

IIA. Indian Constitution : A Constitution Drawn from several Sources

Made in the mid-20th century, the Constitution of India is a unique constitution not only for being the constitution of world's largest democracy but also for embodying the best features of a number of constitutions of the world. It owes its qualities to the founding fathers who sat in the Constituent Assembly for nearly three years to formulate it. In its preparation, they depended upon several sources. They kept before them ideals and values of the National Movement as well as depended upon several foreign Constitutions, their own perceptions and values and the views of experts. They used several sources to weave the constitutional provisions into a solid and stable democratic constitutional system for India.

The Constitution of India became fully operational on 26 January, 1950 and from that golden day till today, it has been evolving through several constitutional amendments, Acts of Parliament, Decisions of the Supreme Court and several Conventions. Its interpretations by constitutional experts have also helped it to grow. All these are then the sources of the Indian Constitution.

We can study the sources of the Indian Constitution under the following heads :

1. Values of National Liberation Movement. The National Liberation Movement against the British Colonial rule was governed by certain ideals and values. Its main aim was Freedom but along with it several objectives were adopted for guiding the struggle for freedom. These were National Unity, Unity in Diversity, Democracy, Secularism, Liberty, Equality, Justice, Rule of Law and Faith in Peaceful and Constitutional Means. These ideals guided the path of the constitution-makers.

The Nehru Report (1928) was an all party effort and it suggested a framework for the constitution which the people of India wanted. It had suggested the following features : Federalism, Strong Centre, Joint Electorate, Secularism, Political and Social Equality, Fundamental Rights, Special protections for Minorities, Universal Adult Franchise, and independent and impartial Judiciary. This report served as the blue-print for the making of the Indian Constitution.

2. Foreign Constitutions. The framers of the Indian Constitutions were greatly influenced by several constitutions which were at work in other democratic states of the world. In fact, they tried to incorporate the best features of such constitutions into the Indian Constitution. However, they did not borrow the features blindly. They used these only when they found these suitable for Indian conditions. Mr. B.N. Rau, the constitutional advisor visited several countries to review the working of various institutions in actual practice. On the basis of his advice, and by their own mature judgements, the constitution-makers incorporated several salient features of foreign constitutions in the constitution of India.

The British Constitution influenced them in adopting Parliamentary Democracy and Bicameralism; the American Constitution in providing for Fundamental Rights, Independence of Judiciary and Judicial Review ; the Irish Constitution in introducing the Directive Principles of State Policy ; the Canadian and Australian Constitutions for laying down the division of powers between the Union and the States, and the Weimer Republic (Germany) for incorporating the emergency provisions. As such some foreign constitutions also served as a source of the Indian Constitution. Many critics charge that this made the Indian Constitution a bag of borrowings. But it is not an objective assessment. In adopting these features, the founding fathers always kept the Indian needs and conditions in view. They tailored these features to make these fit for the Indian environment. They did not copy these blindly.

3. The Government of India Act, 1935. When the Constituent Assembly began its work, Government of India was operating under the provisions of the Act of 1935. Naturally, this Act influenced the constitution-makers both positively and negatively. Negatively, they decided to eliminate the half-hearted democratic system that this Act had introduced. They decided to abolish the communal electorates in favour of a joint electorate. Positively, they were influenced by this Act in laying down the division of powers between the Union and States, in the inclusion of subjects in the three lists and in keeping the centre strong. The decision to introduce Bicameralism in bigger provinces and unicameralism in small provinces as well as the provision for dealing with Constitutional Emergency in States (Art. 356) was made under the influence of Government of India Act, 1935. Several scholars even hold the view that the constitution of India is a glorified edition of the Govt. of India Act. 1935. It is, however, an unobjective view. The Constitution of India in its letter and spirit is totally different from the Act. While the purpose of the Act was to circumscribe the limited democratic structure that it created, the Constitution of India has been an able exercise in providing a full fledged and operational democratic system to the country. Hence the views of such critics merit rejection.

4. The Constituent Assembly and its Record. The Constitution of India is the child of the Constituent Assembly. The perceptions and ideological orientations of the constitution-makers, the reports of the committees and of the debates held in the Constituent Assembly provided the basic threads for its formation.

(i) The perceptions and ideological orientations of the members of the Constituent Assembly, provided the basis for laying down the philosophy and basic structure of the constitution. The adoption of Democratic Socialism, provisions for Centralised Planning, the Directive Principles of State Policy, Secularism, Unitarian Federalism, Welfare State etc., all bear the imprint of the values and ideas cherished by the Framers of the Constitution.

(ii) **Objectives Resolution.** The Objectives Resolution adopted by the Constituent Assembly on 22nd January, 1947 constituted the sign-post for the Constituent Assembly. This resolution categorically stated the objectives before the Constituent Assembly as well as the features that, it was to provide for in the constitution. It specified the objective of making India a Sovereign Independent Republic based on the principle of Popular Sovereignty and committed to secure social, economic and political justice for all, making India a secular polity, securing the interests of the minorities and

working for International Peace and Security. The Constitution of India fully upholds the philosophy and ideals of the Objectives Resolution.

(iii) **Reports of the Constitutional Committee.** The Constituent Assembly appointed a number of committees which prepared reports on the matters allocated to them. Their reports formed the basis of debates held in the Constituent Assembly. In particular the reports of the substantive matters committees like the Advisory Committee on Minorities and Fundamental Rights, Committee on Financial Rights between Union and States and others, constituted a rich source of the constitution.

(iv) **Debates of the Constituent Assembly—CAD.** Before incorporating a provision in the constitution, the Constituent Assembly debated on its all aspects. Every member freely expressed his opinion in these debates. It was after these debates that the decision over every provision was reached either through consensus or unanimity or by a vote. In all, the Constituent Assembly held eleven Plenary Sessions and held debates for 114 days. As many as 7635 amendments were moved by the members, out of which 2473 were actually discussed and debated upon. The Constituent Assembly Debates (CAD) records as such contain a mine house of information which is always used by the Supreme Court in interpreting the various provisions of the constitution.

(v) **The Draft Constitution.** The Drafting Committee, under the Chairmanship of Dr. Ambedkar did a commendable job in preparing the Draft Constitution. On 21st February, 1948, the Constituent Assembly began a debate over the first draft prepared by the Drafting Committee. On 4th November, 1948 the final draft was submitted to the Constituent Assembly. After long discussions and debates, the Assembly finally enacted and adopted the Constitution on 26th November, 1949. The Draft Constitution as such constitutes a source of the Constitution of India.

5. Constitutional Amendments. The Indian Constitution, under its Art. 368 lays down the Power and the Procedure of Amendment. During its operation, since 1950, the Constitution of India has undergone 102 Amendments to this date. These have amended several provisions of the constitution.

The Right to Property is no longer a fundamental right under Article 31 ; instead it is now a legal right under Article 300A. Under article 51A, a list of Fundamental Duties of the citizens stands incorporated. The voting age stands reduced from 21 to 18 years (61st Amendment) and the provision for reservation of seats for Scheduled Castes and Tribes in Lok Sabha and State Assemblies stands extended upto the year 2010. The number of Schedules of the Constitution has gone up to twelve. The Union now has 28 states and 7 Union Territories. The number of languages in the 8th Schedule has gone up to 22 with the addition of Bodo, Santhali, Maithili and Dogri by the 92nd Constitution Amendment Act.

All these changes and several more have been accomplished through amendments. Till today 102 Amendments have been incorporated in the Constitution. These have helped the constitution to change, adjust and develop and serve the needs of the changing environment. Some of the Amendments involving such changes as revamping and strengthening of the Panchayati Raj and other local government institutions have been designed as measures for strengthening the foundations of the Indian democracy—the grass roots of Indian Democracy.

6. Parliamentary Statutes. From time to time Union Parliament has passed several acts, on various subjects. Since 1950, it has exercised its law-making powers to provide for desired changes.

for example, in respect of rules regarding citizenship, number of Judges of the Supreme Court, Reorganisation of States, Peoples Representation Act. In 2002 the Parliament passed an act amending the Peoples Representation Act. Its aim was to prevent criminals from contesting elections. In 2003 the Citizenship Act was amended.

7. Judicial Decisions. The Supreme Court of India has the power to interpret the constitution. It is also the Court of Final Appeals and a Court of Records. It has jurisdiction over constitutional cases. In several such cases, the Supreme Court has given historical decisions which have given a new meaning and thrust to several aspects/features of the constitution.

In the case of *Gopalan vs the State of Madras*, it gave an important judgement over the issue of limitations on the right to personal freedom of the citizens. In the case of *Bengal Immunity vs State of West Bengal*, it decided that it can change its judgements or suspend or stop the operation of a particular judgment. In the case of *State of Madras vs Champakam Dorairajan*, the historic decision 'that Fundamental Rights were superior to Directive Principles of State Policy' was given. In the *Atma Ram* case, the Supreme Court defined the rights enjoyed by the persons detained under Preventive Detention. In the *Golaknath Case (1967)*, the Supreme Court ruled that Parliament had no power to amend Fundamental Rights, but over-ruled this judgement in the *Kesvananda Bharati Case (1973)* and held that Parliament has the power to amend any part of the Constitution, including Part III (Fundamental Rights) but without changing the Basic Structure of the Constitution. In a judgement delivered in 1989, the Supreme Court ruled that the Right to Information is included in the right to freedom of speech and expression along with right to freedom of press. In October 2002, the Supreme Court of India ruled that finalisation of poll schedule comes under the exclusive jurisdiction of the Election Commission and such a power is not subject to any law made by the Parliament or State legislatures. In February 2003, the Supreme Court gave the verdict that the services of a government employee cannot be terminated if he or she becomes disabled during service. In April 2004 the supreme court held that the principle of Equal pay for Equal work was not necessary. On 23 January 2004 the Supreme Court declared that the citizens have a fundamental Right to Hoist the National Flag under Art 19[1(a)] of the Constitution. Judicial Decisions have contributed a lot towards the evolution of the Constitution of India.

In 2007 the Supreme court ruled that jailed MPs could exercise their right to vote in the Presidential Election.

8. Conventions. Every constitution, whether it is written (like the Indian and American Constitutions) or unwritten (like the British Constitution), rigid or flexible, federal or unitary, Parliamentary or Presidential always work with the help of several conventions which grow naturally in the process of its working and evolution. During the operation of the Indian Constitution there have also appeared some conventions which have settled the operationalisation and content of several constitutional provisions.

Some such conventions have been:

- (a) The Governor of a State has to be from outside, *i.e.*, from another state, but exceptions are tolerated.
- (b) Before appointing a person as Governor, the Centre takes the Chief Minister of that State into confidence. (It is now a rule)

- (c) Another convention which seems to be developing is that the change of party in power in the centre leads to a change of Governors.
- (d) The constitution and working of the cabinet rests upon conventions as the constitution makes no mention of it and simply provides for the Council of Ministers.
- (e) The President appoints the leader of the majority in the Lok Sabha as the Prime Minister.
- (f) The Prime Minister however can be from either House of Parliament.
- (g) The neutrality of the Indian Speaker in the Lok Sabha is again a convention.
- (h) Before the 42nd Amendment, the rule that President was bound by the advice of the Prime Minister and the Council of Ministers rested upon convention.
- (i) The convention of electing the Speaker and the Deputy Speaker of the Lok Sabha through a consensus or unanimity is also developing. It was practised twice in 1977 and again in 1989. In October 1999, May 2004 and May 2009 this convention was again followed at the time of election of the Speaker and Deputy Speaker of the 13th 14th and 15th Lok Sabhas. Such conventions have helped the due operationalisation of constitutional provisions. The makers of the constitution were definitely influenced by the Act of 1975 and foreign constitution, but they were always guided by the views, aspirations, needs and democracy of the people of India.

9. Views of Constitutional Jurists and Experts. The commentaries on the constitution by eminent constitutional jurists and experts are always regarded as a source. These do not have any legal status. Nevertheless, the legislature in law-making and the Supreme Court in constitutional interpretations frequently take the help of the views and opinions expressed by the jurists on various constitutional provisions. These influence the work of both these organs and hence are regarded as the sources of the Constitution. Since the Indian Constitution stands influenced by foreign constitutions also, works of eminent foreign jurists on various constitutions as well as the works of Indian jurists are accepted as sources. The following major works stand included in this category : **Commentary on the Constitution of India by D.D. Basu, The Constitutional Development in India by Alexandrowics, From Marshal to Mukerjee by W.O. Douglas, The Republic of India by Gledhill, The Indian Constitution by V.N. Shukla, The Indian Constitution in the Making by B.N. Rau, Parliamentary Institutions and Procedures by M.N. Kaul, Practice and Procedure of Parliament by M.N. Kaul and S.L. Shakhdar. Indian Constitutional Documents by K.M. Munshi, Framing of Indian Constitution by B. Shiva Rao. The works of Seeravai, Seetalvad and Palkhiwala too can be included in this category.**

A study of the Sources of Indian Constitution reveals that it has been drawn not from one but several sources. The attempt of the constitution-makers was to include the best suited principles in the constitution with a view to ensure its ability to guide the path of Independent India's march towards development. Their purpose was, as M.P. Sharma puts it, not to produce an original or unique constitution ; what they wanted was a good and workable one.

Some people wrongly describe it as glorified edition of the Government of India Act 1935 while some others opine that it is a borrowed or imported constitution in so far as it follows western constitutionalism. Both these views are, however, unacceptable. The makers of the constitution were

definitely influenced by the Act of 1935 and some foreign constitutions. However, they were really guided by the views, aspirations and needs of the people of India. They always kept before them the ideals of Indian National Movement.

The Constitution of India is a self-made constitution of the people of India and it provides for a system of self-rule.

The Constituent Assembly acted as the representative assembly of all the people of India and therefore the Constitution of India is based on the SOVEREIGN FREE WILL OF WE, THE PEOPLE OF INDIA. It is indeed our highly valued, respected and sacred possession.

With all these features the Indian Constitution is a constitution best suited to the Indian environment. Even its large size (Elephantine) has helped India to organise and run her government and administration in an effective way both in times of peace and war or emergencies. It has been continuously developing for meeting new situations, challenges, crises and national needs.

The basic features of the Constitution of India are : The Preamble, Fundamental Rights, Directive Principles, Secularism, Federalism, Republicanism, Independence of Judiciary, Rule of Law and Parliamentary Democracy.

IIB. REASONS FOR THE BIG SIZE OF INDIAN CONSTITUTION

With 395 Articles, 12 Schedules and 102 Amendments (till date), the Constitution of India is the one of the largest constitutions in the world. Its big and bulky size can be judged from the fact that U.S. Constitution has only 7 Articles, the Japanese Constitution 103 Articles and the French Constitution 92 Articles. It is indeed, as H.V. Kamath referred to it in the Constituent Assembly, an 'elephantine constitution'.

The following factors have made the Indian Constitution bulky in appearance but pragmatic in approach and efficient in actual working.

1. Indian Constitution is a constitution both of the Indian Union as well as of the States. It provides for the organisation and powers of both the Union Government and the State Governments and explains in detail the relations between the Union and the States.
2. A Federal Constitution is bound to be lengthier than a unitary constitution. The attempt to combine the federal structure with unitary spirit also has also made it lengthy.
3. The constitution contains a detailed Bill of Rights and a detailed part on the Directive Principles of State Policy. The addition of Article 51A involving the incorporation of the ten Fundamental Duties has further increased its length.
4. The Constitution devotes separate parts for detailing provisions regarding several specific topics. For example, Part X deals with the Scheduled and Tribal Areas, Part XIV with Services under the Union and the States ; Part XV with Tribunals , Part XVI with Special Provisions relating to certain classes—Scheduled Castes, Scheduled Tribes, Anglo-Indian Community ; Part XVII with Official Language; Part XVIII with Emergency Provisions and Part XXI with Temporary, Transitional and Special Provisions. The inclusion of these Parts has considerably increased the length of the constitution.

5. The constitution discusses in detail the organisation and functions of several constitutional commissions—the Election Commission, the Finance Commission, the UPSC, the State Public Service Commissions, Comptroller and Auditor General of India, the Minorities Commission etc.
6. Since the Government of India Act 1935 was already in force when the constitution was being framed, and when India became independent, several of its provisions had to be incorporated in the Constitution of India.
7. The Constitution of India has become lengthy due to a large number of amendments made in it during 1950-2002 period. During 1990-91 the two Janata Dal Governments got passed as many as 4 Amendments to the Constitution and between 1991-95 the Congress I government (1991-96) despite initially being a minority government could get passed another four amendments. Till today 102 Amendments have been made in it. Constitutional amendments, some of which have been very lengthy, have contributed a lot to make the elephantine Constitution a bulkier elephantine Constitution.

All these factors have made the Indian Constitution a lengthy and detailed constitution. But it is not a lawyers' paradise because despite details, the constitutional provisions, except for some articles, stand stated in clear and unambiguous words. It has been successfully in operation since 26 January 1950. It has been guiding the march of India towards high level development and self-reliance.

Answer the following questions.

1. Discuss the reasons for the big size of the Constitution.
2. What is Objective Resolution?
3. Discuss the Government of India Act, 1935.
4. What ~~are~~ ^{are} the conventions? State any four conventions operationalised in our country.