

MODULE I INTRODUCTION AND BASIC INFORMATION 8

ABOUT INDIAN CONSTITUTION

Meaning of the constitution law and constitutionalism - Historical background of the Constituent Assembly - Government of India Act of 1935 and Indian Independence Act of 1947 - The Constituent Assembly of India - Enforcement of the Constitution - Indian Constitution and its Salient Features - The Preamble of the Constitution -Citizenship.

Meaning of the Constitution Law and Constitutionalism

The concepts of constitutional law and constitutionalism basically refer to the legal framework of a country. At a time when the constitution is referred to as ‘supreme law of land’; constitutional law is the study of rules, doctrines and principles related to the constitution; and constitutionalism is a system of governance under which the power of government is limited to rule of law. Essentially, Constitutional law is the supreme law and all other laws have to conform to the Constitutional law, containing laws concerning the government and its people.

Whereas, Constitutionalism is a doctrine that means a government’s authority is determined by a body of laws or constitution. Although some jurists take constitutionalism as a synonym of limited government, some refer to it as efforts to prevent arbitrariness of government. It is majorly regarded as a system of governance in which the power of government is limited by law, checks and balances to reconcile with the individual and collective freedoms.

Constitutionalism has a variety of meanings, most generally referred to as “a complex of ideas, attitudes and patterns of behaviour elaborating the principle that the authority of government derives from and is limited by a body of fundamental law”. It is basically meant as the limited government of limitation of government. It does both, recognises the need for a government with adequate powers and at the same time, places limitations on those powers to prevent arbitrariness.

Various elements of Constitutionalism are:

- Written Constitution

- Independent judiciary
- Judicial review
- Rule of law
- Separation of powers
- Fundamental rights
- Federalism and many more.

Therefore, all the terms, constitution, Constitutional law and Constitutionalism are inter-related with each other with the linked idea of democracy and protection of rights of citizens through limited government. These concepts refer to a legal system of the country which grants collective rights and allows people to enjoy their freedom and promote the principle of “Rule of Law”.

Similarities between Constitution and Constitutionalism

Constitution and constitutionalism are overlapping concepts, although the first refer to a written body of laws and legislation and the second is a complex principle and system of governance. Some of the similarities between the two include:

1. Both refer to the limits and features of the system of governance of a country. Constitutionalism would not exist without a constitution, and a constitutional way of governing a country requires limits and boundaries to the central authority;
2. Both influence the actions of both government and population. Besides providing a framework for political and institutional structure, the constitution sets out the main rules that all citizens should respect. Furthermore, ruling in a constitutional manner means that the government applies the regulations outlined in the constitution to limit and manage the citizens’ acts – always respecting individual and collective rights;
3. Both protect and preserve individual and collective rights, preventing the central government from abusing of its powers and infringing on the citizens’ basic freedoms; and
4. Both have evolved and significantly changed during the last few centuries, benefiting from the spread of democratic ideals and becoming key features of the majority of Western countries.

Difference between Constitution and Constitutionalism

The main difference between constitution and constitutionalism lies in the fact that the constitution is generally a written document, created by the government (often with the participation of the civil society), while constitutionalism is a principle and a system of

governance that respects the rule of law and limits the power of the government. Most modern constitutions were written years ago, but laws and norms had already been evolving and mutating for centuries, and continue to do so. The constitution (and laws in general) is a living entity that should adapt to the changing features of the modern world and of modern societies. Failing to adapt the constitution – without losing its core principles and values – may lead to an obsolete and unadapt governance system. Other differences between the two concepts include:

1. ***Constitutionalism is based on the principles outlined in the constitution*** – or in other core legal documents – but it is also a principle of its own. The idea of constitutionalism is opposed to the concept of authoritarian and despotic rule and is based on the belief that the power of the government should be limited in order to prevent abuses and excesses;
2. ***The constitution is often a written document***, while the principles of constitutionalism are generally unwritten. Both constitution and constitutionalism evolve with the promulgation of democratic ideals – although they do not always proceed at the same speed. There can be a constitutional form of governance – that respects the rights of the citizens and promotes democratic values – even though the national constitution is outdated. At the same time, an inefficient democratic government may not be able to rule in a constitutional way, despite the existence of a constitution.

Historical Background of the Constituent Assembly

The idea of a constituent assembly was put forward for the first time by MN Roy. In 1935, the Indian National Congress (INC), for the first time, officially called for a constituent assembly to frame a constitution for India. In 1938, J Nehru made this emphatic statement regarding the constitution- ‘The constitution of free India must be framed, without outside interference, by a constituent assembly elected on the basis of adult franchise’

The demand for a constituent assembly was accepted for the first time by the British through their ‘August offer’ of 1940. Eventually, a constituent assembly was established under the provisions of the Cabinet Mission plan.

Composition of the Council

- It was constituted in 1946

Some of the important aspects related to this are:

1. Total strength of the assembly: 389
2. 296 seats for British India and 93 seats to princely states
3. 292 seats allocated for British India were to be from eleven governor's provinces and four from Chief commissioner's provinces
4. Seats were allocated based in proportion to their respective population.
5. Seats allocated to each British province were to be decided among the three principal communities- Muslims, Sikhs and general
6. Representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferrable vote
7. Representatives of princely states were to be nominated by head of these princely states.

Functions of the Constituent Assembly of India:

- Frame the Constitution of India and make sure that everyone in the country gets equal rights and opportunities.
- The assembly adopted the National flag on July 22, 1947.
- Enact the laws
- In May 1949 the assembly approved India's membership in the British Commonwealth.
- On January 24, 1950, Dr Rajendra Prasad was elected the first President of India through this committee.
- Adopted both the National anthem and National Song on January 24, 1950.

The Government Act of 1935

- The enforcement of this law is considered to be one of the most significant events in the history of the Constitution of India. This act worked towards providing divided powers of governance into a Federal list, a provincial list, and a concurrent list.

- The act also granted more power and autonomy of self-governance to the provinces. This act also helped to set up the federal court, which is today known as the Supreme Court of India.

The Indian Independence Act of 1947

The departure of the British from India was marked by this act. After this act, India officially became an independent and sovereign state. This act laid down the Foundation of the Constituent Assembly which further worked on the drafting of the Constitution of India.

The Constituent Assembly of India - Enforcement of the Constitution

- Enforcement is the process of ensuring that people follow a law or rule, or that a specific event occurs or is accepted. The act of enforcing the Constitution's laws and processes is known as constitutional enforcement. The Indian Constitution went into effect on January 26, 1950. The Assembly ceased to exist on that date, and the Provisional Parliament of India was formed until a new Parliament was formed in 1952.
- The 26th of January was chosen to commemorate the momentous day in 1930 when Purna Swaraj was celebrated and the tri colour flag of Indian independence was unfurled following a resolution of the Indian National Congress's Lahore Session (December 1929).

Enforcement of the Constitution

- Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 of the Constitution relating to citizenship, elections, provisional parliament, temporary and transitional measures, and the short title came into effect on November 26, 1949.
- The Constitution's remaining clauses (the majority) went into effect on January 26, 1950. The Constitution refers to this day as the "day of its start," and it is celebrated as Republic Day.
- Because of its historical significance, January 26 was chosen as the Constitution's 'day of commencement.' Purna Swaraj Day was observed on this day in 1930, following a resolution passed by the INC's Lahore Session (December 1929).

Indian Constitution and its Salient Features

The Constitution of India is the supreme legal and living document. Which consists of fundamental principles, procedures, practices, rights, responsibilities, powers, and duties of the state. It was drafted by the 389 members being a part of the Constituent Assembly, and Dr. BR Ambedkar being the head of the constitution drafting committee.

It took roughly about 2 years and 11 months and 17 days, to complete the duty of drafting the constitution of India, which was finally completed on 26th November 1949, celebrated as the Constitution Day. On 26 January 1950, constitution was adopted, replacing the Government of India act 1935, which is celebrated as the Republic Day of India.

Salient Features are as follows:

1. Modern Constitution:

The constitution makers, made it the world's richest document which consisted of human knowledge, intellect, inheritance and civilizations that is best suited to the social, economic, political, and cultural situations of the country. Nevertheless, it will be wrong to say that the Indian constitution is a carbon copy of constitutions of countries in the world, since it has taken several significant principles, procedures and provisions of the other countries but at the end it came out with its own ability to choose, new directions, methods, principles, and constantly aiming at new constitutional innovations.

2. Written Constitution:

When the Indian constitution was adopted in 1949 originally, it consisted of 395 Articles, divided into 22 parts and 9 schedules. Today after 103 amendments, it consists of 495 Articles, categorized into 22 parts and 12 schedules, which is longest written constitution in the world and is designated as an 'elephant size' living constitution.

3. Secular State:

In 1976, the term Secular was made a part of the constitution, by introducing the 42nd amendment. The union does not give any superior status to any particular religion, in the country. Aiming at all the religions should enjoy equivalent status, acceptance and respect, there is a definite right to freedom of religion, with no discrimination of any kind, ensuring the prohibition of formation of a theocratic state. Every person in the country has an equivalent right and freedom to practice, profess, propagate any religion of their choice with equal protection, respect and support from the state.

4. **Welfare state:**

It is a system of government in which the state has a responsibility to defend and promote the economic and social wealth of its citizens, based upon such principles of equal opportunities, distribution of wealth, and owing responsibilities towards the citizens who are unable to avail these services for leading a decent life. This concept of welfare state is further supported by the Directive principles of the State policy, which provides the economic, political, social, cultural goals for the state, putting compulsion on the state, to accomplish its maximum social well-being for every citizen.

5. **Preamble:**

As an essential part of constitution, which does not give any special power to the constitution but it gives a route and a motive for the constitution to exist. Outlines the purposes of the constitution it asserts India to be a Sovereign, Socialist, Secular, Democratic, and Republic in nature. Apart from this, it also highlights other important provisions for its citizens like:

Justice (Social, Economic and Political); Liberty of thought, expression, belief, faith and worship; Equality and Fraternity (Unity and Integrity of Nation).

6. **Socialist State:**

The term 'Socialism' was included in the Preamble with the 1976 amendment, which is now observed as one of the key features of the State. It imitates how the opinions of India, for ending all forms of exploitation, discriminations and inequalities, hence is

dedicated towards bringing social and economic well-being for the citizens. India has always highlighted the concept of mixed economy, wherein both the public and private sectors have their independent roles to play. The court is also well known about the importance of democratic socialism, aiming to, eliminate inequalities of all kinds and safeguarding a decent standard of life for all citizens.

7. Responsible government:

The Preamble provides us with a democratic and Parliamentary form of governance, wherein the central and state tiers of government look after all the duties, regulated by the system of checks and balances. The President being the nominal head of the country, is nominated by both houses of the Parliament, with elected members of State Assembly. In such a form of government, the Prime Minister being the head of council of Ministers is accountable to look after the actions of his government.

8. Fundamental Rights:

The fundamental Rights are assured by the constitution, under Part III of the constitution laid down from Articles 12 to 35. These include Right to Equality, The Right to freedom, Freedom of religion, Rights against Exploitation, Educational and Cultural right and right to constitutional Remedies. These are essential rights, as a result of which no law, rule, order, or any amendments can interfere or take away these rights, otherwise they will be declared as unconstitutional. Where the people can also approach the court of laws if their rights are violated for its enforcement.

9. Minorities and Backward Classes:

There are multiple castes, classes, religions, languages, cultures, which exist in the Indian society, consisting of people from different sections, which are reasonably weaker than others in various spheres of life. So, in order to encourage a sense of security, safety and pleasure amongst the minorities, and for improving the living conditions of the backward classes by submerging them into the society equally, the

constitution provides various liberal schemes and provisions for reservations.

10. Elections:

India has adopted the concept of adult suffrage, according to which every citizen, attaining the age of 18 years has a right to vote, which is not subjected to any kind of discrimination. According to this concept, the citizens do not need any necessary education qualification for voting, and even a large chunk of the population can vote, where they may not be educated but still, they may have a basic knowledge about their needs and requirements, and so they can select their representatives wisely.

11. Supreme Judiciary:

The constitution has kept Judiciary independent from the legislature and executive. Judges are free of any kind of intrusion, by other organs of the government, so that the judges can give their decisions independently without fear, favor. The concept of separation of power maintains this independence, it also has the power of judicial review, which provides the power to the courts to state any law, rule or order passed by the legislature and any performance of executive as void, if found contradictory to any provision of the constitution. The judiciary has many other tasks like, supervising governmental processes, acting as a wheel of balance for federalism, therefore, highlighting the supremacy of the Judiciary.

12. Federal Constitution:

Since, India has a federal type of constitution, establishing dual polity, having two-tiers government. All the powers, functions, and duties of the government are divided amongst central and state level, without interfering in others functioning. The schedule 7, and Article 246 of the constitution talks about three lists, The Union, State and Concurrent list, which specifying the various matters on which the laws are to be made. India's federalism is a unique blend of simplicity and complexity, having the concept of single citizenship, and becoming a part of the basic structure as well.

Conclusion

The constitution is the pride of our country, where it not only deals with the organizations, functions, responsibilities, structures, authorities of the Central government but also, signifies of the state. It is also focused at maintaining the relationship of the central and state government when their views are contrary. Due to lack of homogeneousness, there are many communities, castes, cultures, religions, languages and classes, which are guaranteed with equal protection and impartial access to justice.

The Fundamental rights not only guarantee equality to all but also prohibit discrimination of all kinds, and on the other hand, the Directive principles of state policies, create an environment for social welfare and aim at establishing an egalitarian society.

The Preamble of the Constitution

The preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose, principles and philosophy of the constitution. The preamble gives an idea about the following: (1) the source of the constitution, (2) the nature of the Indian state (3) a statement of its objectives and (4) the date of its adoption.

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 phrase “We the people of India” emphasises that the constitution is made by and for the Indian people and not given to them by any outside power.

It also emphasizes the concept of popular sovereignty as laid down by Rousseau: All the power emanates from the people and the political system will be accountable and responsible to the people.

Nature of Indian State

1. **Sovereign:** India is internally and externally sovereign – externally free from the control of any foreign power and internally, it has a free government that is directly elected by the people and makes laws that govern the people. No external power can dictate the government of India.
2. **Socialist:** “Socialism” is an economic philosophy where means of production and distribution are owned by the State. India adopted Mixed Economy, where apart from the state, there will be private production too. Socialism as a social philosophy stresses more on societal equality.
3. **Secular:** Features of secularism as envisaged in the Preamble is to mean that the state will have no religion of its own and all persons will be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate the religion of their choice. (S R Bommai and Others v Union of India, AIR 1994 SC 1918)
4. **Democratic:** Indicates that the Constitution has established a form of government that gets its authority from the will of the people. The rulers are elected by the people and are responsible to them.
5. **Republic:** As opposed to a monarchy, in which the head of state is appointed on the hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President of India is not hereditary. Every citizen of India is eligible to become the President of the country.

Objectives of Indian State

1. *Justice:* Social, Economic and Political.
2. *Equality:* of status and opportunity.
3. *Liberty:* of thought, expression, belief, faith and worship
4. *Fraternity* (=Brotherhood): assuring the dignity of the individual and the unity and integrity of the nation.

Date of its Adoption

The date of adoption of the Constitution is 26th November 1949. But most of the articles in the Constitution came into force on January 26th, 1950. Those articles which came into existence on 26th November 1949 is given by Article 394.

Article 394 states that this article (394) and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January 1950, which day is referred to in this Constitution as the commencement of this Constitution.

26 January was selected for this purpose because it was this day in 1930 when the Declaration of Indian Independence (Purna Swaraj) was proclaimed by the Indian National Congress.

Citizenship

Citizenship is the status of a person recognized under the custom or law as being a legal member of a sovereign state or belonging to a nation. The persons who were born in India and are living in India are the citizens of India. As a citizen these persons have certain rights and responsibilities. Citizenship can be acquired by birth, descent, registration naturalization or when India acquires new territories. Citizenship can be lost by renunciation, termination or deprivation.

The Citizenship Act, 1955:

The Constitution of India provides for a single citizenship for the entire country. The provisions relating to citizenship at the commencement of the Constitution are contained in Articles 5 to 11 in Part II of the Constitution of India. The Citizenship Act enacted by the Parliament in 1955 provides for acquisition and determination of citizenship. The Act provides five modes of acquiring the citizenship of India. These are:

By Birth:

Section 5(1)(c) of the Citizenship Act, 1955 states that a person born in India on or after the 26th day of January 1950, but before the 1st day of July 1987, is a citizen of India by birth. Furthermore, people born after July 1, 1987, should have either of their parents as a citizen of India, when they were born. The ones born after December 3, 2004, shouldn't have parents that are illegal migrants or either of them should have citizenship.

By Descent:

A person born outside India on or after January 26, 1950, shall be citizen of India by descent if his father or mother is a citizen of India at the time of his birth. It should be noted that after the 2003 amendment of the Citizenship Act, the government stated that a child born shall not be Indian merely because of his descent but has to be registered with due process within 1 year of its birth to gain Indian Citizenship.

By Registration:

Central Government may, on an application, register as a citizen of India any person if he belongs to any of the following categories, namely: -

- A person of Indian origin who is ordinarily resident in India for seven years before making an application for registration.
- A person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration.
- Minor children of persons who are citizens of India.

- Persons of full age and capacity who are citizen of the Commonwealth Countries (U.K, Australia, Canada, Sri Lanka, New Zealand) or the Republic of Ireland.
- A citizen of Singapore and Canada who is resident in India for five years and eight years respectively.

(4) By Naturalisation:

Central Government may, on an application, grant a certificate of naturalization to any person if he possesses the required qualifications, including adequate knowledge of a language specified in the Eighth Schedule to the Constitution. An applicant for a naturalisation certificate has to satisfy the following conditions.

- He is not a citizen of a country which prohibits Indians becoming citizens of that country by naturalisation.
- He has renounced the citizenship of the country to which he belonged.
- He has either resided in India or has been in the service of a government in India, normally, for one year immediately prior to the date of application.
- He is of good character.
- He has an adequate knowledge of a language specified in the Constitution.
- If granted a certificate, he intends to reside in India or enter into, or continue in service under a government in India.

The Act provides, however, for a conspicuous exemption under which any or all of the above conditions may be waived in favour of a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally.

Every person to whom a certificate of naturalisation is granted has to take an oath of allegiance solemnly affirming that he will bear true faith and allegiance to the Constitution of India as by law established, and that he will faithfully observe the laws of India and fulfil his duties as a citizen of India.

(5) By Incorporation of Territory:

If any territory becomes part of India, the Government of India, by order, may specify the persons who shall be citizens of India by reason of their connection with that territory.

Termination of Indian Citizenship section 9 (1)

A person ceases to be a citizen of India consequent upon voluntarily acquiring the citizenship of another country.

Determination of National Status section 9 (2)]

The question about determination of national status of a person is decided by the Ministry of Home Affairs in such a manner and having regard to such evidence, as may be prescribed in this behalf.

Deprivation of Indian Citizenship [section 10]

A citizen of India by naturalisation or by registration on account of marriage to an Indian citizen can be deprived of his citizenship by the Ministry of Home Affairs for specified reasons.

Procedure

An application for grant of citizenship is to be submitted to the Collector/ District Magistrate of the area where the applicant is resident. The Forms and the procedure are prescribed in the Citizenship Rules, 1956.

Each application is examined by the Ministry of Home Affairs (MHA) in terms of the Citizen Act's eligibility requirements. You should not renounce your foreign citizenship until the citizenship application is accepted and you are informed of the decision. When your Indian citizenship is accepted you will then have to renounce your existing citizenship and show proof to the MHA.
