	SOVEREIGN	SOCIALIST	SECULAR	DEMOCRATIC	REPUBLIC
The constitution has been drawn up and enacted by the people through their representatives, & not handed down to them by a king or any outside powers	People have supreme right to make decisions on internal as well as external matters	Wealth is generated socially and should be shared equally by society	Citizens have complete freedom to follow any religion. But there is no official religion	A form of government where people enjoy equal political rights, elect their rulers and hold them accountable.	The head of the state is an elected person and not a hereditary position
	No external power can dictate the government of India.	Government should regulate the ownership of land and industry to reduce socio-economic inequalities	Government treats all religious beliefs and practices with equal respect.	The government is run according to some basic rules.	

### JUSTICE

Citizens cannot be discriminated on the grounds of caste, religion and gender. Social inequalities have to be reduced. Government should work for the welfare of all, especially of the disadvantaged groups.

### LIBERTY

There are no unreasonable restrictions on the citizens in what they think, how they wish to express their thoughts and the way they wish to follow up their thoughts in action

### EQUALITY

All are equal before the law. The traditional social inequalities have to be ended. The government should ensure equal opportunity for all.

### FRATERNITY

All of us should behave as if we are members of the same family. No one should treat a fellow citizen as inferior.

## Institutional design

- ✓ A constitution is not merely a statement of values and philosophy
- ✓ A constitution is mainly about embodying these values into institutional arrangements.
- ✓ It is a very long and detailed document → so it needs to be amended quite regularly to keep it updated
- ✓ The Constitution describes the institutional arrangements in a very legal language
- ✓ Like any Constitution, the Indian Constitution lays down a procedure for choosing persons to govern the country → defines who will have how much power to take which decisions.
- ✓ It puts limits to what the government can do by providing some rights to the citizen that cannot be violated.

## 4. Guiding values of the Indian constitution

### The preamble

A

inspiration from American model

B

The Preamble of the Constitution reads like a poem on democracy.

C

It contains the philosophy on which the entire Constitution has been built.

D

It is the soul of the Indian Constitution