

# Constitutional Framework

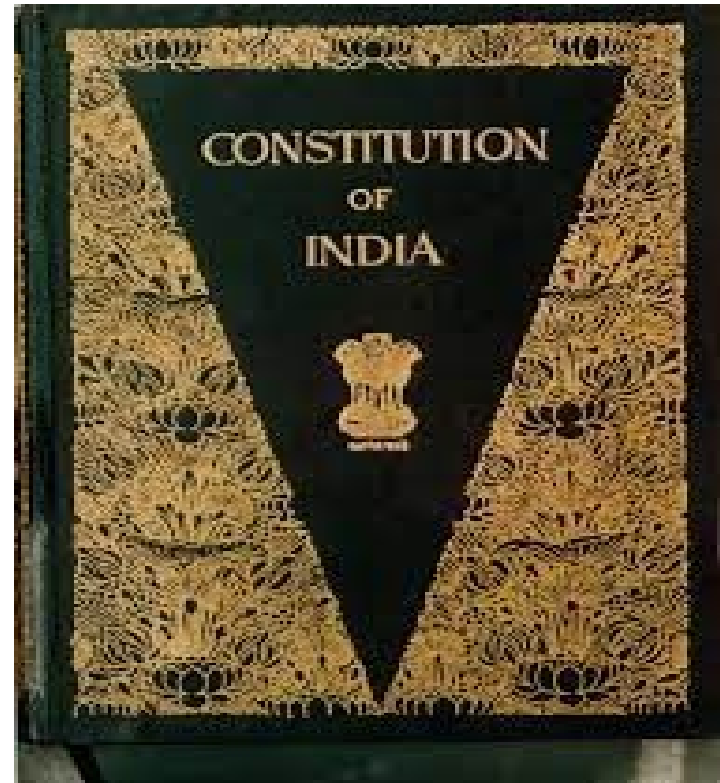
- Historical Background
- Making of the Constitution
- Salient Features of the Constitution
- Preamble of the Constitution
- Fundamental Rights
- Directive Principles of State Policy
- Fundamental Duties

# Constitutional Law of India

- Introduction to Constitution of India
- The Necessity of the Constitution
- Societies before and after the Constitution adoption
- Sources of the Constitution at a Glance

# Introduction to Constitution of India

- “Constitution is not a mere lawyers’ document, it is a vehicle of Life, and its spirit is always the spirit of Age.” – B.R. Ambedkar



- The word 'Constitution' is of **French** origin which is generally used for regulation and orders. The Constitution of any country is the , **supreme law of the land** with greater authority and sanctity.
- It not only describes the basic principles of the State, the structures and processes of governance and the fundamental rights of citizens but also envisions a path of growth and development for a nation. It is the vehicle of Life because it is a living document it can be amended, modified according to the changing needs of the society.

- The Constitution of India is the world's longest constitution. At its commencement it had Preamble, **395 Articles in 22 Parts** and **8 Schedules**. India is referred to as **Bharat** under the Indian Constitution.
- Currently the Constitution of India has a 'Preamble' and **470 Articles** which are grouped into **25 Parts** and **12 Schedules**.
- When it comes to the constitutional reading we have 2 approaches to it –
  1. Original Intent Approach
  2. Living Tree Doctrine
- **Original Intent Approach** : It is w.r.t what original constitution is speaking. e.g. - Art. 17, it is speaking about abolition of untouchability i.e. related to caste discrimination.
- **Living Tree Doctrine** : It is said that Constitution is not dead, it is living one it is transformative with changing times. e.g. - Sabarimala Verdict, while Interpreting Art. 17 Supreme Court held that the temple's practise of excluding women is unconstitutional because it was against Gender Equality/Gender Justice. Court interpreted Art. 17 with a wider meaning saying that temple is treating women's as untouchables.

# The Necessity of the Constitution

- It lays out certain ideals that forms the basis of the kind of country that we as citizens aspire to live in.
- Constitution upholds the idea, values and beliefs of citizens of the country. It is the document of peoples faith and aspirations.
- Constitution defines the nature of a country's political system. Like what type of political system should be there. Eg : Democracy, Dictatorship, Monarchy.
- It lays down limits on the powers of the Government and tells us what the rights of the citizens are.

- Constitution provides us the safeguard against the powerful authority. We can say that political leaders may misuse their authority. Constitution lays down rules that guard us. e.g. Fundamental Rights.
- Constitution ensure that a dominant group does not use it's power against the less powerful people or group i.e. Majority should not exclude the interest of minorities. Tyranny of majority should be checked.

# The Societies before and after the Constitution adoption

- Political system and history
  - Constitutional history and development
1. Indian Councils Act of 1909
  2. Government of India Act of 1919
  3. Government of India Act of 1935
  4. Indian Independence Act of 1947



# Political system and history

- India first came into contact with the west in the early 18th century when it was annexed by the British East India Company in 1599.
- In the mid 19th century, it fell under British colonial rule headed by a Viceroy.
- Viceroy, Governor General they are the representative of Monarch functioned as the chief administrator of India.
- In 1857, in the wake of the Sepoy Mutiny term quoted by Britishers and 'First war of Indian Independence' term quoted by Veer Savarkar, The British crown assumed direct responsibility for the governance of India from 1857 and this rule was continued by Governor General until 1947.

# Constitutional History & Development

## Indian Councils Act of 1909

- This act is also known as **Morley-Minto Reforms**.
- It increased the size of the legislative councils, both central and provincial.
- The number of members in the Central Legislative Council was raised from 16 to 60.
- It introduced the system of **communal representation for Muslims** by accepting the concept of **separate electorate**. The voting population of a country/region is divided into different electorates, based on certain factors such as religion, caste, gender.
- The act 'legalised communalism' and **Lord Minto** came to be known as **Father of Communal Electorate**.

# Government of India Act 1919

- This act is also known as **Montagu-Chelmsford Reforms**.
- Key reforms of the Act were the establishment of a dual scheme of governance known as '**dyarchy**'.
- It introduced, for the first time, **Bicameralism** consisting of an Upper House(Council of State) and a Lower House(Legislative Assembly) and direct elections in the country.
- Central Public Service Commission was set up in **1926** for recruiting civil servants.
- **Simon Commission report** it gave the report to British government in year **1930**. It was a group of 7 MPs from Britain who were sent to India in 1928 to study constitutional reforms and make recommendations to the government. Chairman of this commission was **Sir John Simon**.

# Government of India Act of 1935

- Establishment of All India Federation consisting of provinces and princely states as units. This act exercised as the most profound influence on the Indian Constitution.
- The Act divided the powers between the Centre and units in terms of three lists- **Federal list(for centre)**, **Provincial list(for provinces)** and the **Concurrent list(for both)**.
- **Abolished dyarchy** in the provinces and introduced '**provincial autonomy**'. Federal scheme, Powers of the federal judiciary, **Office of the governor** was greatly influenced by GOI Act, 1935.
- It provided the establishment of RBI to control the currency and credit of the country.
- It extended the principle of **communal representation** by providing **separate electorates for depressed classes, women and labourers**.

# Indian Independence Act of 1947

- On February 20, 1947, the British Prime Minister **Clement Atlee** declared that the British rule in India would end by June 30, 1948.
- This announcement was followed by the agitation by the Muslim League demanding partition of the country under the head of Muslim League **Mohammed Ali Jinnah**.
- On June 3, 1947 **Lord Mountbatten**, the viceroy of India, put forth **partition plan**, known as the **Mountbatten Plan**.
- It abolished the office of viceroy and provided for each dominion, a governor-general.
- **Lord Mountbatten** became the **first British governor-general** of the new Dominion of India. And **Chakravarthy Rajagopalachari** was the **first Indian governor general** of independent India.
- At the time of Independence **two** types of political units existed in India.

# Making of the Constitution and Role of Constituent Assembly

- Constituent Assembly
- Demand for a Constituent Assembly
- Composition of the Constituent Assembly
- Working of the Constituent Assembly
- Drafting Committee
- Enactment of the Constitution
- Enforcement of the Constitution

# Constituent Assembly

- The Constituent Assembly of India is a body or assembly of popularly elected representatives which is assembled for the purpose of **drafting/framing/adopting** a Constitution.
- The members of the constituent assembly are elected by the **provincial assemblies**.
- The idea of a Constituent Assembly to frame a Constitution for India was first mooted by The **All Parties Conference in 1946**.
- Following India's independence from British Government in 1947, its members served as the nation's first Parliamentarians.
- The two persons who played a vital role in the integration of princely states were **Sardar Vallabhbhai Patel** and **V.P. Menon**

# Demand for a Constituent Assembly

- In 1934, **M N Roy** first proposed the idea of a constituent assembly.
- The demand was taken up by the INC in 1935 as an official demand.
- The British accepted this in the **August Offer of 1940**, The British government would transfer the power to the interim government established by the responsible Indian hands.
- Under the **Cabinet Mission plan of 1946**, elections were held for the formation of the constituent assembly.
- The **constituent assembly was formed in 1946** for the purpose of framing/writing a constitution for Independent India.



# Composition of the Constituent Assembly

- Initially, the number of members was 389. After partition, some of the members went to Pakistan and the number came down to 299. Out of this, 229 were from the British provinces and 70 were nominated from the princely states.
- 13 committees were set up by the constituent assembly for framing the Constitution of India.
- Dr. Sachchidananda Sinha was the first temporary chairman/provisional president of the Constituent Assembly.
- Later on Dec 11, 1946 Dr. Rajendra Prasad was elected as the Permanent Chairman/ President of Constituent Assembly.
- Constituent Assembly Vice President was Harendra Coomar Mookerjee, Constitutional Advisor (Legal Advisor) was Benegal Narsing Rau (B.N. Rau).
- H.V.R. Iyengar was the Secretary to the Constituent Assembly.
- S.N. Mukherjee was the chief draftsman of the constitution in the Constituent Assembly.

# Working of the Constituent Assembly

- The Constituent Assembly held its first session on **December 9, 1946** in New Delhi.
- The Muslim League boycotted the meeting citing their demand for separate state of Pakistan.
- On December 13, 1946, **Jawaharlal Nehru** moved the historic '**Objectives Resolution**' in the Assembly.
- Objective Resolution enshrined the **aspirations** and **values** of the constitution-makers. Under this, the people of India were guaranteed social, economic and political justice, equality and fundamental freedoms.
- This Objectives resolution was **adopted** on **22 January 1947** and the **Preamble** to the Constitution is based on it.

- Time taken by the assembly to frame Constitution : It had 11 sessions over **2 years, 11 Months and 18 days**. Total expenditure incurred in framing of the Constitution : Rs 64 Lakhs.
- The Constitution-makers had gone through the Constitutions of about 60 countries.
- It adopted the national flag on **July 22, 1947**.
- It adopted the national anthem on **January 24, 1950**.
- The Constituent Assembly of India took all decisions by **Two-thirds majority**.
- Elephant was adopted as the symbol(seal) of the Constituent Assembly.
- It ratified the India's membership of the Commonwealth in May 1949. The Commonwealth of Nations, generally known as a political association of 54 member states, almost all of which are former territories of the British Empire.

# Drafting Committee

- Most important committee set up on **August 29, 1947**. This committee was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members :

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

# Enactment of the Constitution

- Dr. B.R. Ambedkar introduced the final draft of the Constitution in November 1948, had a general discussion on it for five days in Parliament and the country's people were asked for their feedback and inputs within 8 months.
- The last session of Constituent Assembly was held on 24 Jan 1950.
- The Constitution was passed and **adopted** by the assembly on **26 November, 1949**, contained a Preamble, 395 Articles grouped into 22 Parts and 8 Schedules.
- **Provisions relating to citizenship** came into force soon after the adoption of constitution i.e. on 26 November 1949

# Enforcement of the Constitution

- The Constitution **came into force** on **26 January 1950**. This day is referred to in the Constitution as the '**date of its commencement**', and celebrated as the Republic Day.
- January 26 was specifically chosen as the 'date of commencement' of the constitution because of its historical importance.
- It was on this day in **January 26 1930** that **Purna Swaraj** day was celebrated, called for "complete freedom from the British" following the resolution of the Lahore Session (December 1929) of the INC.

# Sources of the Constitution at a Glance

- **Government of India Act of 1935** : Federal scheme, office of governor, judiciary, emergency provisions.
- **US Constitution** : Fundamental Rights, independence of judiciary, judicial review, impeachment of president, removal of judges of the Supreme Court.
- **British Constitution** : Parliamentary government, single citizenship, bicameralism, cabinet system, Rule of Law, Law making procedure.
- **Irish Constitution** : DPSP, nomination of members to rajya sabha, election of president.
- **Russian Constitution** : Fundamental duties and preamble.
- **South African Constitution** : Procedure for amendment of the Constitution and election of members of rajya sabha.
- **Australian Constitution** : Concurrent List, joint sitting of the two houses of Parliament.
- **German Constitution** : Suspension of Fundamental Rights during Emergency.
- **Canadian Constitution** : Federation with strong centre, appointment of state governors by centre.

# Schedules of the Constitution at a Glance

- **First Schedule** : Names of the States, union territories their extent and their territorial jurisdiction.
- **Second Schedule** : Provisions relating to the emoluments, allowances, privileges and so on of President, Governor, Speaker, Judges of Supreme Court, High Court.
- **Third Schedule** : Forms of Oaths or Affirmations for Union ministers, MP's
- **Fourth Schedule** : Allocation of seats in the Rajya Sabha to the states and the union territories.
- **Fifth Schedule** : Provisions relating to the administration and control of scheduled areas and scheduled tribes.
- **Sixth Schedule** : Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.
- **Seventh Schedule** : Division of powers between the Union and the States in terms of lists i.e. union list, state list, concurrent list.



- **Eighth Schedule** : Languages recognized by the Constitution. Originally it had 14 languages but presently there are 22 languages.
- **Ninth Schedule** : Acts and Regulations of the state legislatures dealing with land reforms and abolition of zamindari system. This schedule was added by 1<sup>st</sup> Amendment Act of 1951.
- **Tenth Schedule** : Provisions relating to disqualification of the members of Parliament and state legislatures on the ground of defection/ Anti Defection Laws.
- **Eleventh Schedule** : Specifies the powers, authority and responsibilities of Panchayats. This was added by 73<sup>rd</sup> Amendment Act of 1992
- **Twelfth Schedule** : Specifies the powers, authority and responsibilities of Municipalities. This was added by 74<sup>th</sup> Amendment Act of 1992.

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