

WHY DO WE NEED A CONSTITUTION?

What is a constitution? What are its functions? What role does it perform for a society? How does a constitution relate to our daily existence? Answering these questions is not as difficult as you might think.

Q. **4.** **Constitution allows coordination and assurance** *India is a big country.*

Imagine yourself to be a member of a reasonably large group. Further imagine that this group has the following characteristics. The members of this group are diverse in various ways. They have different religious allegiances: some are Hindus, some are Muslims, some Christians and some perhaps profess no religion at all. They are also varied

in many different respects: they pursue different professions, have different abilities, have different hobbies, different tastes in everything from films to books. Some are rich and some are poor. Some are old, some young.

Imagine further that members of this group are likely to have disputes over various aspects of life: How much property should one be allowed to own? Should it be compulsory that every child be sent to school or should the parents be allowed to decide? How much should this group spend on its safety and security? Or should it build more parks instead? Should the group be allowed to discriminate against some of its members? Every question will elicit a variety of answers from different people. But

for all their diversity, this group has to live together. They are dependent upon each other in various ways. They require the cooperation of each other. What will enable the group to live together peacefully?



This group is very much like the people of my village.



is could be my colony as does this apply to your or town or colony too?

Function of The basic member

Constitution



encounter
among different students
these differences? Did the entire class gain
something from this exercise?

Q.7.

Specification of decision making powers

A constitution is a body of fundamental principles according to which a state is constituted or governed. But what should these fundamental rules be? And what makes them fundamental? Well, the first question you will have to decide is who gets to decide what the laws governing the society should be? You may want rule X, but others may want rule Y. How do we decide whose rules or preferences should govern us? You may think the rules you want everyone to live by are the best; but others think that *their* rules are the best. How do we resolve this dispute? So even before you decide what rules should govern this group you have to decide: Who gets to decide?

The constitution has to provide an answer to this question. It specifies the basic allocation of power in a society. It decides who gets to decide what the laws will be. In principle, this question, who gets to decide, can be answered in many ways: in a monarchical constitution, a monarch decides; in some constitutions like the old Soviet Union, one single party was given the power to decide. But in democratic constitutions, broadly speaking, the people get to decide. But this matter is not so simple. Because even if you answer that the people should decide, it will not answer the question: how should the people decide? For something to be law, should everyone agree to it? Should the people directly vote on each matter as the ancient Greeks did? Or should the people express their preferences by electing representatives? But if the people act through their representatives, how should these representatives be elected? How many should there be?

In the Indian Constitution for example, it is specified that in most instances, Parliament gets to decide laws and policies, and that Parliament itself be organised in a particular manner. Before identifying what the law in any given society is, you have to identify

who has the authority to enact it. If Parliament has the authority to enact laws, there must be a law that bestows this authority on Parliament in the first place. This is the function of the constitution. It is an authority that constitutes government in the first place.

The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted.

05. Limitations on the powers of government

But this is clearly not enough. Suppose you decided who had the authority to make decisions. But then this authority passed laws that you thought were patently unfair. It prohibited you from practising your religion for instance. Or it enjoined that clothes of a certain colour were prohibited, or that you were not free to sing certain songs or that people who belonged to a particular group (caste or religion) would always have to serve others and would not be allowed to retain any property. Or that government could arbitrarily arrest someone, or that only people of a certain skin colour would be allowed to draw water from wells. You would obviously think these laws were unjust and unfair. And even though they were passed by a government that had come into existence based

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Countries of the European Union tried to create a European constitution. The attempt failed. Here is a cartoonist's impression of this attempt. Does this always happen in any constitution making?



Al: So you first create a monster and then start worrying about saving yourself from it! I would say, why create the monster called government in the first place?

on certain procedures there would be something obviously unjust about that government enacting these laws.

So the third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them.

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.

Q 8 **Aspirations and goals of a society**

Most of the older constitutions limited themselves largely to allocating decision-making power and setting some limits to government power. But many twentieth century constitutions, of which the Indian Constitution is the finest example, also provide an enabling framework for the government to do certain positive things, to express the aspirations and goals of society. The Indian Constitution was particularly innovative in this respect. Societies with deep entrenched inequalities of various kinds, will not only have to set limits on the power of government, they will also have to enable and empower the government to take positive measures to overcome the forms of inequality or deprivation.

For example, discrimination. We have to be enabled to achieve this goal in the history of racial the government



The constitution different aspects different views different goals balancing

constitution of the Indian individual in lead a life of material well enables the some of the Indian

Chapter 1: Constitution: Why and How?

For example, India aspires to be a society that is free of caste discrimination. If this is our society's aspiration, the government will have to be enabled or empowered to take all the necessary steps to achieve this goal. In a country like South Africa, which had a deep history of racial discrimination, its new constitution had to enable the government to end racial discrimination. More positively, a

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The constitution makers have to address themselves to very different aspirations. Here is Nehru trying to balance between different visions and ideologies. Can you identify what these different groups stand for? Who do you think prevailed in this balancing act?

constitution may enshrine the aspirations of a society. The framers of the Indian Constitution, for example, thought that each individual in society should have all that is necessary for them to lead a life of minimal dignity and social self-respect — minimum material well-being, education etc. The Indian Constitution enables the government to take positive welfare measures, some of which are legally enforceable. As we go on studying the Indian Constitution, we shall find that such enabling

Chapter → 1 (11th Pol/Sci)

- Q.1. What is Constitution?
- Q.2. Why do we need a Constitution?
- Q.3. Define the basic function of Constitution.
- Q.4. How does a constitution allow for minimal coordination amongst members of a society?
- Q.5. Explain the most common way of limiting the powers of the government by the constitution.
- Q.6. Which body created the Indian constitution? How much time was taken to create it?
- Q.7. Explain the statement, "Specification of ~~clear~~ decision making powers is done by the constitution."
- Q.8. Which constitutional measures enable the Indian government to fulfil the aspiration of society?