

## Text

As you might be knowing that Law is a tool or an instrument which regulates the conduct and behaviour of human beings. In the same sense the constitution of any country regulates the behaviour between the individuals, the state and the states interse.

Generally speaking, constitutional means set of rules which governs an organisation. However within the legal context constitution is defined as the basic law of the country that outlines the framework and procedure of government, defines its powers and functions, provides how constitutional changes may be made and in a democracy usually guarantees the citizens certain protections against the arbitrary actions of the government.

We can also say that constitutional law is a fundamental law of the land. Constitutional law is the body of the rules which determines the constitution of the state. The term constitution has been defined by various Scholars/ Jurists. Some of them are given as under:-

Lord Bryce defines constitutional law as:

“Constitution is the aggregate of laws and customs under which the life of the state goes on”

“Constitution means aggregate of only those written principles which regulates the administration of the State (Thomas Paine and De Tocqueville)

According to K.C Wheare, Hood Philips and Gilchirst

“The term Constitution is used to denote all written and unwritten Principles regulating the administration of the State.

Thus the constitution means a document which is dynamic and possess a special legal sanctity, and describes the structure ,the primary functions of the various

branches of the government and declares the principles governing the operation of these different branches of the government .

Professor K.C Wheare defines the constitution of states as:-

“The whole system of government of the country the collection of the rules that establish and regulate or govern the government. The constitution can also be defined as a document which contains the rules regarding framework of the government.

Aristotle defines the Constitution as,

“A way of life the state has chosen for itself”

Constitution has also been defined as,

“Collection of Principles according to which the powers of the Government, the rights of the Governed (people) and the relation between the two are adjusted.”

Sir I. Jennings while analysing and scrutinizing the definition of constitution given by Thomas Paine and De Tocqueville, pointed out that, if the constitution means a written document then obviously Great Britain has no Constitution at all because in united kingdoms the constitution is not reduced into writing .

While analysing the definition of Constitution given by Bryce, it is limited and narrower but is most suitable to the British Constitutional System. Since constitution of Britain can be said to be an aggregate of laws and customs.

Professor Wade and Phillips defined constitution as a document having a special legal sanctity which sets out the frame work and the principal functions of the organs of the government of a state and declares the principles governing the operation of those organs.

Thus the constitutional law may be defined as the rules which regulate the structure of the organs of the government of a state and their relationship to

each other and determines their fundamental functions. The constitution is considered to be the ground norm from which all other laws derive their validity, which implicitly means that the other laws have to be in consonance with the constitutional law. The constitution is the basic and the fundamental law that creates a system of government and provides a measuring scale against which the validity of all other laws is determined or tested.

In short, constitution is the collection of principles or the body of fundamental rules (written or unwritten) which usually provide for the establishment and Organisation of the organs of the government. It delineates their powers and function, the manner in which the said powers and functions are to be exercised, their interrelationships and the relation between the organs of the governments and the people of the country.

The constitutional law of the country seeks to establish its fundamental basis as apex organs of the government and the administration, describes their structure, composition powers and principal functions defines the interrelationships of the organs with one another and regulate their relationships with the people and more particularly the political relationship. Every organ of the country must act in accordance with the constitution. The government being the creature of the constitution, constitution defines and delimits the powers of the governmental organs and any exercise of powers beyond the constitutional parameters becomes unauthorised and hence unconstitutional.

Thus any law made by the legislature any action taken by the executive if inconsistent with the constitution can be declared as unconstitutional through the medium of the courts.

**Classification of Constitution:-**The constitution may broadly be classified as-



- a) **Written Constitution and unwritten constitution:** Constitution of the country may be written or unwritten. A written constitution is one which is codified in a form of document, for instance, constitutions of India, USA, and Tanzania are in written form. The roots of the written constitution can be traced in American war of independence [1775-83] and French Revolution (1789).
- b) **Unwritten Constitution:** Unwritten Constitution or Uncodified also called as non-documentary Constitution is one that is not contained in a single document. A constitution is said to be unwritten if it is not reduced into writing for example, constitution of England an unwritten constitution. In those countries where the constitution is unwritten the legislature, Parliament enjoys sovereignty to make and unmake any law. Unwritten constitution is not embodied in one comprehensive document.

The constitution of India is one of the most comprehensive and detailed constitution of the world. Lime lighting the importance of written constitutions Prof. Wheare made the following remarks, “It will be practically impossible to maintain the supremacy of the constitution, unless the terms there of have been reduced into writing”

The constitution must almost necessarily be a written constitution. It will be practically impossible to maintain the supremacy of the constitution, unless the terms thereof have been reduced into writing (Dicey Law of Constitution).

written constitutions involve hectic procedure for its amendment. Usually 2/3<sup>rd</sup> majority and ratification of half of the state legislatures is required. For amending an unwritten constitution such special and hectic procedure is not needed. Yet another advantage is that parliament functioning under a written constitution cannot claim for itself the unlimited power to do whatever it likes. Under the written form of constitution, it has to observe restriction imposed on it by the constitution.

Thus the written constitution seeks to put formal restraints upon the abuse of power. This may be lacking in an unwritten constitution.

### **Unitary and Federal**

Unitary constitution is one which sets up one central government and all the powers are vested in it. For example the constitution of Great Britain. A federal constitution on the other hand is one which provides for the division or the distribution of powers between the Union/Centre and the State Government for instance American Constitution is the best examples as the federal constitution. The central government and the state governments have to exercise the powers and perform their functions within their assigned dominions.

### **Flexible and Rigid**

A constitution is said to be flexible if it provides a simple procedure for its amendment for example A bill proposing amendment can be passed by each house by simple majority of the members present and voting and on receiving the assent of the president or the Governor as the case may be, has the effect of amending the constitution.

A rigid constitution on the other hand is one which requires a special, complex and more technical procedure for its amendment for instance under constitution of India amendment of certain provision related to election of the President requires acceptance of the majority of members in each house of the parliament and also  $\frac{2}{3}^{\text{rd}}$  of majority of members present and voting. In addition, it requires ratification by not less than  $\frac{1}{2}$  of the state legislatures before it is presented for the assent of the president.

The Indian constitution though written is sufficiently flexible. Few provisions of the constitution of India requires the consent or ratification by half of the state legislatures. As per the observations of Ivory Jennings

“The Indian constitution despite being depicted as written hence, rigid in practice has proved to be flexible. From 1950 till 2014 more than 116 amendments have been there to the constitution of India.”

## **Sources of Constitution**

### **Introduction**

The framers of the constitution were quite enthusiastic about framing of the constitution, which would not only represent a definite departure from the Colonial past but also provide a comprehensive document, to fulfill the aspirations of swarming millions - illiterate, suffering from starvation poverty and want besides, they wanted to produce the most suitable constitution after avoiding its certain inherent defects like rigidity, religious intolerance and apathetic social disparities found in the existing constitutions of the civilized world. Thus the constitution of Indian Republic is not the outcome of political revolution but of the research and deliberations of the various eminent representatives of the people who worked out very hard to come out with the constitution whole of India which will form the ground norm of the country. ----The Constitution of India. For drafting such a document best provisions from the worlds best constitutions have been adopted.

The government of India Act, 1935 provided a sound basis for the framing of a new constitution of India. In pursuance of the recommendations of Cabinet Mission in 1946, elections to the constituent Assembly were held and it met for the first time on 9<sup>th</sup> December, 1946. Lord Mount Batten's plan was accepted. At last, Britishers agreed to declare independence. The British parliament passed the Indian Independence Act on 18<sup>th</sup> July 1947. It paved way to constitute Constituent Assembly headed by Babu Rajendera Prasad, as president. A drafting, committee headed by B.R. Ambedkar as chairman and 8 other members were constituted. The Constitutional Assembly after conducting research and thoroughly examining the working of various constitutions of other countries viz, America, England, Australia, Ireland etc. Prepared the constitution of India. It was adopted on 26<sup>th</sup> November 1949, but came into force on 26<sup>th</sup> January 1950.

Before highlighting the sources of constitutional law. Let me first briefly elaborate as to what is meant by a source?

“Source is anything from which flows something.” or something from which any thing comes forth, which is regarded as its cause or origin.

There are wide and varied sources from which constitution of India has evolved. The constitution of India has been divided into various parts. Every part of the constitution of India has a particular source from which it has been adopted. Main sources of the constitution of India are as under:

**I. Government of India Act, 1935** acted as the basic source of the constitution of India. The government of India Act, 1935 served as one of the main source for the framing of constitution. The following features of the constitution of India has been derived from the Government of India Act, 1935.

Distribution of powers between the Centre and the State (Federal Scheme of the constitution). Provisions regarding the Judiciary. Powers, Position and Functions of the Governor. Public Service Commission, Emergency Provisions.

**2. British Constitution:-** The British constitution has been the source of below mentioned aspects existing within the constitution of India: -

- a) Parliamentary form of Government.
- b) Rule of law.
- c) Single citizenship
- d) Cabinet system
- e) Issuance of writs by courts.

**II. Constitution of United States of America:** The following provisions have been derived :-



Preamble, Fundamental Rights, Independence of Judiciary, judicial Review, Impeachment of President.

**iii. Irish Constitution:-** Directive principles of State policy, nomination of members to Raja Sabha and method of election of the President.

**iv. Constitution of Australia:-** The constitution of Australia acted as a source for the following:

Cocurrent List, provisions regarding Freedom of Trade, Commerce and Intercourse etc

**v. Constitution of German Reich:** -Popularly known as Weimer constitution, from this constitution provisions regarding the suspension of fundamental rights during emergency have been adopted.

**vi. French Constitution:** Ideas of liberty, equality and fraternity imbedded in the preamble of the constitution of India.

**vi. Constitution of South Africa:** Procedure for amendment of the constitution and election of members of Raja Sabha.

From the above it becomes clear drafters of the constitution of India researched analyzed and the best provisions from the different constitutions of the world, studied their practicability and adaptability in India condition and needs and remoulded such provisions before adopting so as to basis for having the best ever constitution for India, which will not only serve the present generation but would act as a blessing for the future generations as well. Thus making the constitution as organic, dynamic or the fundamental law for the whole independent Nation.