

Constitutional Law and Public Administration in India

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Week- 01

Lecture-04

Sources of the Constitution & Constituent Assembly

The Canadian Constitution gave us the idea of having a strong centre. We are not a federal legal system. A lot of jurists believe that we are quasi-federal or semi-federal. The state governments are also powerful in their own response in the subjects that are allotted to the state. Although states have their own ability to govern, they do not have a Constitution to themselves. So, they are not independent, and India is not a union of states. It is a federation where states have their governance, and the centre can always dominate and take over state governments if required by imposing president's rule or other ways. Subsidiary powers are what is remaining is always the central government. The Canadian Constitution says that the powers that are not mentioned in the Constitution are subsidiary powers, because the Constitution cannot envisage all the powers at the time it was enacted.

The central government can introduce something unique either in taxation or governance. For example, service tax was introduced under the Finance Act. It was not in existence when the Constitution was built. If there is an international convention or a treaty which the central government must enforce, then the power to make a legislation to fulfill its commitments under international agreements or treaties is with the central government. The Canadian Constitution also brought in the advisory jurisdiction of the Supreme Court. The advisory jurisdiction of the Supreme Court is important though quite rarely exercised. One of those examples of the advisory jurisdiction of the Supreme Court was in the 2G case when in one of its earlier decisions the Supreme Court did mention that auctions shall be the only process of resource allocation in the country. The government found it very difficult to complete the obligation by the Supreme Court of India to which the advisory jurisdiction was sought. The Supreme Court said that it shall not be mandatory but it is the most preferred method of auction. When the government or the president of India requires legal advice on certain Constitutional matters and the Supreme Court being the final word on the Constitution probably gives this advice in this way.

Apart from adjudication of discourse of determination of rights, the Supreme Court has other functions as well and the Canadian Constitution gave us all that. The Australian Constitution gave us a Concurrent list and the German Constitution gave us emergency

powers. So, a Constitution gives the idea of justice mostly social economic. The French Constitution talked about the Republic, the idea of liberty, equality, infatuation, South African, how to amend the Constitution, Japanese Constitution of course was published in the 19th century. The Indian Constitution is the comparatively the best of the world because we wanted to give ourselves the best Constitution and it became bigger and broader and a country like India which is so challenging in terms of the geography and so many class, religions, ethnicity, so many tribes, so many kind of challenges, this Constitution was something that we had to do to ourselves and probably it could be one of the best Constitution because it has the best from the world.

The Constituent Assembly was formed in 1946. They spent about a year trying to give us a Constitution and had different committees; there was a draft committee, there was a minor committee and there was a major committee and the major committee especially on union powers was headed by Jawaharlal Nehru. There were other committees that were advising, the Constitution was there were minor committees including Finance and others, so major and minor they had to write so that each person takes care of whatever is required. And then we had the drafting committee which took 6 months to draft the Constitution, after the Constitution we had debated the entire process and the drafting committee of course was headed by Dr. B R Ambedkar. He was the chairman of the drafting committee and he had other members including N Gopalaswami Ayyangar, Alladi Krishnaswamy Iyer, K M Munshi Muhammed Saadulah, N. Madhava Rau and T.T. Krishnamachari. These were the members of the drafting committee.

Dr. B R Ambedkar introduced the final draft of the Constitution in the assembly on November 4th 1948. The first reading of the draft started, the second which a clause-by-clause reading started on November 15th 1948 and it ended by October 17th 1949. And in the stage during 1948 to 1949 as many as 7653 amendments were proposed of which 2473 were actually discussed in the assembly. Finally, the Constitution was adopted on November 26th 1949 and November 26th is generally considered as law day or Constitutional day because that is when the Constitution was adopted into this country.

And when it was adopted in 1949, it contained one preamble, of course the Constitution will have only one preamble, three 95 articles and 8 schedules. Dr. Ambedkar was India's first independent law minister at that time. While we adopted the Constitution on November 26th 1949, the Constitution came into force only on 26th January 1950. That is when we truly determined ourselves to be a republic and that is when the republic gets celebrated. So that is how the Constitution assembly came into force and you will notice that there are some interesting facets of history that some would like to take to a normal Constitution. So, the Constitution assembly took almost 3 years, 2 years, 11 months and 17 days to draft the Constitution, it had 11 sessions, 4, 165 days. The constituent assembly was headed by Dr. Sachidanand Sinha, then it was headed by Dr. Rajendra Prasad. So the

Constitution assembly had a head to manage the debates in the Constitution. General elections in India were held in 1952 and from 1950 to 1952, the Constitution assembly acted at the provincial parliament of India. The two core houses of parliament came to existence only in 1952. Interestingly the Constitution has been amended more than 100 times and please note, currently we have 448 articles and 22 parts in the Constitution. That is the history of how the Constitution came into existence.

The Constituent Assembly did do a lot of work but there were some criticisms. One of the criticisms of the Constitution assembly was that it was not a perfectly representative government. It did not represent the public directly. So it was not kind of a, you know, elected body representing the idea of the people. These were basically those who came from different status of the society and you will notice that it was not representative of the communities that we have. You will notice that community wise representation in the Constitution was as follows: Hindus were 163, Muslims were 18 and the Sikhs were only 4, Anglo-Indians 3. Indian Christians there were only 6 in the Constitution. So people questioned this kind of representation over there. Not necessarily religious though at that point of time. One critique is that it was not a sovereign body. It was still not something that we were completely independent of. That the British are actually influencing the making of the Constitution in some form is something that and was the British proposal being considered. India required a fast process to gaining independence and getting the country running from the clutches of the British. So taking such a huge amount of time, see the American Constitution, it is said that it was drafted just in 4 months.

But the Indian Constitution took 6 months. But what happened in the Constitutional assembly and how finally it got in the process was a major criticism of the Constitution. In fact, Naziruddin Ahmad, a member of the Constituent Assembly said that this is not a tactical committee. The major criticism of the Constitutional assembly is that it represents only one party, which is the Indian National Congress. Most of the members of the Constitutional assembly were politicians or they were lawyers. At that point of time, lawyers were de-facto politicians and politicians simply tried to have a lobby. So, the Constitution looks like a heavier legal document than anything else, maybe because of the dominance of lawyers and politicians in the Constitutional assembly. At that point of time whatever was the best that could be done, with the best of people who could be assembled to be part of the Constituent Assembly was done.

The princely states were also given their due but they did not take part. It is in that context of the time and the circumstances, the economic capacity of the state, the social and political challenges and percolations that were happening at that point of time, the challenges of dealing with Muslim League, which did not want to take part as they wanted partition and the separation. Taking all those into consideration and being fair to the Constituent Assembly, they did a fantastic job in giving us this Constitution on November

26, which is called the Constitutional Day to celebrate, this date in history in which we got this Constitution.

Some final facts that may be of interest to many of us are that the Constitutional assembly was creative in trying to have a symbol for our activity. The symbol of the seal of the Constituent Assembly was an elephant. B N Rao was appointed as the legal advisor, the Constitutional assembly. S N Mukherjee was the chief draftsman. Putting things in legal language and legal words also becomes a very critical aspect. Prem Behari Narain Raizada was the calligrapher of it. The original Constitution was handwritten in Italics style in English and later was translated to Hindi. Beohar Rammanohar Sinha decorated the original preamble. They created history by writing this Constitution, adopting, and enacting it. That is how the Constitution becomes critically important and how we dropped the process of getting us the Constitution, which then looks at the entire gamut of public administration. India currently is a very powerful nation; it is considered to be a nuclear state, among the top 5 economies of the world, it is the top populated country in the world, it has the largest diaspora across the world and it is one of the richest country in terms of resources and richest country in terms of historical cultural matter as well.