Chapter - 9

The Constitution of India

The constitution of a country is a collection of basic laws. By these laws, not only the governments are formed, but the mutual relations between the government and citizens are also decided. The constitution decides the form of all the elements of government i.e. Legislature, Executive and Judiciary. It also formulates the powers and limitations of every organ of the government. Except these things it also formulates about the Rights and duties both, of the citizens, who will have to pay tax in how much quantum, police will be of which kind and nature, what will be the formate of Judiciary? All such things are also decided by the constitution of any country. Accordingly, the constitution of every country is always a Lively Model of any Nation. The Powers Vest in the people of the country, in the form of Democratic Government. In its ideal form, such powers should be used by the public, as it was used to be done, in Ancient Period, through "Assembly", Committee, but at the Present time the volume and form of the Nations are very big, where it is not possible to apply 'Direct Democracy' Now-a-days, this is the decade of "Representative Democracy" where, the people elect by their Adult Voting System, their representatives, and performs the functions of the government. People at the first time, uses such inherent power, when it formulated a constitution for the people and by the people. This constitution can be written and formulated or unwritten (means based on the old political conventions) also. As the constitutions of India and America are, formulated and in written form. Whereas the constitution of England, is unwritten and developed through conventions, mostly.

It is noticeable that for the first time during British Rule, India was governet through written statutes. At that time, for a long time, the British Parliament made laws for India, as Regulating Act, Pitts India Act 1813, the India Council Act of 1909, the Government of India Act of 1919 & 1935. Inside India, the political awakening started gradually. Likewise the demand of the making of constitution became the inseparable part of the demand for Independence, by the beginning of 20th century.

In the year 1922, Mahatma Gandhi presented the demand of forming of the constitution before the government and in 1925 the conference of all parties was held, in which the proposal of demanding the forming of constitution was passed.

When in the year 1939 the Second World War started. British Government had urgent need of help from Indian. So first time in the month of August 1940, the Britishers accepted the demand of forming constitution, while accepting the "Proposal of August" in July 1945, the new government of Labour Party came into power in England, which indicated that the forming of Indian constitution and to give Freedom to India will be done very shortly. So in the month of March 1946 the British government sent a commission, having three members, to India, which is known as "cabinet mission". According to the planning of cabinet mission, the 'constituent assembly' was formed, which developed and prepared the Indian

constitution. It was the opinion of the cabinet mission that the most satisfactory situation for the formation of constituent assembly would be when the forming of the assembly takes place, through the election through the system of casting the votes by the adult voters, but the Muslim League, started Violent Activities for raising the demand of forming of Pakistan for Muslims, and this action damaged the situation of law and order very badly. By the government Act of 1935, the state legislatures were formed in Indian Provinces. The members of these state legislatures were elected by the method of election. And the cabinet mission, provided the rights to the members of state legislatures, to elect the members for the constituent assembly, from their concern provinces. And on the basis of 10 lakhs people, one member for constituent assembly will be elected, this was decided formally. For example, if in any province, the population was about one crore, than 10 members were to be elected for the constituent assembly, by such province. And they will be elected by the members of Provincial Legislature. At that time, India was divided into two parts, one part was British Province and the other part was of 'Desi Riyasats'. For the Desi Riyasats, the different parameter of electing the members for constituent assembly was adopted which was applied in all over the country. But as there were no Provincial Legislatures, in Deshi Riyasats, so it was decided that the members from such Riyasats for the constituent assembly will be nominated. So, likewise, the constituent assembly was formed by the elected as well as by nominated members from whole of India.

The total numbers of the members for constituent assembly was decided to be 389, and out of this 296 from British India, and 93 from Desi Riyasats, were decided to be taken. In the month of July 1946. Election for 296 members for constituent assembly was held, in which Muslim League got only 73 members. And other places were divided into small parties, and on the other hand, through the "Mount Betan Plan" of 03rd June 1947, the division of India, was decided on the basis of communal point of view. The demand of Muslim League, was accepted that a new country namely Pakistan, should be made, for the Muslim population. So the constituent assembly was reorganised, and its number of the members was decided to be 324 finally. Ultimately 284 members of the assembly signed, on the constitution of India. The members from Desi Riyasats, entered the constituent assembly at the different timings. From the different Riyasats of Rajasthan, 13 members joined the constituent assembly. Hyderabad, was the only Riyasat, whose no representative joined the assembly.

On 09th December 1946, Monday, at about 11:00AM, the constituent assembly was inaugurated in a well managed way, in the central hall. In this meeting about 211 members participated. Sacchidanand Sinha was elected as temporarily Chairman of constituent assembly. Sh. B.N. Rao, was appointed as Legal Advisor. On 11th December 1946, Dr. Rajendra Prasad was elected as permanent Chairman of the constituent Assembly. On 13th December 1946, Pandit Jawahar Lal Nehru presented the "proposal of object", which was accepted on 22nd January 1947, For the formation of Indian constitution, various committees were set up, in which, most important committee was select committee and it was set up in August 1947. The select committee was consisting seven members and it's Chairman was Dr. Ambedkar, who was not only a famous advocate, but most informative person of Legal field. The main work of preparing draft of constitution, was to be performed by this committee. The constituent assembly was supposed to pass it, after a long debate, arguments and by casting of votes. So Dr. Ambedkar, is also called the father of the Indian constitution.

Dr. Rajendra Prasad

Dr. Ambedkar

After considering the proposals of various committees, the select committee published the first draft of constitution in the month of February 1948. The people of India, were given 8 months time to study the draft of constitution and to give suggestions. After 8 months, keeping in mind the received suggestions and amendments, the draft was prepared and put up in November 1948 before the constituent assembly. This draft was read out three times in the constituent assembly. On 28th November 1948, the Indian constitution was finally prepared. As on the same day the constitution was adopted, enacted and spirited. The last meeting of the constituent assembly was held on 24th January 1950, and on this date the members of constituent assembly signed the Indian constitution. On 26th January 1950, the Indian constitution came into force. In the constitution, there is one preamble (which is called as object also) 8 schedules, 22 parts and 395 paragraphs. At present instead of 8 schedules they are increased to 12. The preamble is known as the soul, conclusion of the constitution and it is a key to understand the constitution. The constituent assembly performed some other works also, along with making of the constitution. On July 1947, it adopted the National Flag and in January 1950 it accepted the National Anthem and National Song. Dr. Rajendra Prasad was elected as first President of India, who took the oath on 26th January 1950. As well as, with this election of President, India became a Republic state, in the history of world.

In this way, the constituent assembly completed the historical work of formulating Indian constitution, within 2 years, 11 months and 18 days, but our work is not complete, by completing the work of formulating of the constitution. Dr. Ambedkar told in the constituent assembly, in November 1949, "I feel that in spite of the constitution being good, but those who use it, are inefficient, the constitution will also prove to be so. In the concluding speech Dr. Rajendra Prasad said,"If those who will be elected are qualified, honest and of good character, they will make the defective constitution best. If they lack merits constitution will not be able to help the country.

Every constitution is a mirror of the values, ideals and dreams of its makers and founder persons. The constitution may attain its objects, for this we will have to become responsible, Nationalist and Sacrifying citizens.

The Salient Features of Indian Constitution

The Indian constitution is unique one, in the world. It carries a lot of such features which make it quite different constitution from the others constitutions, which are as under:-

1. The largest constitution of the world :

The constitution of India, is the biggest in volume, in the world. In the constitution not only the Federal government arrangement is there, but it also consists the administrative arrangement of the states also. Whereas the constitution of America is comparatively a bit little. And the main reason for this is that there separate constitutions are meant for all the states, whereas in India there is no separate constitution for the states.

2. The Federal character :

There are two types of constitutions- one is Federal, and the other is Unitary, which is based on the nature and type of relations between the Federal government and the state governments. The constitution in which there is a distribution of powers between the Federal government and state governments, and for the protection of this type of distribution of powers, there is a judiciary. This is

known as a Federal type of constitution. In Indian constitution, the distribution of powers between the Federal government and state governments, have been made through three schedules i.e. Federal list, state list, and concurrent list. It was natural to adopt this type of constitution due to bigger in form, thick and high population and diversities in India.

3. Single Citizenship :

This is a very unique feature of Indian constitution. In general, in the Federal system of the government dual citizenship exists. One is of the country and the second of the state, in which he is residing as that of America, but in India, inspite of this, that though there is a federal form of government, yet we have only single citizenship. All of us are Indians. To reside in any state of the country, does not denote the separate citizenship of that state. This is co-operative element for the national unity and national unification.

4. Parliamentary form of Constitution :

There are three organs of the government- (A) Legislature, (B) Executive, (C) And Judiciary.

The form of the constitution can be either Parliamentary, or Presidential, based on the nature of relations between legislature and executive. The executive of India, means the Prime Minister and his council of Ministers, are responsible to the Legislature i.e. the Parliament, for its functions and period to govern. Such system is called as Parliamentary form of the government.

5. The Independence of Judiciary :

The Judiciary, is independent from the two organs of the Government, this is the other specific feature of the constitution. The Judiciary, i.e. the Supreme Court has the power to interpret the constitution and to protect the constitution.

6. Right to Vote for Adults :

This is the most important feature of Indian constitution, that in India, without any discrimination of any ground, all persons, who become adults, have been given the right to vote universally. In the beginning the minimum age for becoming voter was 18 years, but now it has been change to 21 years. In the other countries of the world, the citizens of various countries had to undergo a big struggle for getting the right to vote, but in India, inspite of illiteracy and less political experience, all Indians got the right to vote, without any discrimination.

7. Fundamental Rights :

The development from all the corners, is not possible in the absence of citizen rights. The farmers of the constitution were aware of this fact. In the part three of the constitution total six fundamental rights were given to the citizens. All such rights may not be misused, so the reasonable restrictions have also been imposed on the rights.

8. Principles of Directive Principles :

Those rights, which are necessary for the progress of person, and the farmers of the constitution also wanted to provide such rights couldn't be converted to fundamental rights, such rights were incorporated in the principles of Directive Principles for the states it is not compulsory to apply or execute, but they will always exist as ideals for the states performance, and the state shall be guided for framing of the state policies.

9. Various Sources of the Constitution :

At present, no constitution can claim to be purely original. Every constitution is inspired by one or other constitution. The concept of fundamental rights and Independence of Judiciary have been adopted from American constitution, where as the concept of Parliamentary democracy has been taken from the British constitution. The concept of 'Republic' has been adopted from France and the principles of Directive Principles have been inspired by the constitution of Ireland.

Fundamental Rights in the Constitution

Rights are such claims of the person, for development, which are accepted both by the society and state. When such rights are incorporated in the constitution and they are protected by Judiciary then such rights, take the form of "Fundamental Rights". The narration of fundamental rights in the constitution is the basic feature of Democratic constitution, and the farmers of Indian constitution were very much conscious about this aspect. Formations of various committees for the making of constitution one committee was kept for fundamental rights. The farmers of the constitution wanted that there should be impact of Indian cultural conventions and the basic values, being carried forward from the Vedic period. So the discussion on fundamental rights consumed 38 days. Dr. Radha Krishnan, told that "Fundamental Rights are the promises made, with our emotions and a treaty, being done, with the civilized world".

In reality, by incorporating the fundamental rights, along with security of the National unity and Integrity, the hard work of protecting the interests of people have been performed. This is the only reason that the detail narrations of fundamental rights in the constitution, is of that high extent, than any other constitution of any country in the world.

In the Articles 12 to 35 of Part 3 of the constitution Fundamental Rights have been incorporated. In the original form, there were 7 fundamental rights but by the 44th constitutional Amendment of 1978, the Right to property "has been removed from the category of fundamental rights, and made it only a Legal Right".

So, now the total number of Fundamental Rights are 6 only in Indian constitution.

1. Right to Equality (Article 14 to 18) :

The framers of the constitution were aware of and conscious about the existing inequality in the society. They knew that till the inequality from the society is not removed, it will have no meaning in reality, so they made, the right to Equality" as first fundamental right of the constitution. According to the right to equality, everybody will be equal in the eyes of law and the citizens will get equal protection of law, and no one can be prevented from such equality. The state will not do any discrimination with any citizens, on the basis of religion, birth place, form of race, caste and sex. Likewise, there shall be no restrictions on the use of shops, public restaurants, hotels, public wells, pounds and bathrooms, on all above grounds. All persons have been provided equal opportunities and rights, to enter the government services and appointments afterwards. No person shall be deemed to be disqualified for government service, on the basis of religion, caste, sex, and birth place. But for scheduled castes, backward and tribes, socially and educationally, females etc., special provision can be arranged and made, which includes 'Reservation' except this, in the concept of equality itself, the untouchability has been controlled and has been made a punishable offence, and providing all kinds of degrees has been stopped, so that among the citizens, inequality on any ground, may not come in force or become visible only. Bravery in military and intellectuals, will continue to be honoured by providing Honour by awarding Honorary degrees-like Paramveer Chakra, Mahaveer Chakra, Bharat Ratna, Padam Bhushan etc.

So, through the concept of right to equality in constitution, not only establishes equality before law, but social equality also, by which the mass good feeling may flourish.

2. Right to Freedom or Liberty (Article 19-22)

The constitution provides, the next fundamental right, after right to equality, is right to freedom, by which the citizen can develop his personality to the best quality. The citizens of India possess, the right to express views, to organise and hold conferences and meetings and organizations peacefully, but without any arms.

To move and reside anywhere in India and the right to get service, to adopt any profession, business etc, but on all the above freedoms, the logical reasonable restrictions are applied. The right to speech does not mean the insult of anyone disobediency of the Judiciary, and violation good conduct and morals. Every individual is co-related with the society, so he has all kinds of freedom, to same extent, that he does not create any hurdle in the way of other's freedom.

The constitution provided this right also that no person can be deemed guilty for committing any offence, till he has not acted in contravention of any law, while doing such work. Nobody can be punished twice for a single offence. Likewise no person can be compelled to give evidence against himself.

The most important narration of fundamental rights, is in Article 21; which provide the right to live, or life, which is related to the freedom of both soul and body. According to this Article any person can be prevented from such right only, by the established procedure of law. As per the 86th constitution fundament, 2002, the new Article 21(A) was inserted and by which it has been made mandatory for the states, that every state will manage free education for children having the age from 06 to 14 years.

Morever, this kind of freedom has also been given that if anybody has been arrested, in a very short time, the reasons of arrest shall be disclosed to him. He cannot also be prevented from taking help of any advocate of his choice. It is the legal duty of the police, that any arrested person should be put up before Judiciary, within 24 hours of arrest.

3. Right Against Exploitation: (Article 23, 24)

Any person, may not be exploited either by state or any other body else. So, the constitution provides the right against exploitation. According to this provision, the restrictions have been laid down, on traffic in human beings, forced labour, and jobless practices. The child labour has been fully restricted by imposing the rule that no children, below the age of fourteen, shall be employed or used, in any industry, mines and other dangerous works.

4. Right to Freedom of Religion: (Act 25 to 28)

According to Article 25, all the persons are entitled to freedom of conscience and the right to freely to profess, practice and propagate religion. But this freedom can be restricted on the ground of public order, morality and health. Therefore it entitles anybody to make conversion, but it does not entitle a person to force conversion.

Likewise, for the works of management for religion, religious institutions like Temple, Monastery, Gurudwara's establishment, have also been incorporated in fundamental rights. This has also been ensured that any institution, being funded by government, can't provide any religious education.

5. Cultural and Educational Rights(Act 29-30):

The Indian constitution has kept a unique feature that among the category of fundamental rights, the right to education and culture has been included, which specially protects the interests of minorities in India. According to this right, that any group of citizens, who carries a special language, religion, script or culture, will be always rightful to protect and keep them safe. Along with this, the minorities groups based on religion or language, shall be empowered to open the educational institutions of their choice and to regulate them also.

6. Right to Constitutional Remedies (Act 32) :

It is not sufficient to narrate the fundamental rights in the constitution only, but this kind of arrangement is necessary to be kept also, by which the rights can be implemented and cannot be violated. The right to constitutional remedy is an instrument, which protects the rights. Under this, it is the right of every citizen, that he can knock the

door of Supreme Court, when his fundamental rights are violated. Judiciary can issue five kinds of orders for the protection of fundamental rights; like- Habeas Corpus, Supreme order, Protest, Right to Question, Transmission Writt. Dr. Ambedkar while explaining the importance of this arrangement, commented that this is the Heart and Soul of the constitution.

Directive Principles of State Policy

The Directive Principles of the state policy have been narrated in the Chapter IV, under Article 36 to 51. This part has been incorporated with the inspiration from Ireland, and gives a form of the welfare state for the people.

On the one hand fundamental rights are the sources of individual development whereas on the other hand, Directive Principle of State Policy are the means for the achievement of collective Social Development also. In these Direct Principles such things are included, by which the social and economic development can be achieved. To implement, such policy principle by the state, it requires a lot of various economic sources, so the implementing of these principles have not been made mandatory for the future governments. It means, in the absence of the implementation of such policy principles, doors can't be knocked of Supreme Court. Likewise, the Directive Principles are not fit for protest, whereas for fundamental rights, Protect can be raised lawfully before the competent court.

In reality, these principles are the ideals for the state, and state will try to formulate policies, in the right of Directive Principles of the state. In the constitution, it has been provided that a schedule or list has been given of rights, which are other than fundamental rights, which such should also be given to citizens.

Government has tried to implement some principles. In some industries the improvement of labour problems and providing minimum wages to the unskilled labour in the organised and unorganised industries. Government has taken so many steps for the encouragement of small and village industries also. Government has done a lot for the development and welfare of the schedule castes and tribes. Even for the health of females and their delivery problems, government has taken a lot of helping steps.

To implement the Directive Principles, the Right to Education has been given in legal shape. In the whole country the Panchayat Raj Institutions have been given a constitutional status. To some extent, through the Mahatma Gandhi Maha Narega plan, the guarantee to Right to work, has been extended. For the upliftment of school going children's health, the lunch management has been made, for the children, and for their good health, and it is being provided free of cost. It is fully free of cost, this is an good attempt for implementing the directive principles. Government has published the General Insurance plans for common man, from the government side at the minimum premium and people to a great extent have been connected with opening of their bank accounts, provided social and economic protections, still there are so many other Directive Principles are lying pending, which requires implementation also.

Now-a-days even, the males and females are not getting equal salary for equal work. The inequality of income is increasing day by day, instead of decreasing. In the Article 44 of the constitution, the states have been directed that “the state shall try to make equal or common civil code for the all citizens of India. It means that in the field of all the social life, i.e. marriage, divorce, property; the state shall have the powers to enact laws, for all such aspects of social life. But till today, from a long time after the applicability of constitution, we could not make and apply or execute the common civil code. Separate religious sects are still having separate and individualistic laws. Even after, the advice of Judiciary given for so many times, we

could not get success to evolve common civil code for social life.

Likewise, it is also incorporated in the Directive Principles of state, that the state will take steps to restrict the slaughtering of cows, calves and dairy cattle. A big part of India, pays full regards to cow and recognise as most pious animal and equal to mother itself. The cow does not only have the religious importance, but it contributes to a big extent in economy and increases income also. Inspite of all these aspects, still the full restriction on the slaughtering of cows, couldn't be made effective in whole India. This duty of the state is also being directed by constitution, that the state will try to develop the field of Agriculture and Animal Husbandry, in an organised way on the basis of modern and scientific ways. So it is clear that state has still due to make more efforts.

The Fundamental Duties of the Citizens

The feelings of duties are naturally connected with the concepts of Rights. There is no existence of rights, in the absence of duties. Though, when the constitution of India was adopted, at that time, in the form of Rights, Fundamental Rights were in existence and in the form of Duties the incorporation of Directive Principles of state, were there, but the civilian's duties, were not included in the constitution of India.

By the 42nd constitutional amendment of 1976, the place has been accorded to the narration of the duties of citizens, in the part 4A and Article 51A of the constitution. Though the constitution is silent about intervention, that if any citizens does not obey his duties, whether he can be forced to obey his duties, whether he can be punished by any law. According to Article 51, these duties have been included in the constitution, which are as under:-

1. To abide by the Constitution and respect its ideals, institutions, National Flag, National Anthem.
2. To cherish and follow the noble ideals, which inspired our National struggle for freedom.
3. To uphold and Protect the Sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to to so.
5. To promote Harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
6. To value and preserve the rich heritage of our composite culture.
7. To protect and improve the natural environment including forests, lakes, rivers, and wild life, and to have compassion for living creature.
8. To develop the scientific temper, humanism and the spirit of inquiry and reform.
9. To safeguard public property and to abjure violence.
10. To strive towards excellence in all sphers of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
11. Who is a parents or guardians to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Important Points

1. Constitution, for any nation, is always a basic document for the running of government of any state and for deciding the relations between the government and the state. The constitution of America is recognised as the first written constitution of the world.
2. The constitution of India was formulated through the planning of 'cabinet mission'. In the constituent assembly, Both kinds of members i.e. Elected and nominated, were

there. The first meeting of constituent assembly was held on 09th December 1946. Dr. Rajendra Prasad Ji was its first President.

3. For the formulation of constitution, various committees were framed. Among them, the most important committee was "standing committee" It President was Dr. Ambedkar. Keeping in mind, the contribution of Dr. Ambedkar, in the making of constitution, he is called as "The Father of Indian Constitution".

4. Indian constitution is the biggest constitution in the world. At present, it consists of 12 schedules, 22 parts and 395 articles, except the Preamble.

5. Indian constitution declares India as Federal, Parliamentary, Democratic Republican State.

6. The constitution provides various fundamental rights to citizens, in which the rights to liberty, the right to equality, right against exploitation, right to religion, right to education and culture and right of constitutional remedies are most significant.

7. The Directive Principles, function as a moral duties for the state. By the implementation of such principles, citizens will be able to develop socially and economically which will lead to their welfare and the concept of the "welfare state" will be achieved in practical.

8. By the 42nd constitution amendment of 1976, the duties of citizens have been incorporated in the Article 51 'A' of the Part 4 'A' of the Indian constitution at present, they are 11 in number.

Objective Type Questions

1. By which plan, the constitution of India was formulated?

   (a) Mount Baton (b) Vavel

   (c) Cabinet (d) Crips

2. When was the first meeting of constituent assembly by held?

   (a) 9th December 1946

   (b) 11th December 1946

   (c) 13th December 1946

   (d) 06th December 1946

3. When was the constitution of India adopted?

   (a) 26th January 1950

   (b) 26th November 1949

   (c) 30th January 1948

   (d) 15th August 1947

4. How many fundamental rights to Indian citizens have been provided ?

   (a) 7 (b) 8

   (c) 5 (d) 6

5. Which Article incorporated the common civil code?

   (a) Article 44 (b) Article 48

   (c) Article 49 (d) Article 50

Very Short Answer Type Questions

1. How much time was consumed in the making of Indian constitution?

2. How many members were there in the constituent assembly?

3. What did Dr. Ambedkar call the Right to constitutional remedies?

4. When were the fundamental duties incorporated in Indian constitution?

5. How many Articles are there, in the Indian constitution?

Short Answer Type Questions

1. Write a short note on the right to equality.

2. Mention any four directive principles.

3. Describe any four fundamental rights.

4. Mention three salient features of constitution.

5. What is the importance of Independent Judiciary?

Essay Type Questions

1. Describe the Indian constituent Assembly?
2. Write a short note on the Right to Liberty.
3. In what way, the Directive Principles make the state to be, of welfare kind?
4. Describe the fundamental duties of citizens.

Answers of objective questions

1 (C) 2 (A) 3 (B)

4 (D) 5 (A)