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GKToday - Indian Polity Fundamentals

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Chapter-1: Constituent Assembly & Preamble

Important Prelims MCQ Topics

Written / unwritten and codified / uncodified constitutions, Constituent Assembly – members, elections, meetings, committees, drafting Committee – members, Provisions of Constitution that came into immediate effect on 26 November 1949, contents of various parts and schedules, sources of various parts, Preamble – its relevance.

Note: Wherever the word 'he' is used in constitution, it is used to indicate person, a office holder regardless of the gender and should be viewed in broader sense as nothing sort of gender discrimination. Our documents follow the same pattern, so rather than using "He/she" repetitively, we have used the term 'he' for holders of various offices.

Introduction

The legal system of a country can be divided into two parts. First deals with the laws governing the state and the second deals with the laws by which the state governs. Constitutional law falls in the first category. It deals with the rules and norms from which the governmental organs draw their powers and functions. Thus constitutional law sets up machinery of the Government of a state and it defines the relations between different institutions and components of the government viz. executive, legislature and judiciary; and also the central, state / provincial and local governments.

Functions of the Constitution

The key functions of constitution are as follows:

- Providing basic rules which allow minimal coordination among various organs of government and society as a whole.
- Laying out **fundamental** principles according to government and its various organs are constituted and governed.
- Basic allocation of power among various organs of government.
- Giving certain powers to executive, judiciary and legislative and imposing certain limits on them
- Giving certain rights to citizens and laying out their duties
- Enabling the government to fulfill the aspirations of the society

First constitution of the world

Law is as old as our civilization. It is thought that Aristotle (circa. 350 BC) was the first to make a formal distinction between ordinary law and constitutional law; and he was the first one establishing ideas of constitution and constitutionalism. However, our own dharmshastras are even older to the Greek philosophers.

As far as written constitution is concerned, the first modern written Constitution is the "Fundamental Orders" of State of Connecticut in US. This is so famous that *Connecticut is called Constitution State in America*.

Similarly, the US Constitution came into force in 1789 and is first well known example of written constitution around the world. It was a trendsetter because written constitutions became popular after its adoption. This document had only 7 articles and is hailed for its simplicity and brevity. It has been amended for 27 times up till now and *first 10 amendments are called Bill of Rights*.

What are written / unwritten and codified / uncodified constitutions?

Historically, of the key methods of classification of the constitution has been that if they are written or unwritten constitutions. Most countries have written constitutions for example India, Germany, France, US etc. Examples of unwritten constitution include *UK, New Zealand and Israel*.

We note here that difference between written and unwritten constitutions is of degree and not of kind. This implies that a written constitution has *proportionately more written and less unwritten elements* while an unwritten constitution has less written and more unwritten elements.

In fact unwritten constitution is a misnomer. The British constitution does not have document which can be called a "Constitution" but it is embodied in the written form, within statutes, court judgments, and treaties. Besides, parliamentary constitutional conventions and royal prerogatives are other written



sources of the British Constitution.

A further difference between these two is that while written constitution is a product of deliberate human action, the unwritten constitution is a result of growth. The written constitution is drafted by an agency (such as constituent assembly); unwritten constitution is a combination of customs and conventions which are not drafted by anybody in particular. Moreover, although UK constitution is labeled as unwritten in a single document, most of its constitutional rules are actually written down in many legislations. Due to this, in recent times, it had become fashionable to classify the constitutions as codified and uncodified ones. A codified constitution is one that is contained in a **single document**, which is the single source of constitutional law in a state. An uncodified constitution is one that is not contained in a single document, consisting of several different sources, which may be written or unwritten. By this definition, India and US have codified constitutions. UK has an uncodified constitution because it is neither written nor its constitutional rules come from a single document.

Constituent Assembly

A constituent assembly is a body of representatives which is composed for drafting a constitution. In our times, we have recently seen how Nepal's constituent assembly has drafted its constitution recently. We note that drafting the constitution is the only function of a constituent assembly. Once the constitution is ready and adopted; the assembly is dissolved. Further, since members of constituent assembly are representatives (elected or unelected); it's a form of representative democracy.

Idea of Constituent Assembly

The idea of Constituent assembly of India was first put forward by **Manabendra Nath Roy** or MN Roy in 1934. In 1935, it became the official demand of INC. It was accepted in August 1940 in the August Offer however, constituted under the Under Cabinet Mission plan 1946. It was first elected for undivided India but after partition, some of its members ceased to exist as a separate constituent assembly was created for Pakistan.

Elections of Members of Constituent Assembly

Members of Constituent Assembly were indirectly elected. During British Era, India had provincial assemblies like the current legislative assemblies of states. The members of the Constituent assembly were indirectly elected by the members of the provincial assemblies by method of single transferable vote system of proportional representations.

Number of members of Constituent Assembly

Initially, its total membership was kept 389. After partition, the Constituent Assembly of India had 299 representatives. These included 229 members from provinces and 70 from princely states. There were total nine women members also. The membership plan was roughly as per suggestions of the Cabinet Mission plan. The basis of divisions of seats was "population" roughly in 1:10 Lakh ratio.

First meeting of Constituent Assembly

The first meeting of the Constituent Assembly of India took place in Constitutional Hall, New Delhi, on 9th December 1946. Dr. Sachchidananda Sinha was the first president of the Constituent Assembly. In the first meeting, the assembly adopted an 'Objective Resolution' which later became the preamble of the constitution. It appointed various committees. The report of the committees formed the basis on which the first draft of the constitution was prepared. It reassembled on 14 August 1947 as Constituent Assembly for independent India.

After partition, Dr. Rajendra Prasad became the president of Constituent Assembly of Independent India.

Professor **Harendra Coomar Mookerjee** was Vice President of the Constituent Assembly. While Dr. Rajendra Prasad later became President of India, Prof. HC Mookerjee became first Governor of West Bengal.

Objectives Resolution

The historic Objectives Resolution was moved by Jawaharlal Nehru on 13 December 1946. It defined the aims of the assembly and enshrined the aspirations and values behind the Constitution making. On the basis of the Objectives Resolution, India's Constitution gave institutional expression to the fundamental commitments: equality, liberty, democracy, sovereignty and a cosmopolitan identity. The preamble of the