

# HAND OUTS 1(3)

## CONSTITUTIONAL DESIGN

### **Acknowledgment**

- 1) Reference : NCERT SOCIAL SCIENCE TEXT BOOK
- 2) Google Web page for Maps & images

We all know very well that in a democracy the rulers are not free to do what they like. There are certain basic rules that the citizens and the government have to follow. All such rules together are called constitution. As the supreme law of the country, the constitution determines the rights of citizens, the powers of the government and how the government should function.

In this chapter we ask some basic questions about the constitutional design of a democracy. Why do we need a constitution? How are the constitutions drawn up? Who designs them and in what way? What are the values that shape the constitutions in democratic states? Once a constitution is accepted, can we make changes later as required by the changing conditions?

What is Constitution ?

- There are certain basic rules that the citizens and the government have to follow. All such rules together are called constitution.
- As the supreme law of the country, the constitution determines the rights of citizens, the

powers of the government and how the government should function.

- One recent instance of designing constitution for a democratic state is that of the South Africa.
- We begin this chapter by looking at what happened there and how the South Africans went about this task of designing their constitution.
- Then we turn to how the Indian Constitution was made, what its foundational values are, and how it provides a good framework for the conduct of citizens' life and that of the government.
- This was Nelson Mandela, being tried for **treason** by the white South African government.
- He and seven other leaders were sentenced to life imprisonment in 1964 for daring to oppose

the **apartheid** regime in his country. He spent the next 28 years in South Africa's most dreaded prison, Robben Island.

## **Struggle against apartheid**

- Apartheid was the name of a system of racial discrimination unique to South Africa.
- The white Europeans imposed this system on South Africa.
- During the seventeenth and eighteenth centuries, the trading companies from Europe occupied it with arms and force, in the way they occupied India.
- But unlike India, a large number of 'whites' had settled in South Africa and became the local rulers.
- The system of apartheid divided the people and labelled them on the basis of their skin colour.
- The native people of South Africa are black in colour. They made up about three-fourth of the population and were called 'blacks'.

- Besides these two groups, there were people of mixed races who were called 'coloured' and people who migrated from India.
- The white rulers treated all nonwhites as inferiors. The non-whites did not have voting rights. The apartheid system was particularly oppressive for the blacks.
- They were forbidden from living in white areas. They could work in white areas only if they had a permit.
- Trains, buses, taxis, hotels, hospitals, schools and colleges, libraries, cinema halls, theatres, beaches, swimming pools, public toilets, were all separate for the whites and blacks.
- This was called segregation. They could not even visit the churches where the whites worshipped. Blacks could not form associations or protest against the terrible treatment. Since 1950, the blacks, coloured and Indians fought against the apartheid system. They launched protest marches and strikes.

- The African National Congress (ANC) was the umbrella organisation that led the struggle against the policies of segregation. This included many workers' unions and the Communist Party.
- Many sensitive whites also joined the ANC to oppose apartheid and played a leading role in this struggle.
- Several countries denounced apartheid as unjust and racist. But the white racist government continued to rule by detaining, torturing and killing thousands of black and coloured people.

## **Towards a new constitution**

- As protests and struggles against apartheid had increased, the government realised that they could no longer keep the blacks under their rule through repression.
- The white regime changed its policies. Discriminatory laws were repealed. Ban on political parties and restrictions on the media were lifted.

- After 28 years of imprisonment, Nelson Mandela walked out of the jail as a free man.
- Finally, at the midnight of 26 April 1994, the new national flag of the Republic of South Africa was unfurled marking the newly born democracy in the world. The apartheid government came to an end, paving way for the formation of a multi-racial government.



## 2. Why Do We Need Constitution

### **In General-**

- I. We need a constitution to govern a country properly.
- II. The constitution defines the nature of political system.
- III. sometimes we feel strongly about an issue that might hurt our interests and the constitution helps us guard against that.
- IV. All the 3 organs of government (executive, legislature, judiciary) perform their functions within the constitution. All the 3 organs of government and ordinary citizens, derive their power and authority (i.e. legitimacy) from the constitution. If they act against it, it is unconstitutional and unlawful.

**So constitution is required to have authoritative allocation of functions, and also to restrict them within its limit.**

A constitution does many things:

- First, it generates a degree of trust and coordination that is necessary for different kind of people to live together;
- Second, it specifies how the government will be constituted, who will have power to take which decisions;
- Third, it lays down limits on the powers of the government and tells us what the rights of the citizens are; and
- Fourth, it expresses the aspirations of the people about creating a good society.

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