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NCERT Class 12 Political Science Part 1 Chapter 1: Constitution – Why and How?

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Need for Constitution

- People from different religion, age, gender and profession come together
- Coordinate and assure them
- Agree on basic rules – known to all members & also enforceable
- How much property should one be allowed to own? Should it be compulsory that every child be sent to school or should the parents be allowed to decide? How much should this group spend on its safety and security?
- The first function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society
- Choose Class representative – functions they perform, decisions they take, revise decisions

Specifications – Constitution

- Body of fundamental principles based on which rules are formulated – state is constituted and governed
- Specifies the basic allocation of power in a society
- Specify who has the power to make decisions in a society
- It decides who gets to decide what the laws will be.
- In a monarchical constitution, a monarch decides; in some constitutions like the old Soviet Union, one single party was given the power to decide
- Parliament gets to decide laws and policies, and that Parliament itself be organised in a particular manner
- Who has authority to enact the laws – function of constitution
- It decides how the government will be constituted.
- The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted.

Limitations of Power

If prohibited from practicing religion or choosing color of your choice -unfair and unjust.

only people of a certain skin colour would be allowed to draw water from wells – unfair and unjust.

So the third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them.

Ways to limit power is to specify fundamental rights that all of us possess as citizens and no government can every be allowed to violate.

The exact content and interpretation of these rights varies from constitution to constitution. But most constitutions will protect a basic cluster of rights. Citizens will be protected from being arrested arbitrarily and for no reason.

Fundamental Rights: Citizens will normally have the right to some basic liberties: to freedom of speech, freedom of conscience, freedom of association, freedom to conduct a trade or business etc. In practice, these rights can be limited during times of national emergency and the constitution specifies the circumstances under which these rights may be withdrawn.

Aspirations and Goals

Most of the older constitutions limited themselves largely to allocating decision-making power and setting some limits to government power
20th century constitution like Indian Constitution – framework for positive things, express aspirations and goals

Indian constitution – innovative – enable and empower government to take positive measures

India – free of caste discrimination

South Africa – end caste discrimination in new constitution, promote conservation of nature, make efforts to protect persons or groups subjected to unfair discrimination, and provides that the

government must progressively ensure adequate housing to all, health care

Indonesia - establish and conduct national education system. Poor and destitute child will be looked after by government

The framers of the Indian Constitution, for example, thought that each individual in society should have all that is necessary for them to lead a life of minimal dignity and social self-respect — minimum material well being, education etc. The Indian Constitution enables the government to take positive welfare measures some of which are legally enforceable

Support of preamble

DPSP enjoin government to fulfill aspirations

The fourth function of a constitution is to enable the government to fulfil the aspirations of a society and create conditions for a just society

Fundamental Identity of People

Maintain basic *political identity*

Constitutional norms are the overarching framework within which one pursues individual aspirations, goals and freedoms

So the constitution also gives one a *moral identity*

Many basic political and moral values are now shared across different constitutional traditions

But constitutions are different in the way they embody conceptions of national identity

The writing of the new Iraqi constitution after the collapse of Saddam Hussain's regime saw a lot of conflict between different ethnic groups in the country

Most nations are an amalgamation of a complex set of historical traditions; they weave together the diverse groups that reside within the nation in different ways

German identity was constituted by being ethnically German. The constitution gave expression to this identity. The Indian Constitution, on the other hand, does not make ethnic identity a criterion for citizenship.

About Constitution

UK – no single document – series of documents

Constitution – set of documents

The most successful constitutions, like India, South Africa and the United States, are constitutions which were created in the aftermath of popular national movements.

India's Constitution was formally created by a Constituent Assembly between December 1946 and November 1949, it drew upon a long history of the nationalist movement – public credibility, negotiate, command respect of society, national consensus

Some countries have subjected their constitution to a full-fledged referendum, where all the people vote on the desirability of a constitution. The Indian Constitution was never subject to such a referendum, but nevertheless carried enormous public authority, because it had the consensus and backing of leaders who were themselves popular

It is the hallmark of a successful constitution that it gives *everyone* in society some reason to go along with its provisions

Constitution should neither undermine the few people or give extra privilege to others

No constitution by itself achieves perfect justice. But it has to convince people that it provides the framework for pursuing basic justice

The more a constitution preserves the freedom and equality of all its members, the more likely it is to succeed

Constitution

Mode of Promulgation

The substantive provisions of a constitution

Balanced institutional design - Well crafted constitutions fragment power in society intelligently so that no single group can subvert the constitution – no single institute should acquire monopoly

Powers across Legislature, Executive and the Judiciary and even independent statutory bodies like the Election Commission

An intelligent system of checks and balances has facilitated the success of the Indian Constitution

right balance between certain values, norms and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances

Too rigid is likely to break; too flexible will have no security

Successful constitutions strike the right balance between preserving core values and adapting them to new circumstances

The Indian Constitution is described as 'a living' document – room to amendments and changes

The ability of the constitution to command voluntary allegiance of the people depends to a certain extent upon whether the constitution is just.

Making of the Constitution

Constitution was made by the Constituent Assembly

1st sitting - 9 December 1946 and re-assembled as Constituent Assembly for divided India on 14 August 1947. Its members were elected by indirect election by the members of the Provisional Legislative Assemblies that had been established in 1935 - Composed by British cabinet called Cabinet Mission

-Each Province and each Princely State or group of States were allotted seats proportional to their respective population roughly in the ratio of 1: 10,00, 000. As a result the Provinces that were

under direct British rule were to elect 292 members while the Princely States were allotted a minimum of 93 seats.

-The seats in each Province were distributed among the three main communities, Muslims, Sikhs and general, in proportion to their respective populations.

-Members of each community in the Provisional Legislative Assembly elected their own representatives by the method of proportional representation with single transferable vote.

-The method of selection in the case of representatives of Princely States was to be determined by consultation.

Dr. Rajendra Prasad in his first address as the Chairman of the Constituent Assembly ... the idea of a Constituent Assembly had come to prevail largely as an article of faith in almost all the politically-minded classes in the country.

Partition of Country - As a consequence of the Partition under the plan of 3 June 1947 those members who were elected from territories which fell under Pakistan ceased to be members of the Constituent Assembly. The numbers in the Assembly were reduced to 299 of which 284 were actually present on 26 November 1949 and appended their signature to the Constitution as finally passed. 26 members from SCs.

With violence of Partition - minorities be secure, but religious identity would have no bearing on citizenship rights

Making of the Constitution – Issues

While in any assembly that claims to be representative, it is desirable that diverse sections of society participate, it is equally important that they participate not only as representatives of their own identity or community.

should India adopt a centralised or decentralised system of government? What should be the relations between the States and the centre? What should be the powers of the judiciary? Should the Constitution protect property rights?

introduction of universal suffrage (meaning that all citizens reaching a certain age, would be entitled to be voters irrespective of religion, caste, education, gender or income) .

The members of the Assembly placed a great emphasis on discussion and reasoned argument. – They gave principled reasons to other members for their positions.

Ambedkar had been a bitter critic of the Congress and Gandhi, accusing them of not doing enough for the upliftment of Scheduled Castes. Patel and Nehru disagreed on many issues. Nevertheless, they all worked together.

Usually an attempt was made to reach a consensus with the belief that provisions agreed to by all, would not be detrimental to any particular interests.

The Assembly met for one hundred and sixty six days, spread over two years and eleven months. Its sessions were open to the press and the public alike.

Nationalist Movements

Constituent Assembly was giving concrete shape and form to the principles it had inherited from the nationalist movement.

the shape and form of government India should have, the values it should uphold, the inequalities it should overcome.

Perhaps the best summary of the principles that the nationalist movement brought to the Constituent Assembly is the Objectives Resolution (the resolution that defined the aims of the Assembly) moved by Nehru in 1946. This resolution encapsulated the aspirations and values behind the Constitution.

Based on this resolution, our Constitution gave institutional expression to these fundamental commitments: equality, liberty, democracy, sovereignty and a cosmopolitan identity.

Constitution is not merely a maze of rules and procedures, but a moral commitment to establish a government that will fulfil the many promises that the nationalist movement held before the people.

Main points of the Objectives Resolution

India is an independent, sovereign, republic;

India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union;

Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union;

All powers and authority of sovereign and independent India and its constitution shall flow from the people;

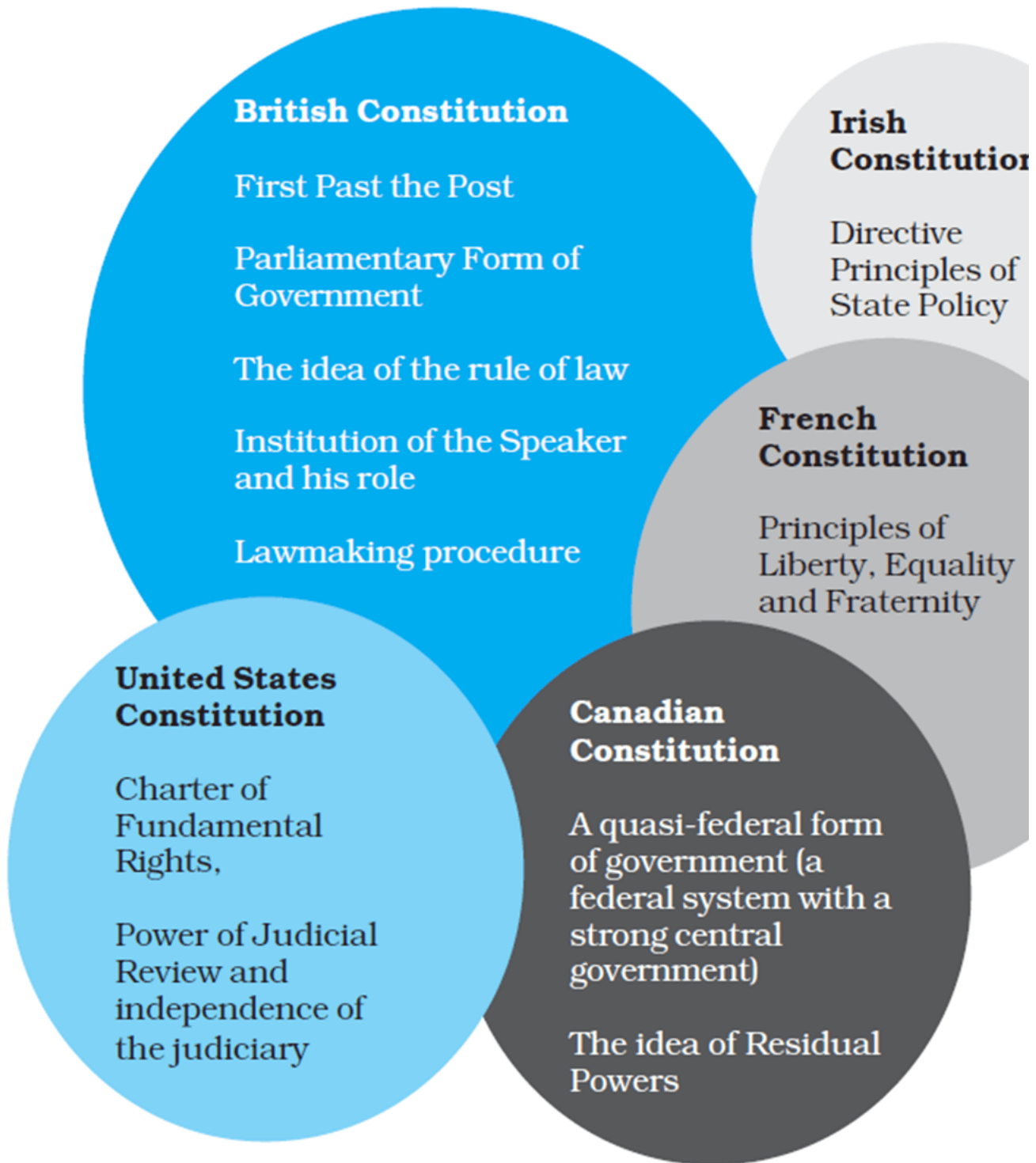
All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms - of speech, expression, belief, faith, worship, vocation, association and action - subject to law and public morality;

The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards;

The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nations;

The land would make full and willing contribution to the promotion of world peace and welfare of mankind.

Institutional Arrangements



The basic principle is that government must be democratic and committed to the welfare of the people. The Constituent Assembly spent a lot of time on evolving the right balance among the various institutions like the executive, the legislature and the judiciary

parliamentary form and the federal arrangement, which would distribute governmental powers

testament to their wide learning that they could lay their hands upon any intellectual argument, or historical example that was necessary for fulfilling the task at hand

The only new thing, if there can be any, in a constitution framed so late in the day are the variations, made to remove the failures and accommodate it to the needs of the country

Nepal Constitution

Nepal has had five constitutions, in 1948, 1951, 1959, 1962 and 1990. But all these constitutions were 'granted' by the King of Nepal. The 1990 constitution introduced a multiparty competition, though the King continued to hold final powers in many respects.

Constitution of Nepal 2015 is the present governing Constitution of Nepal. Nepal is governed according to the Constitution which came into effect on Sept 20, 2015, replacing the Interim Constitution of 2007 (interim). The constitution of Nepal is divided into 35 parts, 308 Articles and 9 Schedules.

Issues were monarchy so far

The Communist Party of Nepal (Maoist) was in the forefront of the struggle for a popularly elected constituent assembly

 Mayank