

## Chapter-2

# CONSTITUTIONAL DESIGN

**STUDY NOTES****DEMOCRATIC CONSTITUTION IN SOUTH AFRICA**

- After a long struggle for freedom, South Africa became independent and got its democratic Constitution. Nelson Mandela is considered a chief driving force behind it. He not only fought for freedom, but also for rights and equality among black and white people. He was being tried for treason by the white South African government. He was sentenced life imprisonment in 1964, spent 28 years in South Africa's most dreaded prison, Robben Island.
- Struggle against apartheid:- Apartheid was the system of racial discrimination unique to South Africa, which was imposed by the white Europeans on the blacks.
- During 17<sup>th</sup> & 18<sup>th</sup> centuries, the trading companies from Europe occupied South Africa with arms and force. Due to this settlement of whites, the system of apartheid divided the people on the basis of their skin. The native 'black' people made up about three-fourth of the population.
- The white rulers treated all non- whites as inferiors. Slowly the apartheid system started oppressing blacks. In this system, the non- white did not have voting rights and they were forbidden from living in their white areas.
- Trains, buses, taxis, hotels, hospitals, schools, libraries, cinema halls, theatres, beaches, swimming pool, public toilets, etc, were all separate for the whites and blacks. This was called as segregation.
- Formation of African National Congress (ANC):- Since 1950, the blacks, coloured and Indians fought against the apartheid system. They launched protest marches and strikes. The African National Congress (ANC) led the movement.
- Many workers' unions, communist Party and sensitive whites joined the ANC to oppose apartheid. Apartheid was declared unjust and racist by several countries.
- As protest and struggle increased, the white rulers realised that they could no longer keep the blacks under their rule. Then the government changed its policies by repealing discriminatory law. Ban on political parties and restrictions on the media were banished.

- After spending 28 years in jail, Nelson Mandela became a free person. Finally at the midnight of 26<sup>th</sup> April, 1994, the new democratic state of the Republic of South Africa emerged.
- After the emergence of the democratic South Africa black leaders appealed to fellow blacks to forgive the whites for the atrocities they had committed while in power. They wanted to build up a new South Africa based on equality of all races.
- After debates and discussion of two years, they made one of the finest Constitution of the world. From this Constitution, the citizens got the most extensive rights available in any country. The South African Constitution inspires democrats all over the world.

### WHY DO WE NEED A CONSTITUTION?

- The example of South Africa tells us why a country needs a constitution and what the Constitution accomplishes. In a new democracy, oppressed and oppressor planned to live together as equals.
- The white minority was keen to protect its privileges and property. After a long negotiations, both agreed to a compromise. The whites agreed to the principle majority rule:- (i) that of one person, one vote. (ii) accept some basic rights for the poor and the workers. (iii) the majority rule would not be absolute. So they wrote down some rules which everyone had to abide by and which all future government would have to follow.
- Constitution: A set of written rules: - The rules decide the rights of the citizen. This set of basic rules is called a constitution.
- We can say that, 'the Constitution of a country is a set of basic rules that are accepted by all people living in a country.' The Constitution is the supreme law that determines the relationship among citizens and also the relationship between the people and government.
- It does the following tasks: - (i) It generates a degree of trust and coordination between people that is necessary for the different kinds of people living together.
  - (ii) It specifies how a government will be constituted and who will have power to make which decisions.
  - (iii) It lays down limits to the powers of the government and also specifies the rights of the citizens.
  - (iv) It also expresses the aspirations of the people about creating a good society.

### MAKING OF THE INDIAN CONSTITUTION

- The Indian Constitution was made under difficult circumstances just like South Africa. It was not an easy task to make the Constitution for a huge and diverse country like India.
- The consensus of creating Indian Constitution had evolved during the freedom struggle. This consensus was on how our democratic India would look like. There were different views regarding what path India should take after Independence.
- In 1928, Motilal Neheru and eight other Congress leaders drafted Constitution for India. At Karachi session of the Indian National Congress in 1931, the leaders decided on how the Indian Constitution should look like.
- In 1937 elections for Provincial Legislatures and Ministers were held all over British India. The Indian Constitution adopted many institutional details and procedures from the colonial laws like the Government of India Act 1935.
- 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. Its first meeting was held in December 1946.
- The Constituent Assembly was divided into Constituent Assemblies of India and Pakistan after the partition. The Constituent Assembly that wrote the Indian Constitution constituted as many as 299 members.
- This Assembly represented people of all regions and communities. Its some important members were: Dr. Rajendra Prasad, Pt. Jawaharlal Neheru, Sardar Vallabhbhai Patel, Maulana Abdul Kalam Azad , Dr. B. R. Ambedkar, Dr. H. C. Mookherjee, Sarojini Naidu, Durgabai Deshmukh, etc.
- The Assembly adopted the Constitution came into effect on 26<sup>th</sup> November, But the Constitution came into effect on 26<sup>th</sup> January, 1950. To mark this day, we celebrate 26<sup>th</sup> January as Republic Day.
- We accepted the Constitution made by the Constituent Assembly more than 50 years ago. The Constitution does not reflect the view of its members alone, it expresses a broad consensus of its time. Over the past fifty years, several groups have questioned some provisions of the Constitution. But no large social group or political has ever questioned its legitimacy.
- Another reason for accepting the Constitution is that the Constituent Assembly represented the people of India. It could not be chosen directly by all people as there was no universal adult franchise. The Constituent Assembly was elected by the members of existing provincial Legislatures.

- The Assembly was dominated by the Indian National Congress which included a variety of political and regional groups of people. The Assembly represented members from different language, groups, castes, classes, religions and occupations.
- Finally the Constituent Assembly worked in a systematic, open and consensual manner which gave sanctity to the Constitution.
- Drafting committee: - First some basic principles were decided and then a Drafting Committee under the leadership of B.R. Ambedkar prepared a Draft Constitution for discussion.
- The discussion of the Draft Constitution took place clause by clause. The members of the Drafting Committee completed the work in 114 days spread over three years. More than 2000 amendments were done.
- Every document presented and every word spoken in the Constituent Assembly has been recorded and preserved. These volumes are called Constituent Assembly Debates printed in 12 bulky volumes.

#### GUIDING VALUES OF THE INDIAN CONSTITUTION

- To understand the Indian Constitution properly, we need to understand its overall philosophy. This can be done by knowing the views of some prominent leaders about our Constitution, which lays down its guiding principles.
- The dream and the promise: - Mahatma Gandhi:- He was not a member of the Constituent Assembly, but many members of it followed his vision. In 1931, he had expressed himself in his magazine 'Young India' what he wanted from the Constitution. He wanted it to make the poor and unprivileged feel that they have an effective voice in the making of their country.
- Dr. B.R. Ambedkar:- The chairman of the Drafting Committee of the Constitution, wanted political, social and economic equality for all. He is known as the 'Father of Indian Constitution'.
- Jawaharlal Nehru:- He wanted equality of opportunity to all, end of poverty and ignorance and control of diseases. He wanted all responsible persons to dedicate themselves to the service of society.

#### PHILOSOPHY OF THE CONSTITUTION

- The values that inspired and guided the freedom struggle formed the foundation for India's democracy. These values are included in the Preamble to the Indian Constitution. They guide all the articles of the Indian Constitution. The Constitution begins with a short statement of its basic value which is called the Preamble to the Constitution. The

Preamble of the Constitution reads like a poem on democracy. It contains the philosophy on which the entire Constitution has been built. It is the soul of the Indian Constitution.

**INSTITUTIONAL DESIGN**

- A Constitution embodies the values and philosophy into institutional arrangements. The Constitution describes the institutional arrangements in a very legal language. As Constitution is a highly detailed document, it needs to be amended regularly to keep it up to date with the changing times. So, the makers of the Constitution made a provision for making such amendments to the Constitution from time to time. These changes are called Constitutional Amendments.
- In its working, there are three major aspects:
  - (i) It lays down the procedure for choosing person to govern the country, ie, about elections.
  - (ii) It defines who will have how much power to take which decisions, ie, distribution of power between the Executive, Legislative and Judiciary.
  - (iii) It puts limits to what the government can do by providing some rights to the citizen that cannot be violated.

ODM EDUCATIONAL GROUP

\*\*\*\*\*

Changing your Tomorrow