Law- 3.0

Law and morality

Law and Public opinion

Law and Liberty

Constitutionalism

Evolution of Constitutionalism

Types of Constitution

The constituent assembly

The preamble

Features of Indian constitution

Law and Morality

Contd.

Affinity Between Law and Morality

The state is founded on the minds of its citizens, who are moral agents. Therefore, morality plays an important role in shaping the legal system of the state. Rightly put forth by Plato, “the best state is that which is nearest in virtue of the individual. If any part of the body-politic suffers, the whole body suffers”. This organic view was hence, the essence of Greek political philosophy.

Modern political thought also believes that the individual and the state are inherently connected, and both act and react upon each other. Man can be at his best only within the state and without state it cannot be anything, because state is the facilitator of liberty, equality and justice. It is man-made and a rational institution.

Since ancient times, there were certain non-codified rules of conduct that shaped an individual’s decision and thereby the decision of society as a whole, of right or wrong. They were customs, predictions and other religious activities and some derived their reasoning from natural justice. These norms eventually became the moral fabric of society and hence when we talk about contemporary legal systems, ideas of such ethical standards affect the laws of the state too. For example, the Hindu code bill, the forest rights act, untouchability laws etc.

Thus, the state here performs a direct function in relation to morality and it takes 2 forms while doing so.

1. Positive function
2. Negative function

Positive function

The positive function of the state is to make laws which are conducive to the general happiness and are in accordance with the moral beliefs and sentiments of all sections of the community. For instance, it is a moral sin to differentiate between human beings on the basis of certain unjust social constructs, like the notion of untouchables. And hence the constitution of India had enacted the provision where this practice is a penal offence. Such a law adds to the moral stature of men in this society and adds value to it. Similar instances in Indian scenario can be witnessed by the provisions of reservation that promotes positive discrimination, etc. Such a function is based in the concept of utilitarianism.

Negative function

Since our standards of right and wrong change, so laws too must change in conformity to such changes. Therefore, when a state repeals a bad law either by itself or as a result of public protest in special circumstances, this move is known as negative function. For instance, the practice of sati in India was prohibited by the constitution of India ensuring that such an unjust custom doesn't become a part of the moral fabric of the contemporary society. The immorality of today can become illegality of tomorrow and hence McIver regarded the state as the condition of morality.

Views of analytical school of thought on law and morality

Analytical school of law made the primary argument that there was a strong distinction between law and morality. Analytical school gained prominence in the 19th century, as against the natural school of flaw which predominated the juristic thought for a very long period of time. In the opinion of a few writers, naturalist thinkers believed that love was derived from reason, justice and most importantly morality and nature. And the analytical school of thought was basically the reaction against these assumptions of natural school. It held that morals were not objective in nature as they differ from person to person and from society to society, and against this, laws ought to be objective in nature.

John Austin is the main proponent of this school. Rivers of the opinion that laws have nothing to do with morality and that both are independent entities. This school believed that all the considerations including morals and ethics should be separated from the study of law since the element of objectivity was challenged. This

school did not deny the existence of morality however it opined that morals and laws are completely different things. Similarly, another great proponent of analytical school, i.e., Jeremy Bentham maintained that law has just the same center as the morals, but it has by no means the same circumference.

Therefore, the analytical school of thought considers law as a close the system of facts from which all the norms, values, epics and morals are excluded. Though criticized on various grounds since relationship between law and morality exists, such a perception of law gave birth to rational thinking, scientific reasoning and getting away from the notions of perpetual idealism.

The positivist and the naturalist to debate on law and morality

There have been many debates and discussions in academic circles and across early discourses about the role of morality and ethics information of law and vice versa. In this context, the Hart- Fuller debate has been arguably one of the most interesting academic debates in jurisprudence because it demonstrates the distinction between the positivist and naturalistic philosophy of law regarding the role of morality in law.

1). The main proponent of the positivist view is H. L. A Hart. Hart is a positivist and so his primary belief is that there is no necessary connection between law and morality. He was of the opinion that there need not be any moral considerations while framing the laws. Law is a law, whether to obey the law or not is a moral consideration or the personal call of an individual. But not considering it as a law just because it is not matching one's own morality raises a philosophical question. The fact of the matter remains, that a lord does not stop being a law due to a moral criticism of it. According to him, laws consist of primary and secondary rules that imposes duty on citizens and a legal sanction behind it. Therefore, hart advocates that conformity to a certain moral standard is not required for a legal system to exist as, without it, it doesn't cease to exist.

2). The main proponent of naturalist view is Lon fuller. Fuller is a naturalist and he was of the opinion that a law cannot be considered as a law if it doesn't follow a basic moral code. A basic moral code is not only based on ethical values but also on to the principle of rationality. He was of the opinion that last hour away of achieving social order by regulating human behavior and that our legal systems are derived from the norms of justice which have a moral aspect. He implores lawmakers to take into consideration certain moral and ethical standards to ensure smooth functioning of the society. For example, Nazi Germany. Hitler made laws according to the constitutional principles but those laws were against Jews. These last came from a legitimate authority with a legal backing. All standards of law, thereof, why are fulfilled however these laws were against the moral considerations. Therefore, according to fuller, search laws cannot be considered as laws. Similarly, initially USA had lost against black people and so they cease to be laws.

3). According to hart, Nazi Germany is a kind of exception. He had put forth the question as of what exactly was morality. How can one define morality? The answer to this question is that, morality cannot be defined in any specific terms because of its subjective nature and hence it cannot contribute towards making uniform laws. Therefore, the positivists believed that it is indeed very problematic to insert moral considerations in deciding the validity of law.

4). Further on, hart cash criticized these principles given by Fuller. He stated that these principles are only follow the means and the sufficiency and therefore it is not appropriate to call them as moral principles. It is important to note that in the above given 8 principles by fuller, are in a way self-contradictory because they define morality.

However, we could conclude that there is a necessary connection between the two entities, i.e., Law and morality. Though the arguments laid down by analytical and positivist school of thought tend to solve practical problems in human society by scientific observation of legal systems, however, the arguments put forth by the naturalist school is also integral for understanding the inclusive nature of law. It is very clear that the state and its legislature are not the exclusive sources of laws but law originates from a variety of sources ranging from traditions, customs, and morality. Hence, law and morality indeed have a relationship.

Law and Public Opinion

Broadly speaking, public opinion can be defined as an aggregate of individual attitudes or beliefs about a particular topic or issue of public importance held by a significant proportion of the total population. The evolution and generation of the notion of public opinion as a whole took place by the end of the renaissance period, when interest in public affairs was growing steadily as the common man became more educated and aware. Gradually, the 17th and 18th century brought in more sophisticated and advanced means of distributing information, i.e., Via newspapers. This helped in empowering the opinions of the masses and hence building a public opinion that later on went to challenge the powerful institutions of the age like monarchy. It is important to note that the opinion of each and every individual is influenced by a vast array of internal and external factors, thus making it very difficult to predict a public opinion on a given issue. The social, political economic and cultural environment heavily influences the determination of public opinion.

Definitions of public opinion:

According to **R. M. Soltan**, "Public opinion is the adoption by the greater part of the population of a point of view, of a policy and ideal or prejudice put forward by some interested person or a group using the various methods of dissemination or propaganda at their disposal through press, ….., public meetings, radio, advertising and especially communication from person to person'.

According to **Dr. Beni Prasad,** "Public opinion is the opinion of whole body of citizens. He adds that opinion may be regarded as truly public when it is motivated by a regard for the welfare of the whole society".

- This particular definition stresses on the concept of sectional opinion. Opinions which center around a special interest or the special privileges of any religious group or any other class or anyone association can be described as a sectional opinion and hence it cannot be described as a public opinion. However, it is to be noted that even such sectional opinions constitute a major part of public opinion.

Lord Bryce observed that the term public opinion is used to denote the aggregate of the view's men hold regarding the matters that affect our interest the community. He observes that opinion of the whole of nation is made-up of different sets of sentiments. Some may support the view and some may not. Some sentiments develop more strength than others because they have behind them large numbers and more intensity of conviction".

There are certain factors that must be taken into consideration while discussing about public opinion -

- The phrase 'public opinion' has itself no specific meaning
- There is no generally accepted definition of this term
- The area of public opinion research is but, vaguely defined.

According to **Gettle**, "what is generally called public opinion is neither public nor opinion. What is described as public opinion is not the opinion of the public at large and it is not the opinion at all".

- This definition is important point of introspection into the real face of public opinion. he says that the prevailing public opinions are often those of the small minority of an interested class or of the few outstanding leaders in society. the masses are often ignorant or indifferent or misinformed and in this particular sense, public opinion may not really be public in nature. it essentially won't cater to the larger good of the larger population and hence Gettle questions that 'what is public' and 'what is opinion'.

Before defining the relationship between law and public opinion, it is important to understand as of what is 'public' and 'opinion' in specific in the term 'public opinion'.

What is public?

In sociological terms, "public" means a segment of society sharing views on a particular public policy. Walter Lippman points out that public is not a fixed body. It changes with the issue. Public means those persons who are interested in public affairs. He adds that the membership of the public is not fixed and it constitutes interested individuals only. and given this nature, a bleak opinion becomes extremely subjective. such an interpretation is

extremely necessary as it deals with both- the degree of awareness as well as willingness of an individual to become a part of the larger opinion. It clearly reflects upon the fact that how, Blake is not a static body but it changes from one issue to another across society.

What is opinion?

According to Gettle, an opinion presupposes extensive and accurate knowledge on the question under consideration and reasoned judgment or conclusion reached by deliberate thought. Many 'so-called opinions' are rather prejudices, beliefs, hasty conclusions or traditional dogmas. There are only a few numbers of people who possess requisite knowledge which is essential to form an opinion in first place. Therefore, we can say that a layman is very much likely to get influenced by various factors in forming his individual opinion which constituents of the larger public opinion. However, this is not the desired or the ideal way for the formation of a public opinion. In reality instead of common men, special interest groups and intellectual circles attempt to establish a public opinion on issues of the concern to their members. These interest groups may be concerned with political, economic, religious, or social issues or causes and work mostly through various communication mediums. They also tend to manipulate public opinion by exploiting the ignorance of a layperson.

For example, scholars and politically and socially aware individuals like the newspaper editors are called as opinion-leaders. Their editorial columns, newspaper stories are read by millions of people and these people regard the opinion of these opinion leaders as their own opinion. However, despite of the political awareness, it is not necessary that the opinions held by people will always be rational in nature. this is because people have a tendency to be swept away by the waves, meaning contemporary position of a political ideology.

And accordingly, an organized opinion of people on any issue of public concern can be described as a public opinion.

a) Law must take into account public opinion- Law is the expression of the will of the state. In contemporary times, the state is based on popular sovereignty which essentially entails that the people are the source of all political power and government works for public welfare. The state expresses the will of the people and it becomes necessary to include the public opinion while making laws. It should be noted that, the lawmaking body of the state, i.e., the legislature is also a representative body of the people. Therefore, it becomes extremely important to take into consideration the opinion of people while framing laws. If the people's opinion is not taken into consideration, they will agitate, protest, and revolt against the state creating possibilities of anarchy and chaos. for example, the controversy over the Farm Bills in India where public opinion was not taken into consideration and it was merely passed by the ordinance without any parliamentary discourses.

b) If the relationship between law and public opinion is to be organic in nature, then the law should succeed as well as precede the public opinion. According to P.S. Muhar, "Law should not only be firmly rooted in public opinion, it should be little ahead of it". Law should be progressive and futuristic in nature and not only source itself in the public opinion. For example, Abolition of Sati and other social practices.

Law and Liberty

The word ‘Liberty’ is derived from the Latin word ‘Liber’ meaning ‘free’. Liberty is the right of an individual since birth, and it is essentially granted in a civil society. Liberty is the freedom to be ‘you’, freedom to do what you what to do, etc. ‘To be free’ is to be able to translate one’s ideals into reality and to actualize one’s potentialities as an individual. The term ‘liberty’ has different connotations – namely negative and positive liberty. The credit of examining this distinction between negative and positive sense of liberty goes to Isaiah Berlin in his book ‘Two concepts of Liberty’.

In its negative sense, liberty is the absence of obstacles, barriers or constraints. In its positive sense, liberty is understood as freedom under rational and logical restraints for the collective good of the society. In a civil society, positive concept of liberty is accepted where liberty means imposition of certain reasonable restrictions. This means that certain reasonable restrictions on the liberties of people is important for maintaining the spirit of equality and promoting social welfare.

Hence, liberty carries 3 connotations-

1. The notion of Choice
2. The absence of constraints to exercise such choice
3. Existence of conditions that enables you to actualize the choice

Definitions:

According to **G.D.H. Cole**, “Liberty is the freedom of individuals to express without any hinderances, his personality.”

According to **McKenzie,** “Liberty means not the absence of all the restraints but rather the substitution of rational ones for the irrational”.

According to **Harold Laski**, “Liberty is the existence of those conditions of social life without which no one can in general be at his best self.”

According to Harold Laski, “Liberty is the eager maintenance of that atmosphere in which men have the opportunities to be their best-selves.”

Features of liberty:

1. Liberty does not mean absence of all the restraints. It is important to note that while living in a civil society and to keep a check so that the individuals in the society behave responsibly – it is essential to prevent absolutism in liberty.
2. Liberty admits the presence of rational restraints
3. Liberty postulates the existence of such conditions which can enable people to enjoy their rights and develop their personality
4. Liberty is not a license to do each and everything as per one’s aspirations and will
5. Liberty is possible only in a civil society and not in the state of nature. State of anarchy cannot be a state of liberty
6. Liberty is for everyone. Liberty means the presence of adequate opportunities for all so that they can enjoy their rights. It facilitates the development of the best qualities a man possesses by providing a progressive environment.
7. In society, blood is an essential condition of liberty.
8. Liberty is the condition and the most essential right of the people without which the individuals will not be able to exercise other rights as well. It is also one of the most important pillars of democracy and it is very evident that ' right to liberty ' is the most valued one.

Types of liberty

Natural liberty-

Traditionally the concept of natural liberty has been very popular though it has been discarded in contemporary times. Natural liberty is generally identified with unlimited and unrestricted freedom. It is justified on the grounds that since a man is born free, he is to enjoy freedom as he wishes to.

The concept of natural liberty was very much prominent medieval times, when the social contract theory came into existence. The cause of natural liberty was championed by the scholars of this theory- Thomas Hobbes, John Locke and Rousseau. The proponents of this theory held that, before establishment of state, i.e., in the state of nature, there was no legitimate authority to impose rules, laws or regulations onto people for maintaining their behavior. And hence, people were governed by natural laws and each individual had absolute freedom to do what one desires to. However, such an absolutism in guaranteeing liberty to the people in a civil society is not possible. Unrestricted freedom can create anarchy in society as it provides for uncensored activities of an individual and therefore, natural liberty cannot be exercised in a civil society.

Civil liberty-

According to Barker, the liberty that a man enjoys in capacity of an individual person in society is called his civil liberty. It is available to all the individuals equally as members of the society. Natural liberty is, however exactly opposite to civil liberty. Civil liberty is enjoyed only under reasonable restrictions for greater good of the society, whereas in the natural liberty there is no presence of any restraints. It is granted to everyone irrespective of the state, society and space, so it means an individual is entitled to this anywhere. There are two important features of civil liberty-

a) The state guarantees civil liberty- it means liberty under law. Law creates the conditions necessary for the enjoyment of liberty.
b) Civil liberties stand for protection of the rights and freedoms of an individual from undue interference. Technically, it entails- a basic set of rights and freedoms guaranteed to individual as protection from any arbitrary actions.

For example, right to life right to personal safety and freedom, right to speech and expression, etc.

Political liberty-

A person enjoys political liberty in the capacity of a citizen of a state. Therefore, political liberty is an entitlement of member of a state. It essentially entails political freedom of a citizen. Political liberty provides for tangible rights of the people to be represented in decision making process, participate in the functioning of the state, good and adequate opportunities for using political rights, etc. Political liberty involves freedom to exercise right to vote, right to criticize the government policies, right to form political parties and right to change the government through constitutional means. According to Harold Laski, “political liberty means power to be active in the affairs of the state”. It is to be noted that such liberty is possible only in a democracy. It takes into account people’s opinions on issues of public concerns.

Individual and personal liberty-

It means freedom to pursue one's own desires, aspirations, goals and ambitions. However, this should not clash with the similar aspirations of others causing a threat to the liberties enjoyed by our counterparts. Such a type of liberty becomes extremely vital in individual development according to their own capabilities, talents and distinctive nature. Via this, an individual becomes capable of contributing their best services 2 words the development of this society and the state. It includes freedom of speech and expression, freedom of movement, freedom to choose any profession, freedom to profess and not profess their religion, freedom to accept and not accept one particular ideology.

Economic liberty-

Broadly speaking, economic liberty belongs to a man in his capacity as a worker. Laski says, “economic liberty means security and opportunity to find reasonable significance in the earning of one’s daily bread”. In its simplest sense, economic liberty is the freedom of an individual to work, join any services, to trade, set up businesses, etc. It stands for freedom from poverty, unemployment and ability to enjoy one’s economic rights. It is very important to understand that without availability of basic necessities for survival, a man cannot avail for other liberties like civil liberty and political liberty. Therefore, ensuring economic liberty becomes an essential duty of the state. For example; in India, an individual is free to set-up their own start-up businesses given the condition that it does not indulge in anti-national, anti-social or illegal activities.

National liberty-

national liberty is the root cause of civil, personal, political and economic liberty. national liberty stands for right to have a nationality. it is synonymous name for independence of a nation and the opposite of imperialism. National liberty postulates that every nation has the right to establish a sovereign state and can be free from any internal or external control. in the words of Thomas Jefferson, “every man and everybody of men on earth, possess the right to self-government". This liberty includes freedom to have a constitution, freedom to have a government, freedom to adopt the policies and programs of the government, freedom to shape their foreign affairs and socio-political and economic setup.

Relationship between Law and Liberty

- Liberty can be enjoyed only in a Sovereign state

Sovereignty is a necessity of liberty. In simple words, sovereignty of a state means to be independent from internal as well as external influences in decision making process. It is important to understand that any state can make laws only when it is sovereign and independent in nature. These laws have a legal backing and a sanction upon its violation; and all this is derived from the supreme authority of the sovereign. Therefore, while analyzing the relationship between law and liberty, it becomes important to understand that sovereignty plays an important role in formation of the law in first place. Liberty, by nature is an entitlement of a citizen of the state, and the state to provides for the protection of these liberties of an individual if violated by enforcing laws. For this purpose, sovereignty becomes handy. Sovereignty provides content to the liberty, without it the last will be meaningless in nature. It also vests certain powers in the state to punish the lawbreakers or the ones who violate someone else's liberties, without which there will be a situation of anarchy and negation of freedom.

- Balance between Law and Liberty

Imposition of excessive law will lead to destruction of liberty, and on other hand, excessive liberty will lead to mob rule ultimately landing up to anarchy and chaos. Such a situation is incompetent in providing equal availability of liberty to every individual in society and creates an environment where liberty is enjoyed only by certain people. While defining reasonable restrictions in liberty, Harold Laski maintained that “the rule made should embody an experience that one can follow and generally accept”. it simply means that the restrictions imposed should be of such nature that the experience of being ‘free’ - the experience of liberty, it's not compromised or lowered. restrictions should be such that do not compromise this spirit of freedom. However, the fundamental of liberty- reasonable restrictions- cannot be overshadowed. taking into consideration these two extreme stances, one cranberry juice that the idea of sniping a balance between law and liberty is the prime responsibility of the state in order to avoid unrest in the society.

- Conflict between law and liberty

There has been a perpetual relationship between law and liberty. Though, both of these entities complement each other but at the same time, one must question whether it is the law that provides liberty or it takes away the same. Scholars argue that, while liberty is the expression of freedom, law acts as a cap on this expression. In order to understand this constant tug-of-war between law and liberty, we shall analyze 2 cases- imposition of emergency in India and anti-abortion laws in USA.

During emergency which was imposed by the then Prime Minister Indira Gandhi, the fundamental rights of Indian citizens seized to exist except Art 21. Though it was a political propaganda, the freedom of speech and expression, freedom of press, freedom of citizens to move to the courts, and many others like them were directly violated by imposition of emergency provisions. Here we could witness how laws have rather become a direct weapon to infringe upon citizens liberties.

The recent controversy on anti-abortion laws in USA also grounds its argument that no one has the right to decide over a life of the progeny that a woman conceives. And hence abortion is made illegal. Here, though indirectly, the state is safeguarding the right to life of the progeny but at the same time, compromising over the mother's choice and her autonomy over her body.

- Conditions for harmony between law and liberty

Law and liberty will be friendly under the following conditions-

1. When a government in a country is responsive and sympathetic towards people and understands their aspirations
2. When the opposition is effective and criticizes the policies of the government from time to time in order to keep a check over them.
3. When they press makes some constructive criticism about the government's policies and schemes.
4. When the court of law functions independently and fearlessly without any kind of legislative or executive intervention, especially away from power dynamics.
5. When people are vigilant in nature.

The aforementioned conditions entail that law and liberty would complement each other if they are in harmony. the end result will be- social welfare, a progressive society, responsible and accountable government, human capital and vigilant demography.

Liberty in dictatorship and totalitarian state

Is to be noted that, an individual enjoys maximum number of liberties and freedom under a democracy. As against to this, a dictatorship or a totalitarian state guarantees least number of rights and liberties to its citizens. This is because a democracy consistently works towards public welfare, and a totalitarian regime doesn't work for this cause. Doesn't take into consideration individual's aspirations and goals.

1. Therefore, in a totalitarian state, liberty of an individual is absent. Here, laws are passed not to meet the larger interests of the society but primarily for Facilitating the exercise of power.
2. under a dictatorship form of government, people have to give unquestioned obedience to the dictator and laws made by them. people do not have civil, economic and political liberty.
3. Laws doesn't safeguard interests of the people but rather becomes an instrument of operation in the hands of the dictator. these types of government exercises complete control over all aspects of an individual's life and has no room for safeguarding liberties.

Traits of authoritarian government in a democracy

Expansion of the state authority for welfare and imposing too much of dos and don'ts which imposes several restrictions on an individual's liberty. It is believed that the purpose of state is to ensure public welfare and take welfare activities, however when these welfare activities take the shape of moral policing- democracy no longer remains democracy. For example, the state's control over food and eating habits of the citizens.

https://www.thoughtco.com/public-opinion-definition-and-examples-5196466

Liberty: Definition, Nature and Theories (politicalsciencenotes.com)

Constitution

The constituent assembly: -

Demand for the Constitution-

In 1934 , the idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy, a pioneer of communist movement in India and an advocate of radical democratism. In 1935, the Indian National Congress (INC) officially demanded a Constituent Assembly to frame the Constitution of India. In 1942, Sir Stafford Cripps, a member of the cabinet, came to with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the WW2. However, the Cripps Proposals were rejected by the Muslim League which wanted India to be divided into two autonomous states with two separate Constituent Assemblies. Finally, a Cabinet Mission was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

The composition of the Constituent Assembly-

The Constituent Assembly was constituted in November 1946, under the scheme formulated by the Cabinet Mission Plan. As to its composition, the CA was elected by the provincial legislative assemblies. The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States. The CA was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise. The elections to the Constituent Assembly were held in July–August 1946. The INC won 208 seats, the Muslim League 73 seats, and the small groups and independents got the remaining 15 seats. However, the 93 seats allotted to the princely states were not occupied as they decided to stay away from the Constituent Assembly.

The Assembly comprised representatives of all sections of Indian Society—Hindus, Muslims, Sikhs, Parsis, Anglo–Indians, Indian Christians, SCs, STs including women of all these sections. The members of the Constituent Assembly were selected from different sections of the society to bring in integration, to 'hear and solve' their apprehensions, etc. Likewise, they were drawn from all walks of life and represented almost every section of the Indian population.

Working of the CA-

The Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was thus attended by only 211 members. Dr. Sachchidanand Sinha, temporarily presided over the meeting and then finally in December 1946, Dr. Rajendra Prasad was elected as the President of the Assembly. Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the Vice-Presidents of the Assembly and B. N. Rao was made the Constitutional advisor.

Objectives Resolution-

The moving spirit of the Assembly was Jawaharlal Nehru, the first Prime Ministers of independent India. On December 13th, 1946, Jawaharlal Nehru moved the 'Objectives Resolution' in the Assembly. It laid down the fundamentals and basic philosophy of the constitution.

These principles were-

1. "This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a constitution:
2. India would be a sovereign Republic an independent nation
3. territories which now comprise of the British India will form the Indian state
4. power and authority of the sovereign independent India, its constituent parts and the Government of India are derived from the people

5. We shall guarantee and secure to all the people of India
   - Justice, social economic and political
   - Equality, of status and opportunity
   - freedom of thought and expression, belief, faith and worship subject to law and public morality
6. Adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes
7. We shall maintain the territory and the integrity of India.
8. We shall contribute to world peace.

It was unanimously adopted by the Assembly on January 22nd, 1947. This influenced the eventual shaping of the constitution through all its subsequent stages. Its modified version forms the Preamble of the present Constitution.

Changes by the Independence Act: -

Independence came with a cost- that is- partition. Lord Mountbatten , the Viceroy of India was sent to transfer the power form British in the hands of Indians. He put forth the partition plan –'Mountbatten Plan' and this plan was accepted by the Congress and the Muslim league. Later on, in accordance to the plan, the Governor-General announced the setting up of a separate Constituent Assembly for Pakistan as well. Therefore, the Constituent Assembly, which had been elected for an undivided India was structured into the Constituent Assembly for the Dominion of India.

- The Muslim league withdrew from the Constituent Assembly
- The Constituent Assembly would now make the Constitution of India only
- The Constituent Assembly bore the responsibility of making both- the constitutional as well as ordinary laws.

  It is important to understand that we are in a time period when India doesn't have an officially elected legislative body too make laws for common people. Therefore now, the CA also became a legislative body . In other words, two separate functions were assigned to the Assembly, that is, making of a constitution for free India and enacting of ordinary laws for the country. These two tasks were to be performed on separate days. Accordingly, when the assembly met as a Constituent body, it was headed by Dr. Rajendra Prasad. When it met as a Parliament of India, it was chaired by, G.V Mavlankar.

- The CA was also vested with the powers to change, alter and amend the laws made by the British.
- The CA had the responsibility to decide the national symbols of the free India, like the national anthem, the national emblem, etc

In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The Constitution-makers had gone through the constitutions of about 60 countries, and the Draft Constitution was considered for 114 days. On January 24, 1950, the Constituent Assembly held its final session.

Committees Of the Constituent Assembly: -

The Constituent Assembly appointed a number of committees to deal with different tasks of constitution-making. Out of these, 8 were major committees and the others were minor committees. He most important committee was the Drafting Committee headed by B. R Ambedkar. The members were;

1. Dr B R Ambedkar (Chairman)
2. N Gopalaswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr K M Munshi
5. Syed Mohammad Saadullah
6. N Madhava Rau
7. T T Krishnamachari

The proceedings of the Drafting Committee: -

1st Draft-
The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was publicly released in February 1948.

2nd Draft-
After accommodating the various proposals, amendments, criticism, suggestions and comments, the Drafting Committee prepared the 2nd draft and published in in October 1948.

3rd Draft and Enactment of the Constitution-
The final draft prepared by the Drafting Committee was introduced to the Assembly in November 1948 by Ambedkar. This was the first reading of the draft of the COI. Subsequently, the 2nd reading started ,which included clause-by-clause discussion on the floor of the house. And finally, on 14th November, 1949, Ambedkar moved the final motion of enactment of the Constitution. A total of 284 members had signed the Constitution. This is also the date mentioned in the Preamble as the date of adoption and enactment of the Constitution.

So, COI – Enacted- on 26th November, 1949
Enforced- on 26th January, 1950

Some provisions of the constitution pertaining to the citizenship, elections, Provincial parliament, temporary and transitional provisions came into force on 26th November, 1949 itself. But the major part of the Constitution came into force on 26th January, 1950. This day is referred to as 'date of commencement' of the Constitution and we celebrate it as Republic Day. January 26 was specifically chosen because of its historical importance. It was on this day in 1930 that 'Purna Swaraj' day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.

Criticisms of the CA: -

Time Consuming:
According to the critics, the Constituent Assembly OF India took unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work. However, the Indian CA had taken more than 2 years to frame our constitution.
In this context, Naziruddin Ahmed, coined a new name for the Drafting Committee to show his contempt for it. He called it a "Drifting Committee"

Not a Representative Body:
The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise. It was a partially elected and a nominate body and hence did not represent the common man's interest.

Dominated by Congress:
Granville Austin states- 'The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was Congress and the Congress was India." The Assembly was the Congress and the Congress was India.' The critics postulate that the CA was dominated by the Congress party.

Dominated by lawyers and politicians:
It is claimed that the CA was populated by lawyers and politicians excluding other sections of the society. It is often said that Indian Constitution is a Lawyer's Paradise and this testifies this criticism. Other sections of society were not sufficiently represented and this is the main reason behind its bulkiness and technical nature.

Preamble of the constitution: -

The American constitution was the first one to begin with the practice of a preamble. Many countries including India had followed this practice. The term preamble simply means to lay down the spirit, objectives, nature, fundamental principles and preface of the constitution. It basically contains a summary or an essence of the entire constitution. The preamble of Indian constitution is based on the "objectives resolution", it has been amended by the 42nd constitutional amendment act in 1976 (amended only once) with edition of 3 new words- socialist, secular and integrity.

Ingredients of the preamble

1. Source of authority

Preamble states that the constitution derives its authority from the people of India. This can be ratified by the fact that the preamble of Indian constitution begins with 'we the people of India'.

2. Nature of the Indian state

It states that India is a sovereign, socialist, secular, democratic and republic in nature. The term socialist add secular were added by the 42nd constitutional amendment

3. Objectives of the Indian constitution

The preamble of constitution enshrines the principles of justice, liberty, equality and fraternity and aspires to secure the same to all its citizens.

4. Date of adoption

It stipulates 26th November, 1949 as the date of adoption of Indian constitution.

Keywords in the preamble

There are a variety of keywords that are important to be taken account of while analysing preamble. Some of them are- sovereign , socialist, secular, democratic, republic, justice, liberty, equality, fraternity, etc

- Sovereign

The term sovereign implies that the state of India is free from any kind of external and internal control, meaning, there is no other authority above the independent state of India. It also implies that India is not dependent on any other foreign country for conducting its affairs.

It is important to note that in 1949, India had declared herself as a full-time member of the commonwealth of nations and accepted the British crown as head of the commonwealth. However, this fact cannot jeopardise the sovereignty of the state of India over her internal and external matters. In the very same way, the membership of united nations organization in no way constituents a limitation on India's sovereignty.

- Socialist

The term socialist was added by the 42nd constitutional amendment in the year 1976. However, even before this, Indian constitution had enshrined certain provisions with socialist content in form of directive principles of state policy. This was also evident by the type of economy that India adopted after independence; a path followed by the congress party on the lines of 'socialist pattern of society'.

There can be 2 types of socialism namely- communist socialism and democratic socialism. Communist socialism essentially means nationalisation of all means of production and distribution and absolute abolition of private property. Whereas, the type of socialism that Indian constitution embraced was a democratic socialism. Democratic socialism provides for a mixture of Gandhian and Marxian socialism, promotes mixed economic system where in both- public and the private sector coexisted to ensure welfare of the society.

- Secular

The term secular was also added by the 42nd constitutional amendment in the year 1976. The supreme court in year 1974 had stated that although the word 'secular state' was not expressed explicitly in the constitution, there is no doubt that Indian society by nature was secular in nature, and our constitution makers essentially wanted to establish such a state. This could be witnessed by the types of provisions incorporated under article 25-28 guaranteeing the fundamental right to religion to each and every citizen. This could not have been possible if the spirit of constitution was not secular in nature.

England constitution embodies the positive concept of secularism, i.e. All the religions in our country, irrespective of their demographic strength, would have same status and support from the state.

- Democratic

The principle of a democratic form of governance traces its roots from the notion of 'popular sovereignty', meaning- people will possess the supreme powers. Incorporation of such a principal was also to reassert the freedom of Indian citizens from the century old British colonial and unjust governance.

Democracy can be of 2 types- direct and indirect. In a direct democracy, the people exercise their supreme power directly, example- Switzerland. Accordingly in an indirect democracy, the people elect representatives on their behalf and vest their supreme powers in the hands of these representatives who carry on the government and make laws for the citizens. The Indian constitution also provides for a representative parliamentary democracy, where universal adult franchise, periodic (free and fair) elections, rule of law, independence of judiciary and absence of discrimination is practiced.

- Republic

In simple words, 'republic' means rare be head of the state is elected by the people directly or indirectly. India preamble it means that the head of the state- the president of India- would be seated into power as per the decision of the masses. Like democracy, this principle also insured a break away from the British monarchical rule in India. It also means that the sovereignty is vested in the hands of the people and not a single individual like a king, and absence of any privileged classes in decision making without any discrimination.

- Justice

In order to ensure equality, liberty, and other fundamental principles we need to the existence of a human being- justice becomes important. It ensures that the individuals are evaluated on just and fair basis, in the way first place. Preamble of India embraces 3 different forms of justice namely- social, economic and political. Social justice provides for equal treatment to all the citizens without any social distinctions based on caste, class, colour, religion, sex, or place of birth. It means absence of privileges to a particular section in the society and allows positive discrimination. Example- reservations. Economic justice means non-discrimination between people on economic basis. Elimination of inequality with respect to wealth, income, property, etc. A combination of social and economic justice denotes 'distributive justice'. Political justice implies that all the citizens should have equal political rights without any discrimination. Each and every citizen is able to voice their opinions and grievances to the concerned authority.

- Liberty

The term liberty means absence of restrains, freedom to do anything. However, this is the negative definition of liberty and while living in a civil society, such a kind of liberty is not possible. While living in a civil society, certain reasonable restrictions are necessary to maintain behaviour of an individual and secure equal rights for everyone. It provides for enjoyment of one's own liberty without jeopardising the capacity of others with an identical right. Prayer for the preamble secures to all its citizens- liberty which is essential for a successful democratic system.

- Equality

The term equality essentially means absence of special privileges to any particular section of society and provision of adequate opportunities for individuals to develop their best selves without any discrimination. The preamble secures to all its citizens equality of status and of opportunity. It is important to note that essentially doesn't guarantee economic equality because we do not believe in a communist ideology of absolute economic levelling. This notion poses an extremist view and in a diverse society like India, will be unjust on many sections of the society. We embrace various kinds of equality that are enshrined under fundamental rights from article 14 to article 18.

- Fraternity

In simple terms, fraternity means a sense of brotherhood. Given the diverse society of India, it becomes very important to embed certain principles of oneness and belonging to promote a sense of nationality. This feeling of fraternity is insured by the system of single citizenship along with provisions for fundamental duties. The spirit of common brotherhood amongst all the people of India irrespective of their religious, linguistic, regional or sectional diversities promotes a spirit of common brotherhood amongst all the people of India ensures harmony and peace in nation.

Features of Indian Constitution

The Indian constitution is unique in its content and spirit. Though borrowed from almost every constitution of the world, the constitution of India has several salient features that distinguish it from the constitutions of other countries.

1. Lengthiest Written constitution

The Constitution of India is the lengthiest of all the written constitutions of the world. It is a very comprehensive, elaborate and detailed document. Originally, the Constitution contained a Preamble, 395 Articles, 22 Parts and 8 Schedules. However, in today's date- we have 448 articles, 12 schedules and 25 parts. There are several factors that contribute towards this lengthy and bulky nature of the document. Some of them are-
Geographical factors, that is, the vastness of the country and its diversity
The influence of the Government of India Act of 1935, which itself was bulky
A single constitution for both , Centre and the State
Dominance of legal luminaries in the Constituent Assembly.
Efficiency and ease in governance
This could be studied under the light of the Constitution of USA- that has exact opposite nature in this regard.

2. Drawn from various sources

The Constitution of India has borrowed most of its provisions from the constitutions of various other countries. It is important to understand that because independence came suddenly to India and our makers were not fully equipped and prepared for creating an entirely new constitution for India- given the urgency- our makers looked upon the good values from other countries' constitutions to suit India's needs.
Some examples are:
USA- concept of fundamental rights, judicial review, judicial independence, impeachment of the president and removal of the Supreme Court and High Court judges
Britain- the concept of parliamentary form of government, rule of law single citizenship, bicameralism
Government act of 1935- federal scheme, office of the governor, emergency provisions and other administrative details
Irish constitution- provision of directive principles of state policy
Canada- federation with a strong centre. residuary powers in the hands of union government
Australia- concurrent list, freedom of trade and commerce and joint parliamentary sessions
Along with these, here are a number of other constitutions like the constitution from Soviet Union, France Japan and South Africa upon whom the makers of Indian constitution looked upon for inspiration and content.

3. A blend of rigidity and flexibility

The constitutions are classified into rigid and flexible constitution. rigid constitution is the one that requires a special procedure for its amendment, for example the American constitution. And a flexible constitution is the one that can be amended why a simple means and the procedure is same as the ordinary laws are made, for example the British constitution. However, the constitution of India is characterised by a synthesis of both rigidity as well as a flexibility. there are several amending processes that the constitution itself lays down and their as follows.
Simple majority- A majority, i.e., more than 50% of the total membership of each House of the parliament. ordinary laws are generally amended by this type of majority
special majority- amendment by a 2/3rd majority of the members of each house present and voting
special majority of the parliament with ratification of half of the total state legislatures

4. A federal system with a unitary bias

the constitution of India provides for a federal system of government. It is important to note that India was already a union, however after independence, we created the various federating units for the convenience of administration. in order to maintain unity, we created a strong centre. Therefore, it can be described as federal in form and unitary in spirit. the constitution also contains several features of a federation and the corresponding unitary bias and they can be explained as follows-

- Various provisions in our constitution contain features of federal structure having 2 sets of government- central and state. it also provides for clear division of their respective powers and authority
- Division of power between the legislature and the executive and judiciary
- The constitution is the final legal authority- a single constitution for both the centre and the state
- Single citizenship system unlike USA
- Integrated judiciary and administrative machinery, integrated machinery for elections, audits and accounts. for example- The election Commission, the Comptroller and Auditor General of India and the central vigilance committee, All India civil services, appointment of state governors

K C Wheare called this form of governance as 'Quasi-federal'.

5. Parliamentary form of government

The Constitution of India has opted for the British parliamentary System of Government rather than American Presidential System of Government. The parliamentary system is based on the principle of cooperation and co-ordination between the legislative and executive organs. The parliamentary system is also known as the 'Westminster' model. The features of parliamentary government in India are:
(a) Presence of nominal and real executives
(b) Majority party rule
(c) Collective responsibility of the executive to the legislature
(d) Dissolution of the lower House
(e) Leadership of the prime minister and the assembly

6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy

The doctrine of sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court. Judicial supremacy in India entails the concept of judicial review. judicial review is the power of the Supreme Court in India to check the constitutional validity of law ordinance passed by the legislature or executive, and if it is deemed to be violating the constitution, then declare it as void and ultra-virus. This can help the judiciary in narrowing down the excessive power exercised by the legislature or the executive. On other hand, parliamentary sovereignty refers to the exclusive prerogative of the legislature to make laws and via this can amend a major part of the constitution. However, the constitution of India does not give exclusive powers in either of the 2 organs of the government. Example- 9th scheduled introduced in 1951, Shah Bano case, etc

7. Integrated and Independent Judiciary

The Indian Constitution establishes a judicial system that is integrated as well as independent. The SC is the apex court in India followed by HCs, District courts and other lower and subordinate courts. This single system of courts enforces both the central laws as well as the state laws, unlike in USA. Along with this, the Constitution has made various provisions to ensure its independence- appointment, removal, security of the tenure, qualifications, conditions after retirement, immunity to judges, etc. This is important so that the Judiciary is not influenced by political dynamics outside.

8. Fundamental Rights

Part III of the Indian Constitution guarantees six fundamental rights to all the citizens. They are justiciable in nature- meaning- one can move to the court over its violation. The aggrieved person can directly go to the Supreme Court which can issue the writs for the restoration of his rights. However, the Fundamental Rights are not absolute and subject to reasonable restrictions. Exceptions- Emergency provisions.

(a) Right to Equality (Articles 14–18),
(b) Right to Freedom (Articles 19–22),
(c) Right against Exploitation (Articles 23–24),
(d) Right to Freedom of Religion (Articles 25–28),
(e) Cultural and Educational Rights (Articles 29–30),
(f) Right to Constitutional Remedies (Article 32)

9. Directive Principles of State Policy

According to Dr Ambedkar, Directive Principles of State Policy is a 'novel feature' of the Indian Constitution. They are enumerated in Part IV (36- 51) of the Constitution. They can be classified into three broad categories—socialistic, Gandhian and liberal–intellectual. These act as guidelines for the government in directing itself as a 'welfare state' and incorporate its elements. Hence, they lay the very foundation of the welfare state and is an important part of constitution. However, unlike the Fundamental Rights, the directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation
For example

- Article 43 provides for right to work and a decent standard of life,
- Article 44 provides for Uniform Civil Code,
- Article 45 provides for early childhood care and education for all children until they complete the age of six years

10. Fundamental Duties

The original constitution did not provide for the fundamental duties of the citizens. These were added by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. The Part IV-A of the Constitution, which consists of only one Article—51- A, specifies the 11 Fundamental Duties. The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow-citizens. However, like the Directive Principles, the duties are also non-justiciable in nature.
For example- to respect the Constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to promote the spirit of common brotherhood amongst all the people; to preserve the rich heritage of our composite culture and so on.

11. Universal Adult Franchise

The Indian Constitution adopts universal adult franchise as a basis of elections to the Lok Sabha and the state legislative assemblies. Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth, and so on. The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988. It makes democracy broad-based, enhances the self-respect and prestige of the common people, upholds equality and ensures minorities participation too.

12. Single Citizenship

Though the Indian Constitution is federal in nature, it provides for only a single citizenship, that is, the Indian citizenship irrespective of which state or province one belongs to. In countries like USA, on the other hand, each person is not only a citizen of USA but also a citizen of the particular state to which he belongs.

13. Independent Bodies

The Indian Constitution not only provides for the legislative, executive and judicial organs of the government at Centre and Sate but also establishes certain independent bodies. They work as building blocks for a democracy like India. These are

- Election Commission to ensure free and fair elections
- Comptroller and Auditor-General of India to audit the accounts of the Central and state governments. He acts as the guardian of public purse.
- Union Public Service Commission to conduct examinations for recruitment to all-India services and higher Central services
- State Public Service Commission in every state

The Constitution ensures the independence of these bodies through various provisions like security of tenure, fixed service conditions, expenses being charged on the Consolidated Fund of India, and so on.

14. Emergency Provisions

The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively. The rationale behind such a provision being the safeguard of sovereignty, unity, security and integrity of the nation. There are accordingly 3 types of emergency provision

- Article 352- National emergency on the ground of war or external aggression or armed rebellion
- Article 356 - State emergency (President's Rule) on the ground of failure of Constitutional machinery in the states and Article 365- Failure to comply with the directions of the Centre
- Article 360- Financial emergency on the ground of threat to the financial stability or credit of India.

15. Three-Tier government

Originally, the Indian Constitution, provided for a dual polity and had provisions with regards to the organisation and powers of the Centre and the states. However, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government which is not found in any other Constitution of the world. The third [tier being that of the local government bodies. It gave constitutional recognition (73^{rd}) to the panchayats gave constitutional recognition to the municipalities (74^{th}). This empowered these local government bodies to take care of the welfare of the general public and bestowed more autonomy to then.