

CHAPTER - I

CONSTITUTION: WHY & HOW

ORIGIN OF THE TERM CONSTITUTION

The term constitution is derived from Latin word 'constitute' which means 'to establish'.

WHAT IS CONSTITUTION

Constitution is the basis or fundamental laws of a state.

TYPES OF CONSTITUTION

There are four types of constitution

- 1 Written Constitution
- 2 Unwritten Constitution
- 3 Rigid Constitution
- 4 Flexible Constitution

1. Written Constitution

If the constitution of a state are in a written form it is called written constitution.

E.g. India.

2. Unwritten Constitution

If the constitution of a state are in a unwritten form it is called unwritten constitution.

E.g. Britain

3. Rigid Constitution

If the constitution of a state cannot be amended easily it is called rigid constitution.

Eg. America

4. Flexible Constitution

If the constitution of a state can be amended easily it is called flexible constitution.

Eg. Britain

FUNCTIONS OF CONSTITUTION

- 1 To provide a set of basic laws to coordinate the people of a given society.
- 2 To specify which institution has the decision making authority in a country or society.
- 3 To limit the powers of the government.
- 4 To enable the government and to fulfil the aspiration and goal of society.

FUNDAMENTAL IDENTITY OF THE PEOPLE

Constitution make some basic laws. These laws explain who should rule the society and how it should be ruled. It is called national identity or fundamental identity.

POLITICAL IDENTITY

By accepting the basic rules and regulation by the people. It is called political identity.

MORAL IDENTITY

Moral identity means what should do and what shouldn't be do. It represent the values of society. It is called moral identity.

AUTHORITY OF A CONSTITUTION

Constitution provides liberty, equality, peace and security to people while a constitution ensure all of these rights such constitution can keep the authority of a constitution.

MODE OF DECLARATION OR PROMULGATION

It means how a constitution came to exist.

- There are some countries which constitution doesn't work properly. Because, the constitution was prepared by military chiefs or dictatorship or autocracy.
- But in some countries constitution work properly because there is a long period of freedom movement. Through this they got their independent. Finally they organize a constitution for their own.

Eg. India, South Africa, America.

- Indian constitution was formed by Constituent Assembly and prepared by popular leaders.
- In some countries constitution were formed based on referendum.

Eg. Switzerland

THE SUBSTANTIVE PROVISION OF A CONSTITUTION

- The provision of a constitution should be acceptable for all.
- It doesn't keep any partiality towards any religion or any other group.
- If there is arise a feeling of suppression among people it will affect the smooth functioning of constitution.
- Complete justice cannot be possible through a constitution. Even though it can provide some basic norms related to the people.
- The content of the provision of constitution should keep liberty and equality.
- If a constitution can ensure the liberty and equality such type of constitution become success.

BALANCED INSTITUTION DESIGN

If a constitution failure or success depends on its institutional design.

- The powers doesn't carry in a single institution.
- The power should be distributed among different institution.

E.g. Legislature, executive, judiciary.

- It ensure that if an agency misuses its powers other agencies can prevent it.
- The constitution should be ensure the amendment based on socio-economic or political change.

MAKING OF INDIAN CONSTITUTION

- The Britain send a mission to India in the name of Cabinet Mission. One of the aim of this mission was to prepare a constitution for India.
- With the recommendation of this Mission formed a constituent assembly.
- The constituent assembly elected Sachidhanandha Sinha as the temporary president. Later elected Dr. Rajendra Prasad as the permanent president.
- Constituent assembly consist of eight committee. The most important committee among them were Drafting Committee.
- This committee chairman was Dr. B.R. Ambedkar. He is known as Architecture of Indian constitution.
- Indian constitution began on 9th December 1946 to 26th November 1949 is ended. It came to existent on 26th January 1950.
- The constitution take time to prepare about 2 years 11 months and 18 days.

There are two factors which gives authorities to Constituent Assembly.

1. Principles of deliberation
2. Procedure

1. Principle of Deliberation

- The members of Constituent Assembly discussed in every subject and finally added them to the provision of the constitution.
- They gave more importance for national interest then community interest.
- There is a debate and discussion occurred by arising issues among the members of constituent assembly.

2. Procedure

- The constituent assembly consist of 8 committee. Each committee study about each subject. The most important committee is 'Drafting Committee'.
- The chairman of this committee was Dr. B.R. Ambedkar.
- Drafting committee appointed in 1947.
- Indian constitution began its works on 9th December 1946. It completed on 26th November 1949. But it came to existent on January 26th 1950.

OBJECTIVE RESOLUTION

Objective resolution was introduced by Jawaharlal Nehru in 1946 December.

Major Content of Objective Resolution

- India is a sovereign democratic republic.
- Popular sovereignty
- The Indian constitution ensure the socio-economic justice for all.
- To ensure the protection for minorities and the other backward classes.
- To maintain unity of our nation.
- To ensure world peace and welfare

India Borrowed Different ideas from Different Countries

British Constitution

- First past the post system (F.P.T.P.)
- Parliamentary system
- Rule of law
- Role of speaker
- Law making procedure
- Citizenship

American Constitution

- Fundamental rights
- Judicial review
- Preamble

Canadian Constitution

- Federal system with a strong central government.
- Residuary powers

French Constitution

- Liberty, equality, fraternity
- Republic

Irish Constitution (Ireland)

- Directive principles of state policy (DPSP)
- Elected head of state

Australian Constitution

- Concurrent list

Russian Constitution

- Fundamental duties

South African Constitution

- Constitutional amendment

German Constitution

- Emergency