POLITICAL SCIENCE BY AKASH KUMAR

CONSTITUTION: WHY & HOW

CONSTITUTION

a set of fundamental principles and laws that defines how a state or country is governed.

WHY DO WE NEED A CONSTITUTION?

- it provides a set of basic rules that facilitate minimal coordination amongst members of a society.
- it specifies who has the power of decsion making in the society and its structure.
- Sets limits on powers of the Government to avoid totalitarianism.
- enables and instructs the government to fulfil the aspirations of a society and create conditions for a just society.
  - e.g., DPSP (part IV)
- it expresses the fundamental identity of a people
  - First, by agreeing to certain basic principles one constitutes one's basic political identity.
  - Second, the constitution also gives one a "moral identity" - sets some limits upon what one may or may not do.

THE AUTHORITY OF A CONSTITUTION

- way of Promulgation
  - Weak constitutions are crafted by military leaders, but successful ones are crafted by public participation
- The substantive provisions
  - The more a constitution preserves the freedom and equality of all its members, the more likely it is to succeed.
- Balance of Power
  - to ensure that no single institution acquires monopoly of power is often done by dividing power across different institutions.
- Rigidity & flexibility
  - Too rigid a constitution is likely to break underthe weight of change. being too flexible, will give no security to people.
    - Assembly worked upon making the right balance among the various institutions like the executive, legislature and judiciary -- led to the adoption of the parliamentary & a federal form.

THE PRINCIPLE OF DELIBERATION

- Every provisions (Except UAF) were Passed after long discussions before adding them to the constitution.
- Each member deliberated upon the Constitution with the interests of the whole nation in mind.
- **Public Reason approach**: The members of the Assembly placed a great emphasis on discussion and reasoned argument.

INHERITANCE OF THE NATIONALIST MOVEMENT

- Constituent Assembly of India could not have functioned if there was no background consensus on the main principles the Constitution should enshrine.
- The best summary of the values that the nationalist movement brought to the Constituent Assembly was the **Objectives Resolution** drawn by Nehru in 1946.
- hrough this resolution, Constitution gave institutional expression to fundamental commitments such as equality, liberty, democracy, etc.

HOW WAS INDIAN CONSTITUTION MADE?

- by an Indirectly elected Constituent Assembly whose members were chosen by the Provincial Legislative Assemblies' members (established under the GOI act, 1935)
- first sitting on 9 December1946 & reassembled as Constituent Assembly for divided India on 14 August 1947
- The Constituent Assembly was composed along the lines suggested by the Cabinet Mission Plan.
- Cabinet mission Plan
  - Provinces & Princely States were allotted seats proportional to their respective population (roughly in the ratio of 1 :10 lakh)
  - Provinces were to elect 292 members while the Princely States were allotted a minimum of 93 seats.
  - The seats in each Province were distributed among the three main communities, Muslims, Sikhs and general.
  - election by the method of proportional representation with single transferable vote.

COMPOSITION OF THE CONSTITUENT ASSEMBLY

- after Partition, those members who were elected from areas of Pakistan ceased to be members of the Constituent Assembly (reduced to 299).
- 284 members were present on 24 January 1950 to append signature to the Constitution.
- Congress dominated the Assembly holding as many as 82% of the seats.
- Assembly had 28 members from the Scheduled Castes.
- met for 2 years, 11 months &166 days
- 8 major Committees on different subjects
  - Usually, Jawaharlal Nehru, Rajendra Prasad, Sardar Patel or B.R. Ambedkar chaired these Committees
  - Each Committee drafted provisions of the Constitution which were then subjected to debate by the entire Assembly to reach a consensus

BORROWED PROVISIONS

- UK
  - · First Past the Post
  - · Speaker
  - · Parliamentary Form
  - · Rule of law
- IRELAND
  - DPSP
- USA
  - · Judicial Review
  - · Independence of the judiciary
  - · Fundamental Rights
- CANADA
  - A quasi-federal form of government

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