CONSTITUTION OF INDIA

Justice M. S. Sonak
High Court of Bombay
Constitution

A constitution is the set of the most important rules and common understandings in any given country that regulate the relations among that country’s governing institutions and also the relationship between those governing institutions and the people of that country.

- A King

Originally an English transplant with Anglo-Saxon roots, the legal system in India has grown over the years, nourished in Indian soil: what was intended to be an English oak has turned into a large, sprawling Indian Banyan, whose serial roots have descended to the ground to become new trunks.

- Fali S Nariman
What is the constitution

- A living organ, not a fossil
- Source of legislation, not a product
- A fundamental norm
- Touchstone with which to test other laws
- Documents aspirations, social values, commitments
- Political philosophy, path to future
- Stable yet flexible
8th May 1945
V day
17th July 1945 to 2nd August 1945

Potsdam Conference
5th July 1945

1945 U K Election

To

26th July 1945

1945 General Election
6th Aug 1945 : Hiroshima
9th Aug 1945 : Nagasaki
15th Aug 1945 : World War II ends
Aug 1945: Lord Wavell, Viceroy of India submits report to British Cabinet

- Britain ravaged by War, militarily and economically weak
- Differences between Muslim League and Congress
- Difficult to maintain Law and Order

Clement Atlee - Election promise to grant independence to colonies
March 1946

• Cabinet Mission Plan (CMP)

• Cripps, P. Lawrence & Alexander

16th May 1946

Proposals:

• Divide India into three autonomous groups
  ➢ Hindu, Muslim & equal

• Weak centre – Foreign affairs, defence, communications

• Constituent Assembly to draft the Constitution.
29th July 1946

• Constituent Assembly meets for the first time (preliminary)

• Muslim League boycotts

• 217 members elected through the provincial legislatures

• 6th Schedule to Government of India Act

• No universal adult franchise

• 28.5% of population eligible to vote

• Matriculates, Taxpayers and landed property owners
Differences between Muslim league and Congress over partition

Demand for an independent Pakistan

31 Jan 1947 Jinnah issues ultimatum
20 Feb 1947

- Atlee makes statement in house of commons
- Transfer of power latest by Jan 1948

22nd March 1947

- Mountbatten replaces Wavell

  Atlee: Keep India united if you can.
  If not, save something from the wreck
  In any case, get Britain out
3rd June 1947

- Mountbatten plan
- Partition of India
Indian Independence Act

- Two independent States from 15th August 1947
- Partition of Bengal and Punjab
- Two separate Constituent Assemblies, which shall become the legislatures of the two independent Nations
- This marked the end of British Rule on Indian subcontinent and birth of two sovereign Nations – India and Pakistan.
15th Aug 1947

- Midnight
- Tryst with destiny
October 1947: Draft Constitution prepared by Dr B N Rau Reddy

Feb 1948: Draft Constitution approved by Dr B R Ambedkar committee

Oct 1948 to Oct 1949: For 11 months CA in session

Clause by clause consideration of Draft Constitution

- No separate electorate for minorities
- Special protection of SC/ST
- Distribution of power between Centre and State
- Draft revised Constitution – 395 Articles and 8 Schedules
17th Nov 1949: Dr. Ambedkar moves resolutions for adoption of the Constitution

26th Nov 1949: Constitution is adopted by Dr. Rajendra Prasad

26th Jan 1950
Date of commencement of the Constitution (Article 394)
Constituent Assembly:

- Statesmen and visionaries
- Conscious that they were representing hardly 28.5% of the population
- Constitution has to reflect best in the past traditions of the nation
- Constitution has to provide considered response to the needs of the present
- Constitution has to possess enough resilience to cope with demands of the future
No generation can claim monopoly over wisdom or put fetters on future generations.

“Each generation must be considered as a distinct nation, with a right of the will of the majority to bind themselves, but none to bind the succeeding generations more than the inhabitants of another country”.

-Jefferson
A Constitution states, or ought to state, not the rules of passing hour, but the principles for an expanding future.

- Chief Justice John Marshall
• Constitution represents the will of the people

• The real sovereign in a democracy is the people

• Democracy is nothing but the government by the consent of the people

Democracy is government of the people, by the people and for the people.

- Abraham Lincoln
- People have inalienable rights.
- However, in order that such rights can be effectively enjoyed, there is necessity of some form of government, which not only recognizes such rights, but, if need be, enforces such rights.
- Order without liberty and liberty without order are mutually destructive - Ted Roosevelt
- Freedom without boundaries is like river without banks.
Impact of

- Great traditions of this great nation
- National freedom struggle
- Social and economic divisions
- Magna Carta: 1215
- French revolution: 1789 – 1799
- U S Constitution: 1787
- Bill of rights: 1791
- Montesquieu theory of separation of powers:
Impacts of

- British North America Act, 1861 (Canada)
- The Commonwealths of Australia Act, 1900
- Government of India Act, 1935
- Constitution of Free State of Ireland
- Constitution of Japan
Part III  Fundamental rights

Part IV  Directive Principles of State Policy

Delicate balance between idealism (Part IV) and practicalities (Part III)
• Article 368: Amendment of the constitution

• State without means of some change is without means of its own conservation - Burke

• Stable but flexible principle

• The constitution must be flexible but not so flexible that it is reduced to a play thing in the hands of politicians
Liberty means responsibilities.
That is why most men dread it.

- G B Shaw