

## Polity Class 02

17th May, 2023 at 9:00 AM

### REVISION OF PREVIOUS CLASS (9:07 AM):

- A constitution is needed to clarify the relationship between the citizens and the state.
- Constitution restricts both the authority of the state and the rights of the citizens in a reasonable manner.
- Hence, the rights available to citizens are not absolute and are reasonably restricted for the common good of everyone.
- **For example-** despite the citizens enjoying the right of movement, movement in tribal areas is restricted through some conditions like the **Inner Line Permit** system.
- The restrictions laid down by the state cannot be arbitrary and they must be lawful.

### Functions of a constitution:

- It provides us with an organizational framework of the state, that is it tells us who would make the laws, who would execute them, etc.
- It tells us about the rights and the limitations on the rights of the citizens.
- It provides the powers as well as the limitations on the powers of the state.
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#### Note:

- The above "state" must not be confused with the smaller administrative units that we use normally- Gujarat, Goa, etc.
- The "state" here refers to a concept of political science which means the overall system that any nation follows.
- This state refers to the overall Judiciary+ Legislature + Executive.

- It tells us about the basic philosophy of a nation.
- It defines the relationship between different administrative units of the state.
- - **Dr. Ambedkar:** "The constitution will be as good or as bad as the ones who are implementing it".
  - Simply the existence of a constitution does not mean that the constitution will be successfully implemented.

#### **REASONS FOR THE SUCCESS OF THE CONSTITUTION (9:30 AM):**

- I. It should be written by those who have credibility, are respected, and also represent the different sections of society.
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#### **Formation of Constituent Assembly (CA)1946:**

- The Constituent Assembly could not be directly elected by the people because of the chaos and confusion surrounding the final stage of British rule in India.
- The CA had some members nominated by the Princely States( which did not have any democracy) and most of the members were elected by the people.

- The elected members were not elected by the people directly, but they were nominated by the members of provincial assemblies.
- Even the members of the provincial assemblies were elected only by a certain section of the society (on the basis of paying tax and educational level).
- The constituent assembly was hence not "popularly democratic " by present-day's standards.
- Nevertheless, the CA had members from all sections of the society.
- The CA had some of the most learned and accomplished minds in India.
- The CA did not give credit to any single person- even **Dr. Ambedkar** said that **Sir Alladi Krishnaswamy Iyer** had contributed much more than him.
- Tribal leader **Jaipal Singh Munda** told the CA that the tribal communities are placing their faith river the CA to address the historical injustice that they have faced.

- Despite the fact that most members of the CA came from the Indian National Congress(INC), the INC of that time was a very inclusive body with wide membership.
  - This is why the Constituent Assembly and the constitution drafted by it later got public acceptance.
- **II. The constitution must consist of something for everyone, especially the marginalized sections of society.**
  - As can be seen through **Articles 15(3)**( Special provisions for women and children), **16(4)** (Reserving government posts for backward classes), **17** (Abolition of untouchability), **29** ( protection of languages, culture ) **30** (establishing educational institutions by religious & linguistic minorities), etc. are providing special measures for the upliftment for the marginalized sections.
  - The constitution should be followed and respected and everyone should be governed according to the constitution without any discrimination.
  - This caused the rule by law and not the rule by men.
  - Since its beginning, many experts have expressed their doubts regarding the survival of the Indian constitution.
  - **Sir Ivor Jennings** believed that the Indian constitution is too verbose and rooted in history and it will not survive for long.
  - In comparison, the constitution of **Sri Lanka (Ceylon)**, which had been drafted with insights from Sir Ivor Jennings, could not survive more than 6 years.
  - The Indian constitution has certainly not been perfectly implemented, but we still have made tremendous progress in its implementation.

### **III. THE CONSTITUTION MUST BE RIGID AND FLEXIBLE (10:15 AM):**

- A successful constitution must be able to adapt to the requirements of the time.
- But at the same time, it should not be able to completely change to protect it from any adverse changes.

#### IV. The Constitution must have **Constitutionalism**:

- Constitutionalism is both a concept, ingredient, and objective of a good constitution.
- The basic idea of constitutionalism is restricting the powers of the state.
- The constitution can be of both types- **Written** (USA, India, etc.) & **Unwritten** constitution (UK, Israel, etc).

#### **COMPARISON OF TYPES OF CONSTITUTION (10:35 AM):**

##### **Written Constitution:**

- All the provisions are written and codified in one place.
- A special body (Constituent Assembly) was created which made the constitution.
- This constitution then created the organs of the states - Legislature, Judiciary & Executive and provided them authority and restrictions.
- The legislature can amend the constitution, but only within the boundaries set up by the constitution.
- The underlying idea is **constitutional superiority**.

##### **Unwritten Constitution:**

- Citizens first chose a parliament and then gave it the powers to make the constitution.
- This constitution prepared by the parliament mentions the functions and authorities of the organs of the state- legislature, judiciary, and executive.
- The underlying idea is **parliamentary supremacy**.
- All the laws made by the parliament are part of the constitution/constitutional laws.
- Parliament in this case can make arbitrary laws because there is no restriction.
- Constitutionalism can be present with or without a written constitution.
- The actual implementation of the constitution, or values of constitutionalism depends upon the culture and societal perception of the parliament.
- **For example-** the British parliament enjoys much more public respect than we see in India.

### CONSTITUTIONALISM (11:00 AM):

- It is the concept according to which the powers of the state should be limited in nature.
- And these limitations must be imposed by the Constitution itself.
- In other words, constitutionalism protects the Constitution and the citizens from excessive actions of the state.
- **For Example:** As per **Article 13**, the state cannot make a law that is against the provision of fundamental rights of the citizens.
- The Supreme Court in the **Kesavananda Bharti Case 1973** held that the Parliament does not possess unlimited powers to amend the constitution.
- Also, any amendment must not disturb the basic idea of the Constitution.

### Significance/Importance of Constitutionalism:

- It prevents the state from becoming despotic/authoritarian.
- It keeps a check on the arbitrary actions of the state.
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### Answer Writing Insights:

- Students must avoid trying to replicate answers in the exact manner that they read in books or class notes.
- That will take up much time for memorizing, and there will be more chances of committing errors.
- Students are expected to understand the concept, and later write the answer as per the word and time limits.

- Though good command of English can be helpful for the exam, students are not expected to have a very high-level vocabulary.
  - Students must at least take care to frame grammatically correct sentences that properly convey the meaning.
  - English and answer-writing skills will improve with practice.
- It protects the liberty of the citizens from the excessive actions of the state.
  - To preserve the basic values and principles of a democratic society.
  - To protect a diverse culture and the traditions of a society.
  - To protect the Constitution itself.

#### **CONSTITUTIONALISM WITHOUT A WRITTEN CONSTITUTION (11:35 AM):**

- It is possible to have constitutionalism without having a written constitution, as in the case of the United Kingdom.
- Constitutionalism is dependent upon **several factors**:
- I. The history of institutions.
- II. Societal values and attitudes towards those institutions.
- III. Provisions of the Constitution.
- Simply having a written constitution is not enough to ensure constitutionalism.
- There have been countries' written constitutions in the past that lagged behind constitutionalism.

#### **Drafting of the Constitution:**

- The constitution was written by the Constituent Assembly which had 299 members who were indirectly elected by the members of the provincial assemblies, and a few others who represented the princely states.
- The constitutional adviser to the assembly was given the responsibility of framing the initial draft.

- Among the 299 members of the Constituent Assembly, various specialized committees (like Fundamental Rights, Union Affairs, etc.) were formed for convenience.
- The reports of each committee were then discussed extensively in the Constituent Assembly.
- The Constitutional Adviser **Sir B N Rau** then made a draft constitution as per the discussion.
- The draft constitution was then sent to the **Drafting Committee**, which then presented an updated draft constitution.
- Each provision of the Draft Constitution was extensively discussed in the Constituent Assembly.
- At this stage, even amendments were proposed, debated, and included in the Constitution if they got passed.
- The constitution-making procedure was completed by **26 November 1949**, and many provisions of the constitution were implemented from that day itself.
- The whole constitution came to force/adopted on **26 January 1950**.
- This date 26 January was chosen as a tribute to the historic **Indian National Congress Lahore Session 1929** where the INC resolved to attain **Purna Swaraj**.

**The topic for the next class is the continuation of constitutional basics.**