

CHAPTER - 1

CONSTITUTION WHY & HOW

Question 1- Which of these is not a function of the constitution?

- a. It gives a guarantee of the rights of the citizen.
- b. It marks out different spheres of power for different branches of government.
- c. It ensures that good people come to power.
- d. It gives expression to some shared values.

Answer- (c)

Question 2- Which of the following is a good reason to conclude that the authority of the constitution is higher than that of the parliament?

- a. The constitution was framed before the parliament came into being.
- b. The constitution makers were more eminent leaders than the members of the parliament.
- c. The constitution specifies how parliament is to be formed and what are its powers.
- d. The constitution cannot be amended by the parliament.

Answer- (c)

3. State whether the following statements about a constitution are True or False.

- a. Constitutions are written documents about formation and power of the government. **(False)**

Explanation- Constitutions need not be always written. It can be Unwritten as well.

- b. Constitutions exist and are required only in democratic countries. **(False)**

Explanation- Constitutions also exists in pseudo democracies or military rule.

- c. Constitution is a legal document that does not deal with ideals and values. **(False)**

Explanation- Constitution is a legal document and it deals with ideals and values of society.

- d. A constitution gives its citizens a new identity. **(True)**

Explanation- Constitution expresses the fundamental identity of people.

4. State whether the following inferences about the making of the Indian Constitution are Correct or Incorrect. Give reasons to support your answer.

a. The Constituent Assembly did not represent the Indian people since it was not elected by all citizens. (Incorrect)

Explanation- Indian constitution was never subject to any referendum but nevertheless carried enormous public authority, because it had the consensus and backing of leaders who were themselves popular. The people adopted it as their own by abiding by its provisions.

b. Constitution making did not involve any major decision since there was a general consensus among the leaders at that time about its basic framework. (False)

Explanation- There was legitimate differences of principle. And the differences were many. Almost every issue that lies at the foundation of modern state was discussed with great sophistication. Only one provision of the constitution was passed without virtually any debate was the introduction of universal adult franchise. Every other matter was seriously discussed and debated.

c. There was little originality in the Constitution, for much of it was borrowed from other countries. (False)

Explanation- The makers of our constitution did not hesitate to learn from experiments and experiences of other countries. It is a 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. Each provision of constitution was defended on grounds that it suited to Indian problems and aspirations.

5. Give two examples each to support the following conclusions about the Indian Constitution:

a. The Constitution was made by credible leaders who commanded peoples' respect.

Answer- The Indian constitution was never subject to a referendum as happened in other countries but it had the consensus and backing of leaders who were themselves popular. The constituent assembly consisted of eminent leaders of the masses and represented all shades of opinion and interests of society.

b. The Constitution has distributed power in such a way as to make it difficult to subvert it.

Answer- Well crafted constitutions fragment power in society intelligently so that no single group can subvert the constitution. The Indian constitution horizontally fragments power across different institutions like the legislature, executive and judiciary and even independent statutory bodies like the election commission. This ensures that even if one institution wants to subvert the constitution, others can check its transgressions. No organ enjoys the absolute powers over the other two organs.

c. The Constitution is the locus of people's hopes and aspirations.

Answer-

Indian constitution also provide an enabling framework for the government to do certain positive things, to express the aspirations and goals of society. The Indian constitution enables the government to take positive welfare measures some which are legally enforceable. The directive principles of state policy also enjoin government to fulfil certain aspirations of the people.

6. Why is it necessary for a country to have a clear demarcation of powers and responsibilities in the constitution? What would happen in the absence of such a demarcation?

Answer- Constitutions limit the power of government in many ways. The most common way of limiting the power of government is to specify certain fundamental rights that all of us possess as citizens and which no government can ever 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. This is one basic limitation upon the power of government. 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. Without the limitations or demarcation of government power, the government might act arbitrarily. They may pass laws that are patently unfair. It might prohibit particular group to practice their religion or prohibit singing certain songs etc. That is why demarcation of powers and responsibilities is required.

7. Why is it necessary for a constitution to place limitations on the rulers? Can there be a constitution that gives no power at all to the citizens?

Answer- In every democratic country limitations are placed on the powers of the rulers through the constitution. Since constitution is the supreme law of the land, everybody including the rulers have to obey it. If no limitations are placed on the powers of rulers, there are ample chances and possibilities of misuse and arbitrary use of powers. It is well known saying that power corrupts and absolute power corrupts absolutely. Absolute power makes the holder of the office corrupt and he tries to subvert the constitution in every possible way on one pretext or the other. To see that rulers exercise their power for the welfare of the people and not for their personal advancement, it is necessary that the constitution places limitations on the rulers.

8. The Japanese Constitution was made when the US occupation army was still in control of Japan after its defeat in the Second World War. The Japanese constitution could not have had any provision that the US government did not like. Do you see any problem in

this way of making the constitution? In which way was the Indian experience different from this?

Answer- A good constitution is one that has been drafted by the people. It means that the constitution should not have been drafted and imposed by any foreign power. Many scholars have noted the irony of the occupation installing democratic political institutions in Japan through transparently authoritarian means. The Japanese, it has been said, were “forced to be free” by their American occupiers. Nonetheless, the 1947 Constitution was readily embraced by the Japanese people and has endured (with not a single amendment over the past six decades) as a sound basis for Japan’s post war democracy. Making of constitution in this way means that it was imposed forcefully without taking into consideration basic ideals of constitution making. Indian constitution was enacted by the constituent assembly constituted in 1946 under the cabinet mission plan. The members of constituent assembly were indirectly elected without any coercion from British government. It was an independent constituent assembly that framed the Indian constitution.

9. Rajat asked his teacher this question: “The constitution is a 50 year old and therefore outdated book. No one took my consent for implementing it. It is written in such tough language that I cannot understand it. Tell me why should I obey this document?” If you were the teacher, how would you answer Rajat?

Answer- The Constitution is not an outdated book as it accepts the required changes to keep updated with requirements of the changing times. The amendment in the provision of constitution made time to time but according to rigid law so that no one can alter it for their own interest. The language of Indian constitution is elaborative. Its vast size and also inclusion of some legal languages stands it as tough. However, it is written in too detailed manner clearing all confusion that may come. The Indian constitution is a body of fundamental principles according to which India is governed. Constitution provides ideological basis to the state and legitimacy to political institutions. It provides democratic form of government in India. It grants fundamental rights and privileges to all its citizens. It lay down the basic ideals of secularism, equality and fraternity. It is very necessary for smooth functioning and working of various institutions and also maintains stability. Therefore, we should obey this document.

10. In a discussion on the experience of the working of our Constitution, three speakers took three different positions:

- a. Harbans: The Indian Constitution has succeeded in giving us a framework of democratic government.
- b. Neha: The Constitution made solemn promises of ensuring liberty, equality and fraternity. Since this has not happened, the Constitution has failed.
- c. Nazima: The Constitution has not failed us. We have failed the Constitution.

Do you agree with any of these positions? If yes, why? If not, what is your own position?

Answer- Yes, I agree with Harbans' position that Indian Constitution has succeeded in giving us a framework of democratic government. This is the age of democracy and the power is exercised by the representatives of the people and they are also accountable to the people. Thus they cannot be allowed to exercise the power according to their sweet will. Constitution determines the set up of the organs of the government, their powers, mutual relations and the rights and duties of the citizens. The biggest testament of its success is that a democratic government is working in India for more than sixty five years whereas countries that gained independence with India failed to maintain democratic rule in their nations.

No, I do not agree with the position taken by Neha that the Constitution made solemn promises of ensuring liberty, equality and fraternity. Since this has not happened, the Constitution has failed. The provisions of constitution are helpful in realisation of certain aims but it is not a guarantee to fulfil all the needs of society in a short period of time. The values of liberty equality and fraternity are cherished by our constitution makers and they included it in our constitution. Ideal liberty, equality and fraternity is not a simple thing to achieve. Even developed nations failed to realise the perfect liberty, equality or fraternity. Our nation is in a infant stage of development compared to nations that achieved independence two hundred years ago. Constitution creates certain conditions that are helpful in the realisation of these aspirations and goals of society.

Yes, I agree with the position taken by Nazima that the Constitution has not failed us. We have failed the Constitution. The constitution has effective principles for proper governance of country. However, the people who are responsible for execution and implementation of the principles have failed to do so because of their own interest. It is all about welfare of citizens and giving equal opportunities to all but without thinking of welfare of the nation they are using it for their profit. Therefore, the constitution has not failed us but we failed the constitution.