
UNIT 3 CONSTITUTION AND SOCIAL TRANSFORMATION

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3.1 INTRODUCTION

The Constitution of a country is the highest legal-political document for its government. It also embodies the statement of rights of the people as lawfully established. In a general sense it lays down the structure of power and obligations of the rulers towards the ruled. Such obligations imply not only the limit of the governmental power but also the expectation of the people from the government.

A significant point about a Constitution is that it is future oriented, rather than past oriented. People who administer their affairs according to traditions and customs do not need a constitution. The memories of their elders are sufficient for them. Historically, whenever a constitution has been framed, it has followed a revolution. A constitution has been intended to usher in a new social and political order.

In the eighteenth century, when the first written constitution in the world appeared – in the United States of America - only the bare structure of a federal republican government was laid down in 1789. That was a break with the monarchical colonial links with Britain. Within two years, the Constitution of the United States went through ten amendments incorporating the rights of the people in the form of limits to governmental power. The assumption was that the people had certain rights, naturally, and the Government could not take them away. Those rights were conceived in terms of the liberal *laissez faire* doctrine that put premium on the rights to life, liberty and personal property.

In the twentieth century, this view of rights was considerably widened by the welfare, and even socialist approach. New rights were included in the other constitutions of the world and the scope of old rights were widened by judicial interpretations. Even the form of the statement of the rights was modified. Thus, the Constitution of the now defunct Union of Soviet Socialist Republics incorporates the right to gainful employment as the fundamental right of every citizen. In the USA, affirmative action in favour of the weaker sections of the people was legally validated. The Constitution of Ireland incorporated certain directives to the Government on the people's welfare.

3.2 THE OUTLOOK OF THE INDIAN CONSTITUTION

The proclamation of the Indian Constitution after the transfer of power from Britain heralded a new era too. First and foremost, it established a Republican Democracy in place of the monarchical empire of the British Government. Expectedly, the Indian Constitution inherited the world trend through the experiences of the people during the freedom struggle. The Indian Constitution retained the liberal democratic framework but broadened the scope of governmental intervention with a view to promoting social reform and welfare. There was prohibition on the state to violate the rights and equality of the citizens – the rights that were essentially of negative character. There was a prohibition on the society to practise untouchability. Permission was granted to the state to take special measures for the improvement of weaker sections of the people. The Constitution also adopted the Irish model of issuing positive directives to the Government for the promotion of welfare measures.

3.3 THE PREAMBLE

Every liberal democratic constitution has a preamble articulating its spirit. The Preamble to the Indian Constitution also has stated the noble aims of the polity.

The first point that needs mention is that, according to the Preamble, it is 'We, the people of India' who, in the Constituent Assembly of India, adopted, enacted and gave to ourselves this Constitution. In short, the authority of the Constitution, as the Supreme Law of the land, is derived from the people and not from the grace of any external sovereign. Therefore, India is a Democratic, Sovereign country. India is also a Republic. It does not recognise any hereditary rule.

The democratic character of the state is ensured by the right of the people to elect the first chambers of the Union Parliament and the state Legislative Assemblies on the basis of adult franchise. Every resident, adult citizen of sound mind, and not legally barred on grounds of crime, corruption or illegal practice, is entitled to be registered as a voter (Article 326 of the Constitution).

The Constitution also promises to all its citizens Justice, social, economic and political; Liberty of thought expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual. By an amendment in 1976 the aims of establishing secularism and socialism and promoting the unity and integrity of the nation were proclaimed.

3.4 THE RISE OF THE PEOPLE

The significance of the universal adult franchise can never be overstressed. The British had introduced an elective system of legislature in India. Until the coming into force of the new Constitution, however, only about 15% of the adult Indians were voters, the voting right being conditioned by property and educational qualifications. By one stroke it was made universal and became a key factor in the making and unmaking of the government.

The Constitution not only made the people the ultimate masters of their destiny, but it also made them equal. The traditional Indian social system, fragmented by religious and ethnic differences and stratified by caste, lost its legitimacy. Individual human beings became the fundamental units of polity. All political and economic rights were granted to the individuals. At the same time, some cultural rights were granted to the minority groups.

3.5 RIGHTS OF THE PEOPLE

There are two kinds of rights under the Indian Constitution: some granted to all ‘persons’ and some to ‘citizens’ only. The first kind of rights is available to non-citizens too and include equality before the law and equal protection of the law (Article 14), protection against unlawful conviction (Article 20), life and personal liberty (Article 21), protection against unlawful detention (Article 22), right against exploitation in the form of traffic in human beings and forced labour except for public purposes (Article 23), right of children against hazardous employment (Article 24), freedom of religion (Article 25), freedom of religious denominations to manage their religious affairs (Article 26), and freedom from payment of taxes the proceeds of which specifically go to the benefit of any particular religion or religious denomination (Article 27), freedom from enforced religious instruction in schools run by religious denominations (Article 28), protection of minorities (Article 29), right of minorities to establish and administer educational institutions of their choice (Article 30), right to Constitutional Remedies (Articles 32 and 226) and the right not to be deprived of property save by authority of law (Article 300A). All other rights – right against discrimination by the state (Article 15), equality of opportunity in matters of public employment (Article 16), right against practice of untouchability (Article 17), right against creation of state titles other than military or academic (Article 18), right to freedom of speech and expression, to assemble peacefully and without arms, to form associations or unions, to move freely throughout the territory of India and to reside and settle in any part of the territory of India and to practise any profession or carry on any occupation, trade or business (Article 19) are granted to the citizens.

3.5.1 Nature of the Rights

The following points need to be noted about the rights: (1) These rights are negative in form in as much as they restrict the authorities from violating these rights. (2) While most of these rights are against the state, some of them, like the right against untouchability (Article 17) and the right to protection of minorities (Article 29) are against the society. (3) While most of the rights are granted to the individuals, some are granted to groups (Article 27, 29 and 30) (4) Most of the rights are conditional upon considerations of public interest, law and order, decency and welfare of certain weaker sections of the people.

These points are significant in the understanding of the nature of rights in India. We have said that in the traditional liberal democracies like the United States, the rights are negatively framed so that the state does not take them away. The question of protection of those rights from the assault of other members of the society is tackled by the law and order functions of the state. For instance, race riots in the USA are dealt with exclusively under the criminal law which the State is constitutionally obliged to apply without discrimination. In India, on the other hand, practice of untouchability by members of the upper castes is directly an offence against the Constitution. Similarly, violation of the rights of minorities by members of the majority community is an offence against the Constitution. It is the direct constitutional responsibility of the state to protect the social rights of the dalits (the people of the Scheduled Castes), the adivasis (the people belonging to the Scheduled Tribes) and the religious and linguistic minorities.

The other significant difference with the older liberal constitutions is the specification of limits of the rights by the Constitution of India itself. In the United States such limits are set by the courts of law and depend upon the personal views of the judges. Such personal views are not ruled out in India but they are restricted by the Constitution itself. As has been mentioned, these constitutional restrictions spring from the Constitution's concern for not only law and order but also public interest in general, including decency, morality and welfare of the weaker sections of the society.

Finally, constitutional acknowledgement of groups as well as individuals is the result of the rather unhappy communal history of the country. This concern of the Constitution of India with the plight of the religious and linguistic minorities and the weaker castes is reminiscent of certain European constitutions set up between the two World Wars in pursuit of the minority treaties some of the states had to sign before their establishment. Such countries were Poland, Yugoslavia and Czechoslovakia. The difference is that those European states never seriously implemented them. In India they have been implemented with all seriousness.

Thus the structure of rights in the Indian Constitution envisaged an active role of the state in bringing forth social transformation.

3.6 THE DIRECTIVE PRINCIPLES OF STATE POLICY

A more direct activist role of the state in bringing forth socio-economic transformation was assigned by the Constitution of India through Directive Principles of State Policy. These principles are not directly enforceable by the law courts. But the courts, while interpreting the Constitution, including the Fundamental Rights, are to be guided by them. The Constitution enjoins the state to regard them as fundamental in governance and to apply them when making laws.

3.6.1 Common Good and Life of Dignity

The most fundamental directive to the state is to strive to secure a social order in which justice, social, economic and political shall inform all the institutions of their national life. The state shall, in particular, strive to minimise inequalities in income and eliminate inequalities of status,

facilities and opportunities not only among the individuals but also among groups of people residing in different areas or engaged in different vocations (Article 38). In particular the state shall direct its policies toward securing adequate means of livelihood for all citizens, men and women equally, distribution of ownership and control to best serve the common good, preventing concentration of wealth and means of production to the common detriment, ensuring equal pay for equal work for both men and women, protection of the health and strength of the workers, men and women, prevention of the abuse of the children, and facilitation of the children to grow in a healthy manner and with freedom and dignity (Article 39).

3.6.2 In the Sphere of Law

Most other Articles in this part of the Constitution (Part IV) are elaborations of these basic objectives. The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities (Article 39A, added in 1977 by the 42nd amendment to the Constitution). The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India (Article 44). The state shall take steps to separate the judiciary from the executive in the public services of the state (Article 50).

The state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government (Article 40).

3.6.3 In the Economic Sphere

There is a more guarded promise in the economic sphere. The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want (Article 41). The right to work as such cannot be granted by any liberal democratic state simply because it does not control all the means of production. The system of social insurance is also provided by only developed industrial countries though its operation is unstable. For a developing country like India the promise of universal right to work and/or social insurance is obviously too ambitious.

The State shall regard the raising of the level of nutrition and the standard of living of the people and the improvement of public health as among its primary duties and, in particular, endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating and harmful drugs (Article 47).

3.6.4 Rights of Workers

The State shall make provision for securing just and humane conditions of work and for maternity relief. The state shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, industrial, agricultural or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage

industries on an individual or co-operative basis in rural areas (Article 43). By the 42nd Amendment to the Constitution, the State was enjoined to take steps, by suitable legislation or any other way, to secure the participation of workers in the management of undertakings, establishments of other organisations engaged in any industry (Article 43A)

3.6.5 For Children and the Weaker Sections

The state is directed to provide, within a period of ten years (from the proclamation of the Constitution) to all children up to the age of fourteen years (Article 45).

The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation (Article 46).

3.6.6 In the Sphere of Agriculture and Environment

The state shall endeavour to develop agriculture and industry along modern scientific lines (Article 48).

It is the obligation of the state to protect every monument or place or object of historic interest declared by the Parliament to be of national importance from spoilation, disfigurement, destruction, removal, disposal or export, as the case may be (Article 49).

Article 48A, incorporated by the 42nd amendment in 1977 enjoins the duty to protect and improve the environment and safeguard the forests and wildlife of the country.

3.7 SUMMARY

This unit focused on the developmental aspirations of the national movement that were embodied in the Constitution of India, the highest legal- political charter of the Indian polity. The Indian Constitution enshrined in itself the positive aspects based on experiences of the people around the world. Infact, the Preamble remains the soul of the Constitution, with the utmost aim of safeguarding the rights of the people and ensure justice in all aspects. There is also a provision for Directive Principles of State Policy regarded as fundamental in the matters of governance. It also ensures to safeguard the rights of the workers, children, weaker sections and nurture, develop and protect agriculture, environment, forests and wildlife of the country.

3.8 EXERCISES

- 1) Discuss the world's perception of rights that served as the background of rights embodied in the Indian Constitution. To what extent was it transformational?
- 2) What place do 'the people' have in the Indian Constitution?
- 3) What are the negative and the positive rights in the Indian Constitution?
- 4) What are the rights in India granted to the individuals? What are the rights of the groups?
- 5) How much transformational potential exists in the Directive Principles of State