

SOCIAL STUDIES (CIVICS)

CHAPTER 03: CONSTITUTIONAL DESIGN

(Notes)

Glossary

Apartheid:	The official policy of racial separation and ill treatment of blacks followed by the government of South Africa between 1948 and 1989.
Clause:	A distinct section of a document.
Constituent Assembly:	An assembly of people's representatives that writes a constitution for a country.
Constitution:	Supreme law of a country, containing fundamental rules governing the politics and society in a country.
Constitutional amendment:	A change in the constitution made by the supreme legislative body in a country.
Draft:	A preliminary version of a legal document.
Philosophy:	The most fundamental principles underlying one's thought and actions.
Preamble:	An introductory statement in a constitution which states the reasons and guiding values of the constitution.
Treason:	The offence of attempting to overthrow the government of the state to which the offender owes faithfulness.
Tryst:	A meeting or meeting place that has been agreed upon.

Nelson Mandela

Nelson Mandela was tried for treason by the white South African government. He and seven other leaders were sentenced to life imprisonment in 1964 for daring to oppose the apartheid regime in his country. He spent the next 28 years in South Africa's most dreaded prison, Robben Island.

Apartheid

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- (i) Apartheid was the name of a system of racial discrimination unique to South Africa where the white European minority discriminated the native black majority.
 - (ii) The blacks were forbidden from living in white areas. They could work in white areas only if they had a permit.
 - (iii) Trains, buses, taxis, hotels, hospitals, schools and colleges, libraries, cinema halls, theatres, beaches, swimming pools, public toilets, were all separate for the whites and blacks. This was called segregation.
 - (iv) They could not even visit the churches where the whites worshipped.
 - (v) Blacks could not form associations or protest against the terrible treatment.



Nelson Mandela in Prison



Struggle against the Apartheid

- (i) Since 1950, the blacks, the coloured and Indians fought against the apartheid system. They launched protest marches and strikes.
- (ii) The African National Congress (ANC) was the umbrella organisation that led the struggle against the policies of segregation. This included many workers' unions and the Communist Party.
- (iii) Many sensitive whites also joined the ANC to oppose apartheid and played a leading role in this struggle.
- (iv) Nelson Mandela was tried for treason by the white South African government. He and seven other leaders were sentenced to life imprisonment in 1964 for daring to oppose the apartheid regime in his country. He spent the next 28 years in South Africa's most dreaded prison, Robben Island
- (v) Several countries denounced apartheid as unjust and racist. But the white racist government continued to rule by detaining, torturing and killing thousands of black and coloured people.

End of Apartheid in South Africa

- (i) As protests and struggles against apartheid had increased, the government realised that they could no longer keep the blacks under their rule through repression. Discriminatory laws were repealed. Ban on political parties and restrictions on the media were lifted.
- (ii) After 28 years of imprisonment, Nelson Mandela walked out of the jail as a free man. Finally, at the midnight of 26 April 1994, the new national flag of the Republic of South Africa was unfurled marking the newly born democracy in the world.
- (iii) The apartheid government came to an end, paving way for the formation of a multi-racial government. Mandela, became the first president of new South Africa

How did South Africans make a democratic constitution?

- (i) After the emergence of the new democratic South Africa, black leaders appealed to fellow blacks to forgive the whites for the atrocities they had committed while in power.
- (ii) They build a new South Africa based on equality of all races, social justice and human rights.
- (iii) After two years of discussion and debate they came out with one of the finest constitutions the world has ever had. This constitution gave to its citizens the most extensive rights available in any country.
- (iv) The South African constitution inspires democrats all over the world. A state denounced by the entire world till recently as the most undemocratic one is now seen as a model of democracy.

Why do South Africans need a constitution?

- (i) The black majority was keen to ensure that the democratic principle of majority rule was not compromised. They wanted substantial social and economic rights. The white minority was keen to protect its privileges and property.
- (ii) After long negotiations both parties agreed 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.
- (iii) The blacks agreed that majority rule would not be absolute. They agreed that the majority would not take away the property of the white minority.
- (iv) The only way to build and maintain trust in such a situation is to write down some rules of the country that everyone would abide by. These rules also determine what the elected governments are empowered to do and what they cannot do.
- (v) They agreed on some basic rules which will be supreme, that no government will be able to ignore these. This set of basic rules is called a constitution.

What do constitutions do in a Democracy?

- (i) A Constitution generates a degree of trust and coordination that is necessary for different kind of people to live together.
- (ii) A Constitution specifies how the government will be constituted, who will have power to take which decisions.
- (iii) A Constitution lays down limits on the powers of the government and tells us what the rights of the citizens are.
- (iv) A Constitution expresses the aspirations of the people about creating a good society.
- (v) All countries that have constitutions are not necessarily democratic. But all countries that are democratic will have constitutions.

Constitution of India

Factors contributed to the making of our Constitution

- (i) In 1928, Motilal Nehru and eight other Congress leaders drafted a constitution for India with the following features - universal adult franchise, right to freedom and equality and to protecting the rights of minorities
- (ii) In 1931, the resolution at the Karachi session of the Indian National Congress dwelt on how independent India's constitution should look like with the following features - universal adult franchise, right to freedom and equality and to protecting the rights of minorities.
- (iii) The experience gained by Indians in the working of the legislative institutions of the colonial period proved to be very useful for the country in setting up its own institutions.
- (iv) Indian constitution adopted many institutional details and procedures from colonial laws like the Government of India Act 1935.
- (v) Our leaders gained confidence to learn from other countries, but on our own terms. Many of our leaders were inspired by the ideals of French Revolution, the practice of parliamentary democracy in Britain, the Bill of Rights in the US and the socialist revolution in Russia.

Makers of the Constitution



How India's Constitution was made

- (i) At that time the people of India were emerging from the status of subjects to that of citizens.
- (ii) The country was born through a partition on the basis of religious differences. This was a traumatic experience for the people of India. At least ten lakh people were killed on both sides of the border in partition related violence.

- (iii) 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.

Who were the makers of the Indian Constitution?

- (i) The drafting of the document called the constitution was done by an assembly of elected representatives called the Constituent Assembly.
- (ii) Election to the Constituent Assembly was held in July 1946. The Constituent Assembly that wrote the Indian constitution had 299 members. Its first meeting was held in December 1946. The Constituent Assembly worked in a systematic, open and consensual manner.
- (iii) 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.
- (iv) Several rounds of thorough discussion took place on the Draft Constitution, clause by clause. More than two thousand amendments were considered. The members deliberated for 114 days spread over three years.
- (v) The Assembly adopted the Constitution on 26 November 1949 but it came into effect on January 26, 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 fifty years ago?

- (i) Over the last half a century, several groups have questioned some provisions of the Constitution. But no large social group or political party has ever questioned the legitimacy of the Constitution itself.
- (ii) The Constituent Assembly was elected mainly by the members of the existing Provincial Legislatures. This ensured a fair geographical share of members from all the regions of the country.
- (iii) The Assembly was dominated by the Indian National Congress, the party that led India's freedom struggle. But the Congress itself included a variety of political groups and opinions.
- (iv) In social terms, the Assembly represented members from different language groups, castes, classes, religions and occupations.
- (v) 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. More than two thousand amendments were considered.

Constituent Assembly Debates

- (i) Every document presented and every word spoken in the Constituent Assembly has been recorded and preserved. These are called 'Constituent Assembly Debates'.
- (ii) When printed, these debates are 12 bulky volumes! These debates provide the rationale behind every provision of the Constitution.
- (iii) These are used to interpret the meaning of the Constitution.

Guiding values of the Indian Constitution

Understanding of the overall philosophy of our Constitution can be done in two ways.

(i) By reading the views of some of our major leaders on our Constitution:

- Mahatma Gandhi - He had spelt out what he wanted the Constitution to do: An India in which there shall be no high class and low class of people, all communities shall live in perfect harmony, no room for untouchability or the curse of the intoxicating drinks and drugs and Women will enjoy the same rights as men.
- Dr. B.R. Ambedkar - who played a key role in the making of the Constitution but he often bitterly criticized Mahatma Gandhi and his vision. In his concluding speech to the Constituent

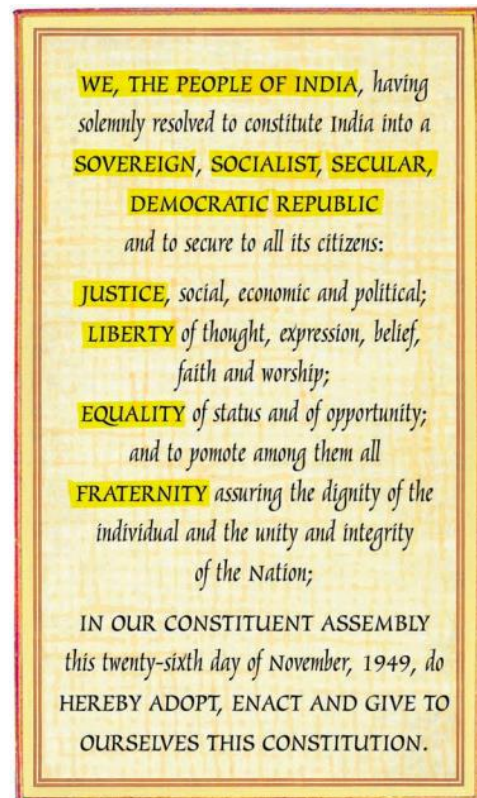
Assembly he stated his anxiety very clearly. In politics we will have equality and in social and economic life we will have inequality.

- Jawaharlal Nehru - In his famous speech to the Constituent Assembly he stated that when the world sleeps, India will awake to life and freedom. Freedom and power bring responsibility. The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye.

(ii) By reading the preamble to the Constitution:

The Constitution begins with a short statement of its basic values. This is called the Preamble to the constitution. Preamble of the Indian Constitution guides all the articles of the Indian Constitution. The keywords in the Preamble of the Constitution of India are discussed as follows:

- **WE, THE PEOPLE OF INDIA:** This statement means that the constitution was not handed down to us by any king or by any outside power, rather it was drawn and enacted by the people of India through their representatives.
- **SOVEREIGN:** The sovereignty means that India is a free country and no external power can dictate the government of India. It is important to note that the British had proposed a dominion status for India which meant it would have been a country under the British monarchy. The Constituent Assembly rejected that proposal and preferred for full freedom.
- **SOCIALIST:** The socialism which is being followed in India is somewhat different than what was being followed in various communist countries at that time. The Indian socialism was about generation of wealth by the society and sharing of wealth equally by the society. It was decided that the government would regulate the ownership of land and industry to reduce socioeconomic inequality.
- **SECULAR:** There is no official religion in India and no religion gets special status from the government of India. Citizens have complete freedom to follow any religion. All religions are treated with equal respect by the government.
- **DEMOCRATIC:** India would adopt a form of government in which people would elect their rulers and hold them accountable. It was also decided that the people would enjoy equal political rights.
- **REPUBLIC:** This term means that the head of the state, i.e. the President of India is an elected person and it is not a hereditary position.
- **JUSTICE:** The land of the law would not discriminate between citizens on the basis of caste, religion and gender. The government would work for the welfare of poor and oppressed so that social inequalities could be reduced.



- **LIBERTY:** Citizens are given the liberty to express their opinions in a way which is found suitable by them. There are no unreasonable restrictions on the liberty of citizens.
- **EQUALITY:** All citizens are equal before the law; irrespective of differences in socio-economic conditions. Every citizen would be provided equal opportunities to improve his/her socioeconomic conditions.
- **FRATERNITY:** Each citizen should respect the spirit of brotherhood and no one should treat a fellow citizen as inferior.