



- A living & organic document” in the words of the Supreme Court.
- Kesavananda Bharati case (1973) SC- Constituent power of parliament under art 368 does not enable it to alter " basic structure of the constitution".
- The goal of constitutional autochthony is to deliver an indigenous Constitution, the source of whose ‘authority’ can be located in the new state’s own soil.
- Longest written constitution
- British constitution - unwritten
- 395 art, 8 schedules, 22 parts.

WHY SO LENGTHY CONSTITUTION ?

- Geographical factors - vastness & diversity.
- Historical factors - Influence of GOI act 1935- Bulky
- Single constitution - for centre & state

Dominance of legal luminaries in CA.

- Contains fundamental principles of governance & detailed administrative provisions.
- Regionalism.

DRAWN FROM VARIOUS SOURCES

- Upto large extent derived from GOI act 1935
- Philosophical part - F.R.- American - DPSPs- Irish .
- Political part - Principles of cabinet govt & relations bet executive & legislature - British constitution.
- Criticism - borrowed , patch work.
- Borrowed features modified according to Indian conditions, same time avoiding their faults.

BLEND OF RIGIDITY & FLEXIBILITY

- Some provisions - special majority of Parliament i.e.2/3rd majority of each house present & voting & majority (50%+) of total membership of house.
- Some provisions - special majority in parliament & ratification by half of the states.
- Some by Simple majority as is in ordinary legislative process - these amendments do not come under article 368.

RIGIDITY & FLEXIBILITY

- Article 31B — a clause intended to protect legislation inserted into the Ninth Schedule of the Constitution ‘notwithstanding the judgment of any court
- Supreme Court has the power to strike down or set aside constitutional amendments, it has no power to repeal them.

FEDERAL SYSTEM WITH UNITARY BIAS

- Federal features - 2 govt, division of powers, written constitution, supremacy of constitution, rigidity of constitution, independent judiciary, bicameralism.
- Unitary - Strong centre, Single constitution, Single citizenship, flexibility of constitution, integrated

judiciary, Appointment of governor, All India services, Emergency provisions .

- No federation word used in constitution - art1- union of state → Indian federation is not the result of agreement by states.
- No state has right to secede.
- Federal in form & unitary in spirit - quasi federal - K.C. Wheare.
- Bargaining federalism -Morris Jones.
- Cooperative federalism - Granville Austin.
- Federation with centralising tendency - Ivor Jennings.

PARLIAMENTARY FORM OF GOVT

- British parliamentary system - principle of cooperation & coordination between legislative & executive organs - Westminster model of govt.
- Presidential - doctrine of separation of powers between two organs.
1)Nominal & real executive.
2) Majority party rule.
3) Collective responsibility of executive to legislature.
4) Membership of ministers in legislature.
5) Leadership of PM & CM.
6) Dissolution of lower house.
- Indian Parliament is not a sovereign body like British parliament.
- India has elected head(republic) while Britain has hereditary monarch.
- Parliamentary system means that the ministers get their legitimacy from Parliament.
- Legislature is made of President, Lok Sabha & Rajya Sabha
- In the presidential form of democracy - President is directly elected by people through electoral college & neither he nor his cabinet is responsible to House of Representatives.
- Council of ministers is responsible to Lok Sabha.
- In presidential govt -people poll for a particular candidate & not for a particular party as opposed to the election of the PM in India
- Most attractive part of the Presidential system is the stability of the tenure.
- German federal parliamentary republic system-vote of no confidence passed only when an alternative successor govt can form a majority.
- Instead of the system of first-past-the-post in India, Sri Lanka adopted system of proportional representation
- Parliamentary form is a basic feature of the Constitution, as held by the Supreme Court.

SYNTHESIS OF PARLIAMENTARY SOVEREIGNTY & JUDICIAL SUPREMACY

- Judicial supremacy - American SC.
- Indian parliament has scope of judicial review power of SC- Narrower than that of US - as American constitution provides for due process of law.
- Indian constitution - Procedure established by law.
- SC can declare parliamentary laws unconstitutional through power of judicial review - while parliament can amend major portion of constitution.

INTEGRATED & INDEPENDENT JUDICIARY

- SC ↔ HC ↔ District court ↔ Lower Court
- USA - federal and state judiciary.
- SC - Guarantor of FR & Guardian of constitution.
- Security of tenure & fixed service conditions of judges, expenses charged upon consolidated fund of India , prohibition on discussion on conduct of judges in legislature, ban on practice after retirement, power to punish for its contempt, separation of judiciary from executive.
- Judicial independence, based on the principle of separation of powers, is part of the Indian Constitution's basic structure
- What interpretation would ensure the greatest conformity to the Constitution's text, to the intention of its framers, and to the document's finest aspirations.
- How is judicial primacy in making appointments to the higher judiciary a part of our Constitution's basic structure?
- 1993 the Second Judges Case SC- nine-judge bench, interpreted word "consultation," used in Articles 124 and 217, to mean concurrence-appointment of judges- executive was bound by the advise of the CJI.
- In the Second Judges Case, by effectively rewriting the Constitution to create a self-serving body, usurping powers from both Parliament and the executive.
- In exercise of powers conferred by the "due process" clause of the Constitution(USA) courts would create "new" or unenumerated rights- principles of "fairness" or "ordered liberty." -India - procedure established by law.
- Due process of law - imposed an "undue burden" on the judiciary
- In Justice P.N. Bhagwati's classic opinion in the Maneka Gandhi case, it was held that the Constitution mandates "fair" procedure when rights are deprived.

FUNDAMENTAL RIGHTS

- Right to equality (Art 14-18)
- Right to freedom (Art 19-22)
- Right against exploitation (Art23 ,24)
- Right to freedom of Religion (Art 25-28)
- Cultural & educational rights (Art 29-30)
- Right to constitutional remedies (Art 32).
- FR - Promoting idea of political democracy

- Operate as limitations on tyranny of executive & arbitrary laws.
- Justiciable
- Habeas corpus, mandamus, prohibition, certiorari, quo warranto are writs for restoration of rights.
- Not absolute , subject to reasonable restriction.
- Can be amended
- Can be suspended during operation of national emergency except art. 20 & 21.

DPSPs

- - Novel features - Dr. B.R. Ambedkar
- - Part IV
- - Socialistic, Gandhian , liberal - intellectual
- - Seek to establish " welfare state"
- Non-justiciable -fundamental in governance - moral obligation on state- real force behind them is political i.e. Public opinion.
- Minerva Mills case(1980) - Indian constitution is founded on the bedrock of the balance between FR & DPSP.
- Madras High Court judge D. Hariparanthaman - Constitution is "slightly tilted" in favour of one section of people since contained provisions such as Art 48 impresses upon State to take steps to prohibit slaughter of cows, calves & other milch & draught cattle.

FUNDAMENTAL DUTIES

- Added by 42nd amendment act 1976 - during operation of internal emergency - recommended by Swaran Singh committee - 86th amendment act of 2002 - right to education.
- - Part IV -A - Art 51A- 11 duties.
- - to respect constitution, national flag, anthem, to protect sovereignty, unity, integrity of country, to promote spirit of common brotherhood, to preserve rich heritage of our composite culture.
- - serves as reminder to citizens - non justiciable.

SECULAR STATE

- Secular word in preamble - 42nd amendment
- Preamble secures to all citizens liberty of belief, faith & worship .
- Equality before law & equal protection by law.
- State shall not discriminate on the grounds of religion (art 15)
- Equality of opportunity in terms of public employment (art16)
- Freedom of conscience and right to free profess , practice & propagate any religion (art25)
- Every religious denomination or any of its section shall have right to manage its religious affairs (Art 26)
- No person can be compelled to pay the taxes for promotion of a particular religion (Art 27)
- No religious instruction shall be provided in any educational institution maintained by the state (Art 28).

- Any section of citizen shall have the right to conserve it's distinct language, script or culture (Art 29)
- All minorities shall have right to establish & administer educational institutions of their choice (Art30)
- State shall endeavour to secure for all citizens a uniform civil code (Art 44)
- The promise of equal ballots devoid of sectional preferences in Article 325
- Kesavananda Bharati case - secularism is part of the basic structure of the Constitution
- Western secularism - complete separation between religion and state - negative secularism
- India - positive secularism- protecting all religions equally.
- What does secularism in the Indian Constitution mean?- It is a constitutional value that seeks to manage India's diverse and plural society, in an atmosphere of cohesiveness of national purpose.
- Power for first time vested in the diverse, heterogeneous people- Constituent Assembly became a trustee & demarcator of extent of that power.
- God is significantly absent throughout the Constitution.
- Citizens ,Believer, atheist and agnostic alike, the Constitution doesn't differentiate.
- Article 25(2)Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
 - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

UNIVERSAL ADULT FRANCHISE

- 61 St amendment act of 1988- voting age reduced from 21 to 18.
- Makes democracy broad based , enhances self respect and prestige of common people, upholds the principle of equality, enables minorities & weaker sections to protect their interests.
- Single Citizenship
 - Dual polity- single citizenship
 - Discrimination is never made except few cases like tribal areas
- Independent Bodies
 - Election commission, CAG, UPSC, SPSC
 - Security of tenure , fixed service conditions, expenses charged on consolidated fund of India .

Emergency Provisions

- National emergency - external aggression or internal armed rebellion art. 352

- State emergency -president's rule- failure of constitutional machinery (art 356) - failure to comply with directions of centres (art 365).
- Financial emergency - threat to financial stability or credit of India (Art 360).
- Emergency - Total unitary structure.

Three Tier Govt

- 73rd & 74th constitutional amendment act 1992- third tier
- 73rd amendment - recognized panchayats - added part IX & schedule 11.
- 74th - municipalities - added part IX -A & schedule 12.
- First schedule- Names & jurisdiction.

SCHEDULES

- Second - Emoluments, allowances, privileges (President, VP, Speaker, Deputy speaker, Chairman & Deputy chairman RS ,Speakers of LA & LC, Judges, CAG.)
- 3rd schedule - Oaths & affirmations
- 4th schedule- Allocation of seats in Rajya Sabha to states & UTs.
- 5th schedule- Provisions for administration & control of scheduled areas & STs.
- 6th schedule - Provisions related to administration of tribal areas in state of Assam, Meghalaya , Tripura, Mizoram.
- 7th schedule - Division of powers between centre and state .
- 8th schedule - 14 Languages.
- 9th schedule - Acts, regulations of state legislature dealing with land reforms & abolition of zamindari system- 1St amendment (1951) - to protect laws included in it from judicial scrutiny on ground of violations of FR. 2007 SC — laws included in this schedule after April 24, 1973 are now open to judicial review.
- 10th schedule - Anti-defection law- 52nd amendment 1985.
- 11th schedule - Power, authority & responsibilities of panchayats- 29 matters- 73rd amendment act of 1992 added this schedule.
- 12th schedule - specifies powers, authority & responsibilities of municipalities - 18 matters- 74th amendment act of 1992 added this schedule.

SOURCES OF THE CONSTITUTION

- GOI act of 1935- Federal scheme, office of governor, Judiciary, Public service commission , Emergency provision ,administrative details.
- British constitution- Parliamentary govt, Rule of law,legislative procedure, Single citizenship, Cabinet system, Prerogative writs, Parliamentary privileges & bicameralism.
- US constitution - FR, Independent judiciary, judicial review , impeachment of president, removal of judges, post of vice president.
- Irish constitution - DPSP ,Nomination of RS members, Presidential election

- Canadian constitution- Federation with strong centre, residuary powers with centre, Appointment of governor, Advisory jurisdiction of supreme court.
- Australian constitution - concurrent list, freedom of trade,commerce & intercourse, Joint sitting of two houses.
- Weimar constitution(Germany) - Suspension of FR during emergency.
- Soviet Constitution - FD, Justice (social,eco, political)
- French constitution -Republic & ideals of liberty, equality & fraternity.
- South African constitution - Amendment procedure, election of RS members.
- Japanese constitution - Procedure established by law.
- GOI act of 1935 - 250 Provisions included in constitution.
- Originally constitution provided for 7 FR- right to property deleted (art 31) by 44th amendment act of 1978- legal right under art. 300-A in part XII.
- 1909,1919, 1935 acts - communal representation.
- USA gave franchise to women in 1920 , Britain 1928, USSR 1936, France 1945 ,Italy 1948, Switzerland 1971.
- 44th amendment - replaced the term " internal disturbance" by " armed rebellion"
- Part IX - 3 tier system of panchayat Raj.
- Part IX-A - 3 types of municipalities.
- Dr. B.R. Ambedkar : "I feel that the Constitution is workable; it is flexible and it is strong enough to hold the country together both in peacetime and in wartime. Indeed, if I may say so, if things go wrong under the new Constitution the reason will not be that we had a bad Constitution. What we will have to say is that Man was vile."
- Constitutional historian Granville Austin said the transcendent goal of the Indian Constitution was to promote "social revolution." For this, the framers intended to fulfil the basic needs of citizens, and hoped that it would bring about fundamental changes in the structure of Indian society
- fundamental rights and directive principles of state policy — demonstrate the core of this commitment. These are perceived as the conscience of the Constitution, because they provide the base for human rights and human development policies for governance.
- fundamental rights are guaranteed as a matter of legal obligation rather than as a political concession.
- The legislature, the executive and the judiciary — need to have a certain degree of trust in, and deference to, the actions of one another in matters within their respective jurisdictions.
- It is imperative for the Indian society to work towards internalising the values of constitutionalism so that the exercise of all powers is subject to accountability.
- Citing Grote, the historian of Greece, Dr. Ambedkar talked of constitutional morality. This is best realised when citizens do not worship but revere the Constitution.
- But constitutional morality, warned Dr. Ambedkar, has to be cultivated. Our people have yet to learn it, for democracy is only a top-dressing on an Indian soil which is essentially undemocratic.
- While the Constitution is written down, it is not a rigid set of rules or framework. The provisions were stated generally so that they could be adapted to changing times and situations. Take for instance the Right to Life under Article 21.
- According to Patrick Henry, an American lawyer and politician, "The Constitution is not an instrument for the government to restrain the people; it is an instrument for the people to restrain the government."
- In his book, 'Making of India's Constitution', Justice H.R. Khanna wrote that the people are the trustees and custodians of the values in the Constitution. "A constitution is not a parchment of paper; it is a way of life. Eternal vigilance is the price of liberty and, in the final analysis, it's only keepers are the people."
- How significant it is to have a constitution ?
- It may be least possible where the acts of parliamentary persuasion and the dexterities of party management are brought to their highest perfections. Let the political parties be reduced to two, but let the chasm dividing them be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure (Walter Bagehot; The English Constitution, The World's Classics; Oxford University Press; 1867, Balfours Introduction to the Second Edition, 1928; pp. xxii-xxiii).