

Introduction to Human Sciences

Political Science: Lecture IV

Salient Features of the Indian Constitution: The Context

- The complex history of Independence
 - Partition and its bloody trail
- Princely states and their stand
 - Hyderabad, Junagad, Jammu and Kashmir
- Centrality of the Identity Question
 - Not a Homogenous Country
- Accommodating many social cleavages aroused by the Nationalist Movement
- The spirit of Liberal-Democracy

The Colonial Legacy and the Philosophy of the Constitution

- Government of India Act of 1935
 - Colonial Law
 - Section 377
 - Personal Laws
- Freedom Conditional at best
 - National Unity, Social Uplift and International Recognition
 - Nation Building as a project
- Constitution as Political and Revolutionary Vision
 - Rupturing a particular relation between time and History
 - Historical past as “social and contemporary fact on which politics does its work”
- Constitution as a framework to contain various contesting claims

The Preamble

- 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, faith 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, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION

The Preamble II

- Sovereignty
 - A government which is not controlled by any other power: internal or external
 - Can frame its policies
 - Formulate Foreign Policy
- Socialist
 - 42nd Amendment to the Constitution
 - Used in the context of economic planning
 - Removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work

The Preamble III

- Secularism

- there will be no 'State' religion – the 'State' will not support any particular religion out of public fund

- every individual is free to believe in, and practice, any religion he/ she belongs to

- State will not discriminate against any individual or group on the basis of religion

- Democratic Republic

- Government is elected by the people, it is responsible and accountable to the people

- universal adult franchise, elections, fundamental rights, and responsible government

Justice, Liberty, Equality

- Justice
 - Basic rights to food, clothing, housing,
 - Participation in the decision-making and
 - Living with dignity as human beings.
- Liberty
 - Liberty of thought and expression
 - Fundamental Rights
 - Directive Principles
- Equality
 - Article 14 -18 of the Indian Constitution
 - Equality Before Law
 - Equality of Opportunity
 - Prohibition of Untouchability

Fraternity, Dignity, Unity and Integrity

- There was a need for harmonious co-existence among various religions, linguistic, cultural and economic groups.
- Inclusion of phrases like 'dignity of individuals', 'fraternity among people' and 'unity and integrity of the nation' in the Preamble highlight such a need
- In view of the centrifugal tendencies which emerged in the country after a few years of Independence, it would not seem impertinent, if not undesirable, to insert the word 'Integrity' in the Preamble to the Constitution

Fundamental Rights

- Part III of the Constitution
- Six kinds after the Right to Property was repealed –
 - Right to Equality (Articles 14–18),
 - Right to Freedom (Articles 19–22),
 - Right against Exploitation (Articles 23 and 24),
 - Right to Freedom of Religion (Articles 25–28),
 - Cultural and Educational Rights (Articles 29 and 30), and
 - the Right to Constitutional Remedies (Article 32)
- Right to Education (Article 21A) (2010)
- Supreme Court Ruling
 - Right to privacy is an intrinsic part of *Article 21* that protects life and liberty of the citizens (2017)

Fundamental Rights II

- Conscience and soul of the Constitution
- Common platform on which divergent political ideologies and practices may meet
- Stress on the rights of citizens
 - Article 15 (prohibition of discrimination on the basis of religion, race, caste, sex, place of birth, or any of them),
 - Article 16 (equality of opportunity in the matters of public employment),
- Article 32, the Supreme Court is given the original jurisdiction to entertain the petition of a person whose fundamental right has been infringed
- Abolition of Fundamental Rights in a state of emergency
- Negative Injunctions as well as positive obligations
 - Article 17 stands for the abolition untouchability,
 - Article 15(2) prohibits the disability of any citizen in the use of shops, restaurants, wells, roads and other public places on account of his religion, race, sex, or of birth, and
 - Article 23 bars the practice of begging or forced labour in any form

Fundamental Duties

- Forty-second Amendment Act, 1976
- Part IV-A of the Constitution under Article 51-A
- Set of ten fundamental duties is supposed to be only moral exhortation to the citizens of the country to inculcate a sense of patriotic and sensible citizenship, without any legal justiciability
- Inconsistencies
 - one of the fundamental duties asks every citizen of the country to develop a scientific temper and spirit of enquiry. But with bulk of the people still illiterate, how is this possible?

Directive Principles of State Policy

- Part IV of the Constitution (Articles 35–51)
- Positive obligations of the state towards its citizens
- Not enforceable by courts but it is the duty of the state to apply these principles in making laws
- Constitutional Status of Directive Principles
- Article 38, broadly defining the core content of the directive principles, envisages that the state shall strive to promote the welfare of the people by effectively ensuring a social order in which justice—social, economic, and political—shall pervade all the national institutions in the country

Federalism

- Although federal in soul, Indian Constitution combines a number of provisions that may facilitate its conversion into a patently **unitary** structure in accordance with the needs of the time
- Centre-state relations in the country are the biggest example of the “quasi-federal” structure
- Seventh Schedule of the Constitution contains three lists—Union, State, and Concurrent
- Concentration of powers in the hands of the Central Government
 - Article 249, if the Rajya Sabha resolves by two-third majority that it would be prudent for the Parliament to legislate on a subject of the State List in “national interest”, the Parliament is authorized to legislate on the said subject.

Federalism II

- The Central bias is also visible in the case of administrative decisions
 - according to Article 257, it has been provided that the executive power of the Central Government also extends to the giving of such directions to the states as they may appear to the Government of India to be necessary for the purpose
- Centre-state financial relations
- Article 356, which lays down that if the President is satisfied, on the basis of the report of the Governor or otherwise, that a situation has arisen in which the government of a state cannot be carried out in accordance with the provisions of the Constitution, he/she may, by proclamation, impose a state of emergency resulting in the imposition of President's rule in that state (Counter measures placed after 1994)

A Shift in the Bias

- Congress Inability to function as an Umbrella body
- 1989 election – a turning point in the federalization process – increase in Autonomy of the State
- Rise of BJP
- Prominence of many regional parties and A multi-party system
- Coalition Governments through the 1990s.
- Liberalization-Privatization in 1991
- Changes in Judicial Behaviour
 - Federalism to be considered as the within the purview of the “basic structure of Constitution”
 - Judicial Review in matters of State Emergency

Parliamentary Government

- Two choices for the framers
 - Constitution on the village and its panchayats and erect upon them a superstructure of indirect, decentralized government in the Gandhian manner
 - opting for the Euro-American constitutional traditions, reflected in the form of parliamentary system
- Congress Bias against Gandhian ways, Commitment towards Socialism, Considerations of Unity and Integrity of the Country and Considerations of Universal Adult Franchise
- Nehruvian democratic government – Crisis of Congress – Rise of BJP- Era of Unstable Coalition Politics – Stable Coalition Governments

Panchayat System

- 73rd Amendment, 1992
- Three Tier System
- Village Panchayat
 - Lowest Administrative Unit
 - Elected Representatives
 - Accountable to the General body or Gram Sabha
 - Levy certain taxes and duties to meet their expenses
- Panchayat Samiti
 - Take charge of all aspects of development in rural areas
 - Coordinate the activities of the various Panchayats within its jurisdiction
- Zilla Parishad
 - apex of the three-tier structure
 - performs co-ordinating and supervisory functions
- All bodies have special provision for reservations for Women and Scheduled Caste/Tribe