

IARE '24 DISCORD TEAM

II-II

INDIAN CONSTITUTION

IMPORTANT POINTS



INDIAN CONSTITUTION

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MOD-I HISTORY OF MAKING OF THE INDIAN CONSTITUTION

History of Making of the Indian Constitution:

The Constitution of India (Bhāratīya Saṁvidhāna) is the supreme law of India. The document lays down the framework that demarcates fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written national constitution in the world.

It imparts constitutional supremacy (not parliamentary supremacy, since it was created by a constituent assembly rather than Parliament) and was adopted by its people with a declaration in its preamble. Parliament cannot override the constitution.

Constitution of India

It was adopted by the Constituent Assembly of India on 26 November 1949 and became effective on 26 January 1950. The constitution replaced the Government of India Act 1935 as the country's fundamental governing

document, and the Dominion of India became the Republic of India. To ensure constitutional autochthony, its framers repealed prior acts of the British parliament in Article 395. India celebrates its constitution on 26 January as Republic Day.

The constitution declares India a sovereign, socialist, secular, and democratic republic, assures its citizens justice, equality, and liberty, and endeavours to promote fraternity. The original 1950 constitution is preserved in a helium-filled case at the Parliament House in New Delhi. The words "secular" and "socialist" were added to the preamble by 42nd amendment act in 1976 during the Emergency.

Introduction

The Constitution of India is the supreme law of India. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government. It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a constituent assembly, and adopted by its people, with a declaration in its preamble. Parliament cannot override it.

The world's longest constitution is the Indian's constitution. At its commencement, it had 395 articles in 22 parts and 8 schedules. It consists of approximately 145,000 words, making it the second largest active constitution in the world. Currently, it has a preamble, 25 parts with 12 schedules, 5 appendices, 448 articles, and 101 amendments.

History

The constitution of India was adopted on the 26th of November, in the year 1949. However, it came to effect on the 26th of January, 1950. 26th of January is celebrated as the Republic Day of India.

It was adopted by the Constitution Assembly. Dr. B. R. Ambedkar, the chairman of the Drafting Committee, is widely considered to be the architect of the Constitution of India. After the adoption of the constitution, The Union of India became the contemporary and modern Republic of India.

The Constitution of India provides its citizens with six fundamental rights. These rights are the Right to Freedom, Right to Equality, Cultural and Educational Rights, Right to Constitutional Remedies, Right against Exploitation. Recently, the Right to Privacy has also been added to fundamental rights.

Making :

A Constitution Drawn from several Sources:

In formulating the Constitution of India, the founding fathers used several sources. The values and ideals of the national movement guided their path. The national movement influenced them to adopt secularism as the ideal. Some provisions of Government of India Act 1935 were used by them and

several features of foreign constitutions influenced them, and were adopted by them.

The Government of India Act of 1935 marked the second milestone towards a completely responsible government in India after the Act of 1919. This Act was passed by the British Government in 1935. It was one of the lengthiest Acts at that time as it contained 321 sections and 10 schedules. It was also the last constitution of British India, before the country was divided, in 1947, into two parts-India and Pakistan. Once the act was passed the government saw that it was too lengthy to be regulated with efficiency and thus, the government decided to divide it into two parts for the act to function in a proper manner:

1. The Government of India Act, 1935
2. The Government of Burma Act, 1935

In adopting parliamentary system and bicameralism, the British Constitution influenced them. The US Constitution influenced them in favor of republicanism, independence of judiciary, judicial review and bill of rights. The progress of the (former) USSR after the 1917 Socialist Revolution influenced them to adopt socialism as a goal. Likewise, they were influenced by the constitutions of Canada, Australia, Weimar Republic (Germany) and Ireland.

The Constitution has been helping India to organize and run her government and administration in an effective way both in times of peace and war

Some of its salient features are discussed below:

The Constitution has been helping India to organize and run her government and administration in an effective way both in times of peace and war. The basic structure of the Constitution i.e. its most fundamental features can be described as: **Preamble, Fundamental Rights, Directive Principles, Secularism, Federalism, Republicanism, Independence of Judiciary, Rule of Law, and Liberal Democracy.**

1.Lengthiest written constitution

The Constitution can be classified into a written constitution such as that of America or an unwritten constitution such as that of the UK.

The constitution of India is a written constitution which happens to be the lengthiest written constitution in the world.

It is comprehensive, elaborate and a detailed document

2.Drawn from various sources

It has borrowed most of its provisions from the constitution of various other countries as well as from the Government of India act, 1935. Ex: structural part from GoI, 1935, independence of judiciary from USA, Fundamental Rights from USA etc

Though it is borrowed, the Indian constitution-makers made sure the borrowed features were made suitable to Indian conditions. **Ex:** Though we

borrowed a cabinet form of governance from the UK, the cabinet is not all-supreme as in the case of the UK.

3.Preamble of the constitution

The Preamble consists of the ideals, objectives and basic principles of the Constitution.

1. The salient features of the Constitution have developed directly and indirectly from these objectives which flow from the Preamble
2. It asserts India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity of the individual, and unity and integrity of the nation.
3. The Preamble is the nature of the Indian state and the objectives it is committed to secure for the people.

4.Democratic system

- The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights.
- Free fair and regular elections are held for electing governments

5.India is a republic

- The Preamble declares India to be a Republic.

- India is not ruled by a monarch or a nominated head of state. India has an elected head of state (President of India) who wields power for a fixed term of 5 years.
- After every 5 years, the people of India indirectly elect their President.

6.Union of states

- Article I of the Constitution declares that “India that is Bharat is a Union of States.”

7.Fundamental Rights and duties:

- The Constitution of India grants and guarantees Fundamental Rights to its citizens.
- The constitution of India confirms the basic principle that every individual is permitted to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental rights.
- **The Six FR include-**
 - 1) Right to Equality;
 - 2) Right to Freedom;
 - 3) Right Against Exploitation;
 - 4) Right to Freedom of Religion; Cultural
 - 5) Educational Rights &

6) Right to Constitutional Remedies (Art. 32).

- The fundamental rights are justiciable and are not absolute. Reasonable constraints can be imposed keeping in view the security-requirements of the state.
- A new part IV (A) after the Directive Principles of State Policy was combined in the constitution by the 42nd Amendment, 1976 for fundamental duties.

8. Directive Principles of State Policy:

- A unique aspect of the Constitution is that it comprises a chapter in the Directive Principles of State Policy.
- These principles are in the nature of directives to the government to implement them to maintain social and economic democracy in the country.

9. Parliamentary System:

- The Constituent Assembly decided to espouse Parliamentary form of government both for the central and the state.
- In the Indian parliamentary system, distinction is made between nominal and real executive heads.

- The Council of Ministers is responsible before the Lok Sabha, The lower house of union parliament. There are close relations between the executive and legislature.

10.Federal structure of government:

- A federal state is a state where a country is divided into smaller regions and the government is functioning at two levels
- The Indian Constitution has envisaged a federal structure for India considering the geographical vastness and the diversity of languages, region, religions, castes, etc.
- Written Constitution, supremacy of the Constitution, division of powers between Union and States, bicameral Legislature, independent Judiciary, etc. are the features of Indian federation.
- Scholars describe India as a 'Quasi-Federation' (K.C. Wheare) or as 'a federation with a unitary bias, or even as 'a Unitarian federation.'

11.Universal adult franchise

- All men and women enjoy an equal right to vote. Each adult man and woman above the age of 18 years has the right to vote.
- All registered voters get the opportunity to vote in elections.

12.Single integrated State with Single Citizenship:

- India is the single Independent and Sovereign integrated state.

- All citizens enjoy a common uniform citizenship.
- They are entitled to equal rights and freedoms, and equal protection of the state.

Integrated Judicial system

- The Constitution provides for a single integrated judicial system common for the Union and the states.
- The Supreme Court of India works at the apex level, High Courts at the state level and other courts work under the High Courts.

Independent Judiciary

- It is necessary to secure the philosophical foundations of the rule of law and democracy
- Firstly, the Constitution makers created a separate Judiciary independent of Legislature and Executive.
- Secondly, the Constitution has ensured complete independence of the Judiciary in the matters of administration and finances.

Amending the Constitution of India:

- Amending the Constitution of India is the procedure of making modifications to the nation's fundamental law or supreme law.

- The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India.
- This procedure guarantees the sanctity of the Constitution of India and keeps a check on uninformed power of the Parliament of India.

Judicial Review:

- The judiciary has a significant position in the Indian Constitution and it is also made independent of the legislature and the executive.
- The Supreme Court of India stands at the peak of single integrated judicial system
- It operates as defender of fundamental rights of Indian citizens and guardian of the Constitution.

Basic Structure doctrine:

- The basic structure doctrine is an Indian judicial norm that the Constitution of India has certain basic features that cannot be changed or destroyed through amendments by the parliament.
- The basic features of the Constitution have not been openly defined by the Judiciary.
- At least, 20 features have been described as “basic” or “essential” by the Courts in numerous cases, and have been incorporated in the basic structure.
- In Indira Gandhi v. In The Raj Narain case and also in the Minerva Mills case, it was witnessed that the claim of any particular feature of

the Constitution to be a “basic” feature would be determined by the Court in each case that comes before it.

Secularism

- In no other country of the world so many religions coexist as in India. In view of such diversity the Constitution guarantees complete freedom of religion to all.
- The citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed, religion or sex.
- The State does not discriminate against anyone on the ground of his religion, nor can the State compel anybody to pay taxes for the support of any particular religion.
- Everybody is equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- The Constitution regards religion as a private affair of individuals and prohibits the State from interfering with it. The Constitution also grants various cultural rights to minorities.

Independent bodies

- The Constitution has set up various independent bodies and vested them with powers to ensure the constitutional provisions. Ex: Election Commission, CAG, Finance Commission

- These institutions have been provided with security of tenure, fixed service conditions etc to ensure that they are not susceptible to the whims of either the legislature or the executive.

In its Part IVA (Article 51 A) the Constitution describes the following Fundamental Duties of a citizen:

1. Respect for the Constitution, the national flag and the national anthem;
2. Cherish the noble ideals of the freedom struggle;
3. Uphold and protect the sovereignty, unity and integrity of India;
4. Defend the country and render national service when called;
5. Promote the common brotherhood of all the people of India and renounce any practice derogatory to the dignity of women;
6. Preserve the rich heritage of the nation's composite culture;
7. Project the natural environment and have compassion for living creatures;
8. Develop scientific temper, humanism and spirit of inquiry and reform;
9. Safeguard public property and abjure violence; and
10. Strive for excellence in all individual and collective activity.
11. Duty of the parents to send their children to schools to get an education.

The Fundamental Duties are, however, not enforceable by the courts.