

CONSTITUTIONAL DESIGN

WHY THE NEED FOR CONSTITUTION?

Take the example of South Africa to see why we need the constitution and what constitutions do. The oppressor and oppressed were planning to live together as equals in the new democracy. Each section wanted to safeguard their interests and wanted substantial social and economic rights. Through negotiations, both parties came to a compromise. The whites agreed to the principle of majority rule and that of one person one vote. They also agreed to accept some basic rights for the poor and the workers. The blacks agreed that majority rule would not be absolute and that the majority would not take away the property of the white minority. How was this compromise to be implemented? The only way to build and maintain trust in such a situation was to write down some rules of the game that everyone would abide by. These supreme rules that no government would be able to ignore are called a constitution.

Every country has diverse groups of people. All over the world people have differences of opinion and interests. The constitution is the supreme law that determines the relationship among people living in a territory (called citizens) and also the relationship between the people and government. Find what constitutions do below:

- First, it generates a degree of trust and coordination that is necessary for different kind of people to live together
- Second, it specifies how the government will be constituted, who will have the power to take which decisions
- Third, it lays down limits on the powers of the government and tells us what the rights of the citizens are
- Fourth, it expresses the aspirations of the people about creating a good society

All countries that have constitutions are not necessarily democratic. But all countries that are democratic will have constitutions.

MAKING OF THE INDIAN CONSTITUTION

India's Constitution was drawn up under very difficult circumstances. The country was born through a partition on the basis of religious differences and was a traumatic experience for the people of India and Pakistan. The British

had left it to the rulers of the princely states to decide whether they wanted to merge with India or with Pakistan or remain independent. The merger of these princely states was a difficult and uncertain task. When the constitution was being written, the future of the country did not look as secure as it does today.

THE PATH TO THE CONSTITUTION

One of the major advantages for the makers of the Indian Constitution was that consensus about what a democratic India should look like had already evolved during the freedom struggle. In 1928, Motilal Nehru and eight other Congress leaders drafted a constitution for India and In 1931, the resolution at the Karachi session of the Indian National Congress dwelt on how independent India's constitution should look like. Both these documents included features such as Universal Adult Franchise, Right to Freedom and Equality and to protecting the rights of minorities in the constitution of independent India. These basic values were accepted by all leaders much before the Constituent Assembly met to deliberate on the Constitution. That is why the Indian constitution adopted many institutional details and procedures from colonial laws like the Government of India Act, 1935. Many of our leaders were inspired by the ideals of the French Revolution, the practice of parliamentary democracy in Britain and the Bill of Rights in the US.

THE CONSTITUENT ASSEMBLY

The drafting of the constitution was done by an assembly of elected representatives called the Constituent Assembly. Elections to the Constituent Assembly were held in July 1946 and its first meeting was held in December 1946. Soon after, the country was divided into India and Pakistan and the Constituent Assembly was also divided into the Constituent Assembly of India and that of Pakistan. The Constituent Assembly that wrote the Indian constitution had 299 members. The Assembly adopted the Constitution on 26 November 1949 but it came into effect on 26 January 1950. To mark this day we celebrate January 26 as Republic Day every year.

Why should we accept the Constitution made by this Assembly more than six decades ago?

- The Constitution does not reflect the views of its members alone. It expresses a broad consensus of its time.
- The second reason for accepting the Constitution is that the Constituent Assembly represented the people of India.

- Finally, the manner in which the Constituent Assembly worked gives sanctity to the Constitution. The Constituent Assembly worked in a systematic, open and consensual manner.

First, some basic principles were decided and agreed upon. Then a Drafting Committee chaired by Dr B.R. Ambedkar prepared a draft constitution for discussion. Several rounds of thorough discussion took place on the Draft Constitution, clause by clause. More than two thousand amendments were considered. Every document was presented and every word spoken in the Constituent Assembly has been recorded and preserved. These are called 'Constituent Assembly Debates.'

GUIDING VALUES OF THE INDIAN CONSTITUTION

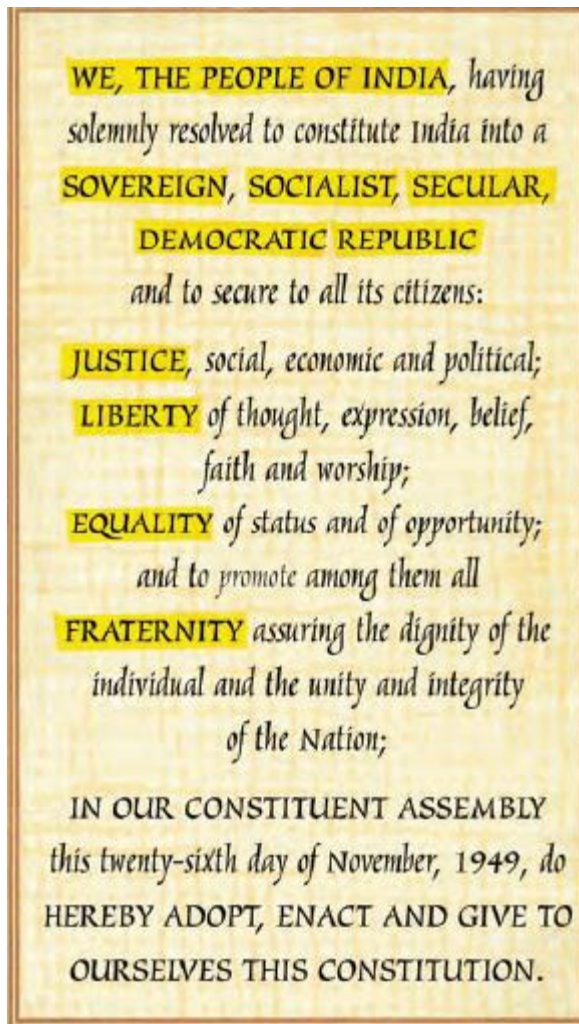
First, understand the overall philosophy of what our Constitution is all about. Read the views of some of our major leaders on our Constitution and read what the Constitution says about its own philosophy. This is what the preamble to the Constitution does.

THE DREAM AND THE PROMISE

There were many members who followed the vision of Mahatma Gandhi. This dream of an India that has eliminated inequality was shared by Dr Ambedkar, who played a key role in the making of the Constitution, but his vision of removing inequalities from India was different from Gandhiji.

PHILOSOPHY OF THE CONSTITUTION

Values that inspired and guided the freedom struggle and were in turn nurtured by it, formed the foundation for India's democracy. Given below are the values embedded in the Preamble of the Indian Constitution.



WE, THE PEOPLE OF INDIA: The Constitution has been drawn up and enacted by the people through their representatives, and not handed down to them by a king or any outside powers.

SOVEREIGN: People have the supreme right to make decisions on internal as well as external matters. No external power can dictate the Government of India.

SOCIALIST: Wealth is generated socially and should be shared equally by society. The government should regulate the ownership of land and industry to reduce socio-economic inequalities.

SECULAR: Citizens have complete freedom to follow any religion. But there is no official religion. The government treats all religious beliefs and practices with equal respect.

DEMOCRATIC: A form of government where people enjoy equal political rights, elect their rulers and hold them accountable. The government is run according to some basic rules.

REPUBLIC: The head of the state is an elected person and not a hereditary position.

JUSTICE: Citizens cannot be discriminated against on the grounds of caste, religion and gender. Social inequalities have to be reduced. The government should work for the welfare of all, especially of the disadvantaged groups.

LIBERTY: There are no unreasonable restrictions on the citizens in what they think, how they wish to express their thoughts and the way they wish to follow up their thoughts in action.

EQUALITY: All are equal before the law. The traditional social inequalities have to be ended. The government should ensure equal opportunity for all.

FRATERNITY: All of us should behave as if we are members of the same family. No one should treat a fellow citizen as inferior.

INSTITUTIONAL DESIGN

A Constitution is not merely a statement of values and philosophy. It is mainly about embodying these values into institutional arrangements. It is a very long and detailed document. Therefore it needs to be amended quite regularly to keep it updated. Provisions are made to incorporate changes, known as constitutional amendments from time to time. Like any Constitution, the Indian Constitution also lays down a procedure for choosing persons to govern the country. It defines who will have how much power to make which decisions. And it puts limits to what the government can do by providing some rights to the citizen that cannot be violated.