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The Indian Constitution

WHAT IS A CONSTITUTION?

Most of us are familiar with the game of cricket; many of you might have played it too. It is played according to certain rules and regulations. A batsman is given out by the umpire if he hits a ball in the air and the ball is caught by a fielder without touching the surface. A controversy arises when the batsman feels that the ball actually touched the ground before flying in the air or when he feels that the fielder actually floored the catch before holding on to it. The decision of the umpire is final and the batsman has to follow his decision. If the decision of the umpire was not considered final and respected by all the players, utter confusion and chaos would have followed. Similarly all games have certain rules according to which they are played. Rules are different for different games.

Likewise, people living in large societies have to follow certain rules and regulations. In large societies, different communities of people live together. Their interests and aspirations vary; what is advantageous for a particular community might be disadvantageous for another. Most often their

interests and aspirations clash. To avoid a conflict, all the people of a society have to follow certain rules which are formulated through a consensus. In modern countries, these rules, based on consensus are written down in a document. A written document in which we find such rules is called a **Constitution**.

WHY IS A CONSTITUTION NEEDED BY A COUNTRY?

Most of the countries in the world have a Constitution. Most of the Constitutions are written, like those of India and the US. Some countries like England have an unwritten Constitution. They follow rules and regulations based on convention and tradition. Almost all democratic countries have a Constitution.

The Constitution serves many purposes. First, it lays down certain ideals explaining the basic structure or the fundamental nature of our society. Various communities having different interests and aspirations live in a country. Their ideals and beliefs may be opposite or contrary. A Constitution contains a set of fundamental ideals and principles that all



Jawaharlal Nehru addressing the Constituent Assembly

In August 1928, the Congress and other political parties had accepted a draft Constitution drawn up by a committee under the chairmanship of Motilal Nehru. This report provided for supremacy of the legislature over executive, among various other things.

The demand for a Constitution for the country and a Constituent Assembly was first made by Indian National Congress in 1934 and it was repeated several times between 1935 and 1939. In 1938, Jawaharlal Nehru definitely formulated his demand for a Constituent Assembly, thus: "The National Congress stands for independence and democratic State. It has proposed that the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise." This was reiterated by the Working Committee of the Congress in 1939. In 1940, the British Government recognised the principle that Indians should themselves frame a new Constitution for autonomous India. In March 1942, Sir Stafford Cripps came to India to settle the question. Eventually, it was under the Cabinet Mission Plan of 1946 that the Constituent Assembly was constituted to frame a Constitution for India. The Constituent Assembly, which had been elected for undivided India and held its first sitting on the 9th of December, 1946, reassembled on 14th August, 1947, as the sovereign Constituent Assembly for the Dominion of India. As a result of the partition of India, a separate Constituent Assembly was set up for Pakistan. Hence, when the Constituent Assembly reassembled on 31st October, 1947, the membership of the House was reduced to 299. On 26th November, 1949, the members put their signatures to the Constitution as finally passed. The Constitution came into force on 26 January, 1950. Our Constitution reflects the idealism and philosophy that characterised the freedom movement.

countrymen agree upon. This includes the way a country is to be governed, the ideals and principles that have to be followed by all citizens. In other words, a Constitution lays out the type of polity and society of a country. These are explained in the Preamble to the Constitution.

Let us understand the above concept by going into the recent history of Nepal, our neighbouring

country in the north. Until very recently, Nepal was a monarchy. All powers were concentrated in the hands of a king who ruled with the help of a Council of Ministers. The previous Constitution, adopted in 1990, confirmed and restated the fact that the king was the final and supreme authority. The movement for democracy in Nepal, which had been continuing since 1990, gained crucial momentum in 2006, under the combined leadership of the Seven Party Alliance (SPA). King Gyanendra reinstated the old Nepal House of Representatives in April, 2006. The reinstatement of Parliament was accepted by the SPA which declared that G.P. Koirala led the new government. The new Parliament put an end to the powers of the king. In 2007, Nepal adopted an interim Constitution. In April 2008, a new Constituent Assembly was elected which finally abolished monarchy and established democracy. For the first time a president was elected. The leader of the Maoists, Prachanda (Pushpa Kumar Dahal) was elected the Prime Minister. A new Constitution has to be framed by the Constituent Assembly reflecting the wishes of the people. Quite clearly, the people of Nepal were unhappy with the old system of government, monarchy, as it failed to fulfil the people's aspirations. The people of Nepal believe that a democracy is the best guarantee of their well-being and development. Nepal has moved from monarchy to democracy. All rules, procedures and regulations have to be written afresh to usher in a new society. The new set up will certainly reflect the ideals and principles of the large majority of people.

Another important role of a Constitution is to define the nature of a country's political system: whether it is a monarchy or a democracy or any other system. In a monarchy, a country is ruled by a king or a queen aided by a council of ministers. In a democracy, people elect their representatives to rule on their behalf. Both the systems have vastly different



Movement for democracy in Nepal

sets of rules. The Constitution of a democratic country plays a pivotal role as it explains the power and functions of various organs and branches of the government. It is vast and voluminous, containing minute details. Nepal has to frame a new Constitution as it has recently become a democracy from a monarchy.

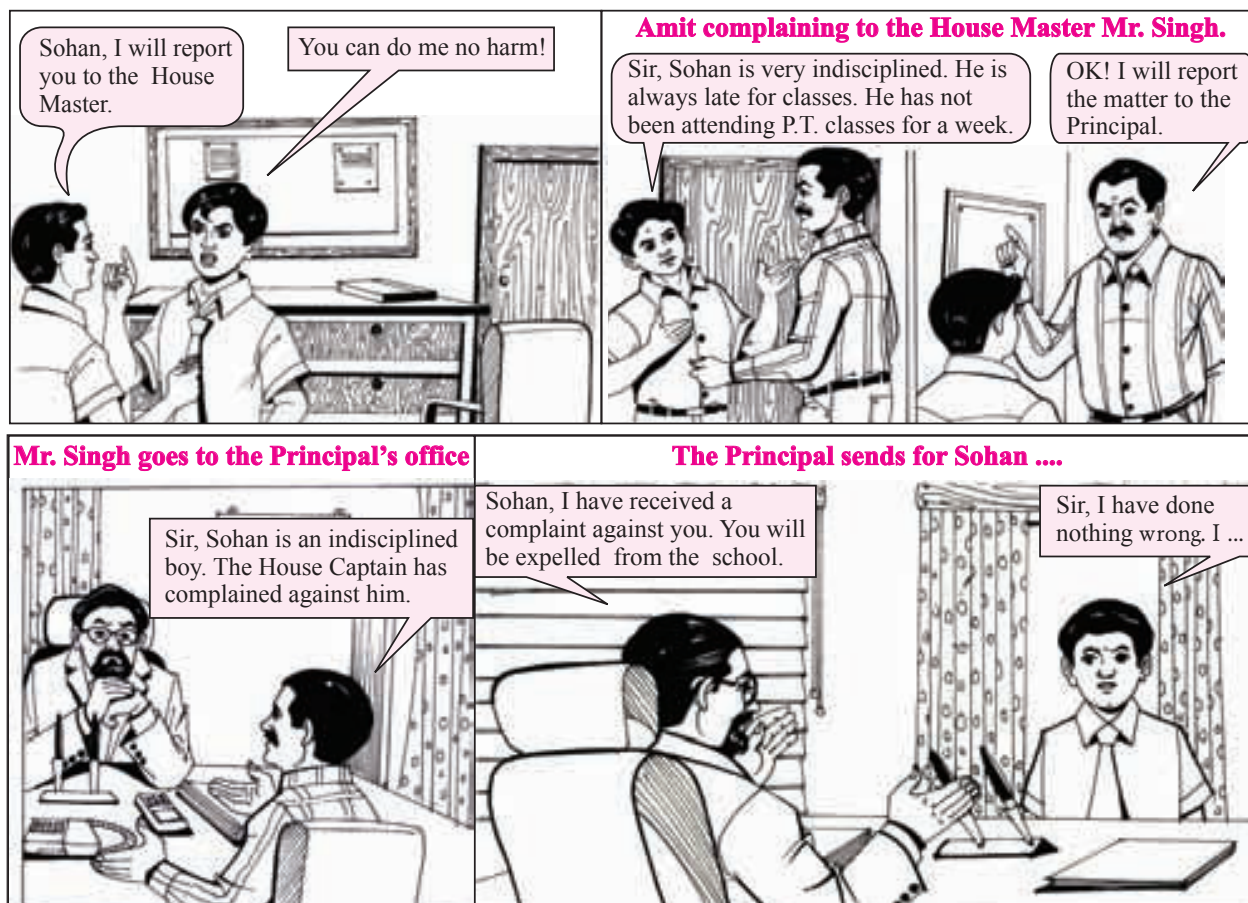
In a democracy people elect their representatives through periodic elections to rule on their behalf. However, the representatives (MPs and MLAs), many of whom become ministers, generally misuse their power and authority for personal gains or for helping their relatives and friends. The Constitution seeks to provide checks and balances to prevent misuse of power by the leaders. Misuse of power leads to corruption, inequality and injustice.

One of the main concerns of the Constitution is to lay down rules to prevent misuse of powers by people’s representatives and to stop discrimination

against less-privileged groups in the society. In the Constitution of India most of these laws are enshrined in the chapter on the Fundamental Rights. The Fundamental Rights guarantee certain important, basic rights to all the citizens of India. These rights are enforceable by the courts of law. You have read about discrimination against B.R. Ambedkar and Om Prakash Valmiki in the previous class. Both of them faced discrimination and humiliation in their childhood because they were Dalits. Those who wrote the Indian Constitution were well aware of the prevalent social and economic inequality. Therefore, they included the Right to Equality in the Fundamental Rights. According to it, no citizen can be discriminated against on grounds of caste, religion, gender, race and place of birth. Another important function of a Constitution in a democratic society is to protect less privileged groups against misuse of power and

The following storyboard explains this theme:

In a boarding school, the House Captain, Amit had a quarrel with Sohan, one of his housemates. He threatened to lodge a complaint against him to the House Master.






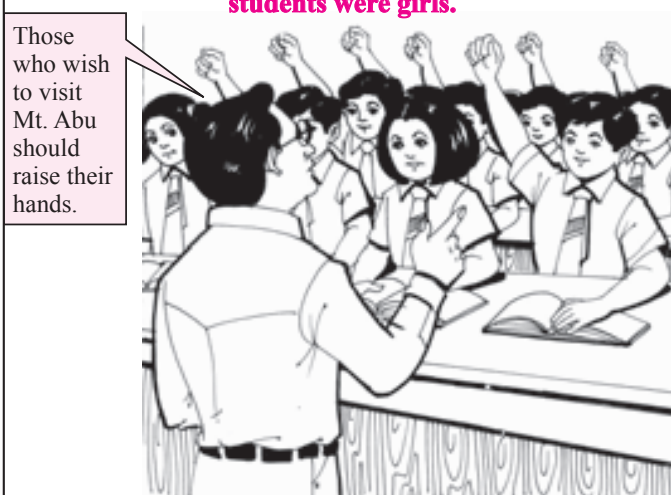
privilege by a dominant or more powerful group. The majority group is likely to impose its interests and desires on the minority group.

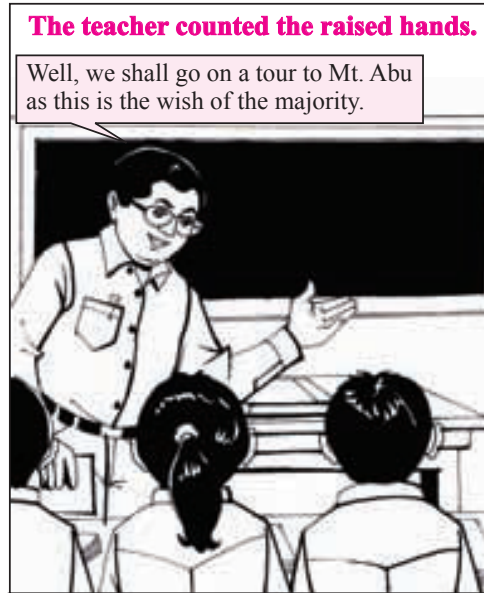
In the storyboard, the boys won because they were in majority. Such situation occurs in a democratic society quite often. The interests of the minority are subjugated to those of the majority who are able to impose their decisions which go against the interests of the minority. This is called the **tyranny of the majority**. All questions concerning the society should not be left to numbers. Every community has certain basic and inalienable rights which are fundamental to its growth and development. These rights need to be protected by the government. All citizens are

equal before the law. In our country, there are several minority communities: Muslims, Christians, Sikhs, Parsis. The Constitution lays down rules which protect the rights and interests of the minorities. These rules are also included in the Fundamental Rights. **This is another function of the Constitution – to prevent the domination of the minority by the majority.** The Constitution contains rules and laws to stop intra-community domination (one community dominating another) and inter-community domination (groups within the same community dominating other groups). Such rules are necessary to prevent social conflict and mutual rivalry among the people. As you know, peace and prosperity go together.

Let us understand this with the help of the storyboard given below:

Inside a classroom of a well-known public school...

<p>Well, students! As you know, we are to go on an educational tour. The principal has asked me to choose the place we wish to visit. Let us decide where we should go.</p> 	<p>There was a low gossip among the students. There was a difference of opinion. The boys wanted to visit Mt. Abu whereas the girls wished to go to Agra.</p> <p>Sir, we would like to go to Mt. Abu!</p> 
<p>Sir, we would like to go to Agra to see the Tajmahal!</p> 	<p>In the class of 60 students, 40 were boys and 20 students were girls.</p> <p>Those who wish to visit Mt. Abu should raise their hands.</p> 



All of us need to have self-discipline. Sometimes, we are tempted to do things which are not in our larger and long-term interests, though it may be immensely satisfactory at present.

The third important reason why we need a Constitution is to save us from ourselves. That is to prevent us, from taking wanton and whimsical decisions which are harmful to us, to our society and to our country.

The following storyboard will help you understand this concept:

Sonia had to check her desire to attend marriage ceremony and abide by the advice of her mother.

Similarly, the Constitution helps us take decisions which are in larger interests of our society and country.

Sonia's annual examinations were to begin in a week's time. Meanwhile, her parents had to attend a marriage ceremony in a far-off town.



Our Constitution lays down certain fundamental principles according to which the country is to be governed. These are referred to as the **basic structure of the Constitution**, that cannot be altered or amended even by our Parliament. Nowadays, many of us are so saddened by the acrimonious politics and corruption in public life that sometimes we feel that our democracy has outlived its utility. We sometimes feel that we should be ruled by a dictator or change to presidential system of government. But we do not realise that any other form of government will turn out to be harmful in the long run. It would lead to chaos, confusion and conflict in the country. The members of the Constituent Assembly were wise and far-sighted. Each of the provisions of the Constitution was discussed in great detail and with great sincerity. Our Constitution is best suited to our

needs, ethos, ethics, and ideals for which we waged a long and painful struggle against our colonial masters. A good Constitution does not allow modification in its basic structure. There are basic provisions like the Fundamental Rights and the Directive Principles that cannot be changed. There are provisions for amendments to rules which need to change according to changing circumstances.

KEY FEATURES OF THE INDIAN CONSTITUTION

The Government of India Act, 1935 presented a set of rules and procedures which had the stamp of democracy. It was under the Cabinet Mission Plan of 1946 that the Constituent Assembly was constituted to form a Constitution for India.

The Constituent Assembly started its task on December 9, 1946. It took the Constituent Assembly 2 years, 11 months and 18 days of hard work to complete the Constitution. It took such a long time because of several reasons. First, the country was made up of several communities, speaking different languages, following different religions and having distinct cultures. Meanwhile, India was partitioned and Pakistan came into being on 14th August 1947. Some of the princely states had yet not decided whether to remain with India or merge with Pakistan. There were communal riots in the wake of partition. Therefore, the most important task before the Constituent Assembly was to maintain the unity and integrity of India. The linguistic, cultural and regional diversities also had to be given due respect and proper accommodation. Moreover, great social and economic inequality prevailed in India with the majority of people being illiterate and living in stark poverty. The members of the

Constituent Assembly grappled with these problems and concerns under the leadership of Nehru, Patel, Rajendra Prasad and Maulana Azad.

1. Federalism: A political system in which powers to govern are divided between the centre and the states is called Federalism. There are three levels of government in India – the central level, the state level and the panchayat level. Powers and authority have been distributed between the centre and the states.

Moving the Draft Constitution in the Constituent Assembly, Ambedkar said, “Both the union and the states are created by the Constitution, both derive their respective authority from the Constitution. The one is not subordinate to the other in its own field; the authority of one is coordinate with that of the other.”

The Constitution has made clear-cut provisions for the Subjects on which the Central and the State Governments can pass laws. They come under different lists of subjects and are called the **Union List, the State List and the Concurrent List**. Subjects of national interests like defence, foreign affairs, war and peace are included in the Union List. Subjects like police, local government, land, etc., are included in the State List. The Constitution also specifies where each tier of government can get money from for the work that it does. Provisions have also been made in the Constitution for giving assistance to states in the form of grants and loans. A resident of a particular state has to follow laws and policies made by the state government as well as those made by centre.

Dr. B.R. Ambedkar is called the Father of the Indian Constitution. He was the chairman of the Constitution Drafting Committee. Dr. Ambedkar chaired the Committee and steered the document through nearly a year of debate over its various provisions. Nehru personally invited Ambedkar to become law minister in his Cabinet. He joined the cabinet because he could serve the cause of Scheduled Castes better from within the government. Similarly, his participation in the Constituent Assembly helped the Scheduled Castes get some safeguards in the draft Constitution.



Dr. B.R. Ambedkar



Some important members of the Constituent Assembly

2. Parliamentary Form of Government : India has a parliamentary form of government. In this system, the Parliament is supreme and it represents the people. The legislature at the centre is called the Parliament or the “Sansad”. The Parliament has two Houses— the Lower House (Lok Sabha) and the Upper House (the Rajya Sabha). The Parliament exercises supreme and sovereign power. The Union Council of Ministers headed by the Prime Minister, constitutes the real executive. Ministers are collectively responsible to the Lok Sabha. The Parliament has the power to amend any provision of the Constitution, except the basic structure.

During the British rule, the right to vote was limited. The Constitution of India guarantees **universal adult suffrage**. In other words, all adult citizens have the right to vote to elect a representative. The adoption of universal adult franchise, without any qualification either of sex, property, education or taxation was a bold experiment. During that period, overwhelming majority of Indians were poor and illiterate. A section of conservative members of the Assembly were sceptical about giving voting rights to the common masses but Jawaharlal Nehru prevailed upon them. The leaders of the freedom struggle had immense faith in the capability of the common man. It was one of the ideals of the freedom struggle to give power to the common man, to improve their standard of life and comfort. It was also hoped that granting of voting rights to all adult citizens would lead to social and economic equality, breaking of the barriers of caste and class.

3. Separation of Powers : There are three organs of the government – the Executive, the legislature



Voting in an election

and the Judiciary. The Legislature consists of both the Houses of Parliament and the State Legislative Assembly (Vidhan Sabha) and State Legislative Council (Vidhan Parishad). The main task of the Legislature is to make laws for the country and the states. The executive consists of the ministers and the bureaucrats. It is responsible for implementing laws and running administration. The judiciary consists of all the courts in the country. It interprets the laws and punishes those responsible for violation of laws. Some members of the Constituent Assembly were afraid that the executive might become too strong and unrestrained. They included many provisions in the Constitution to balance the powers of the three organs. Therefore, the Constitution has separated the three organs of government to prevent misuse of power and privilege. Each organ acts as a check on the other organs of the government. The power and functions of each organ are clearly defined in the Constitution. No organ is subordinate to or superior to any other.

4. The Fundamental Rights : A modern State gives certain basic and fundamental rights to its citizens. These rights are essential for the development of an individual. The Fundamental Rights are contained in Chapter III, under Articles 14-32, of the Indian Constitution. They protect citizens against misuse of powers by the State. They also guard against the arbitrary and absolute exercise of power by the State. These rights are justiciable and inviolable. If any of these rights are violated by any individual or any organ of the government, the affected citizen can directly approach the High Court or the Supreme Court. The Fundamental Rights have been called the 'Conscience' of the Indian Constitution. As claimed

by Dr. B.R. Ambedkar, the Fundamental Rights have two objectives. First, all citizens must be in a position to claim those rights and secondly, no authority has got power to violate these rights.

Our Constitution guarantees the following seven Fundamental Rights to the citizens.

(i) Right to Equality: Articles 14-18 of the Constitution mention these rights.

- (a) Equality before law : All are equal before the law. All citizens are equally protected by law without any discrimination. There is rule of law in India.
- (b) Prohibition of discrimination: The State shall not discriminate against any citizen on grounds only of religion, caste, race, sex, place of birth or any of them. No citizen shall be discriminated on any of the above grounds with regard to access to shops, hotels, use of wells, tanks, ghats, roads , parks, and public resorts.
- (c) Appointment to government or public services: There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. No citizen shall be ineligible for any office under the government, on grounds of religion, race, caste, sex, place of birth or any of them. However, the government has the right to reserve certain posts or seats for the socially and economically weaker sections of the people.
- (d) Abolition of untouchability : Article 17 says 'Untouchability' is abolished and its practice in any form is forbidden. It has been declared a punishable offence.
- (e) Abolition of titles : Article 18 abolishes titles. Titles given by the government during the British rule have been abolished. Titles like Sir, Rai Bahadur, Rai Sahib, Khan Sahib, Khan Bahadur etc. cannot be conferred on a person. The government can honour its citizens by giving military or academic titles on the basis of merit.

(ii) Right to Freedom : Articles 19-22 of the constitution guarantee the right to various freedoms. Article 19 guarantees six freedoms:

- (a) the freedom of speech and expression.

- (b) the freedom to assemble peacefully without arms.
- (c) the freedom to form associations and unions.
- (d) the freedom to move freely throughout the territory of India.
- (e) the freedom to reside and settle in any part of the country.
- (f) the freedom to practise any profession or to carry on any occupation, trade or business as per one's choice.

All these freedoms are subject to reasonable restrictions by the government, if they threaten the peace, security and integrity of the country. During national emergency, Article 19 is fully or partly suspended.

(iii) Right against Exploitation : Article 23 of the constitution prohibits forced labour, work without payment or beggar and immoral traffic in women and children. Article 24 prohibits the employment of children below the age of 14 in factories and mines.

(iv) Right to Freedom of Religion : Articles 25-28 guarantee religious freedom. These rights are:

- (a) Freedom of conscience and the right to follow, practise and propagate any religion.
- (b) Freedom to establish and manage institutions for religious and charitable purposes.
- (c) The government would not charge a tax for the promotion of any particular religion.
- (d) Religious education can't be imparted in educational institutions maintained wholly or partly by the State.

All the provisions under the right to religious freedom are subject to public order, health and morality.

(v) Cultural and Educational Rights : Articles 29 and 30 protect the religious and cultural rights of the religious minorities. They have the right to preserve their language, script and culture. All minorities have the right to establish and administer educational institutions of their choice. The State shall not discriminate against such institutions while granting aid on the ground that they are managed by a religious community.

(vi) Right to Constitutional Remedies : Article 32 of the Constitution provides that the citizens who think that their fundamental rights have been denied to them can move the Supreme Court

or any High Court to restore these rights. It is called the soul and heart of the Constitution.

(vii) The Right of Children to Free and Compulsory Education or Right to Education (RTE):

Article 21A added as a new Article by the Constitution (86th Amendment) Act, 2002 provides for free and compulsory education for all children between the age of 6 to 14 years. By consequence of this Amendment Act and the RTE Act, India become one of the 135 countries to make education a **fundamental right** of every child (between the age of 6 - 14 years) from 1 April, 2010.

In Part IV of the Constitution, the Directive Principles of State Policy have been explained. The idea has been taken from the Constitution of Ireland. These principles are in the nature of direction to the State to create social and economic equality. These are also aimed at removal of poverty of masses. They include a number of values and principles of Mahatma Gandhi. But these directives are not enforceable by the courts. These serve as a guide to the various organs of the State to frame and implement the laws so as to set up a Welfare State.

(5) Secularism : The term 'secular' was added to the Preamble by the 42nd Amendment to the Constitution in 1976. The inclusion of this word means that the State has no religion of its own. It neither favours nor discriminates against any particular religion. The State does not discriminate against a religion by imposing restrictions upon it, nor does it encourage any religion. The State allows freedom of conscience, faith and belief to all. Every citizen is allowed freedom of mode of worship and to practise and propagate any religion.

The 42nd Amendment Act, 1976, included a section on the Fundamental Duties, which are ten in number. It is the duty of every citizen of India to perform these duties for the well-being of the society and the country. Of course, there is no provision in the Constitution for direct enforcement of any of these duties, nor any sanction to prevent their violation.

We have discussed why a country needs a Constitution and what its importance is. We have also glanced through certain key features of the Indian Constitution. These have been explained in brief because they involve complicated ideas which need to be understood and appreciated in higher classes.

Points to Remember

- Most countries in the world have a Constitution.
- The Constitution is a set of rules and regulations according to which a country is governed.
- The Indian Constitution has certain key features which are part of its basic structure. These are :
 1. Federalism.
 2. Parliamentary form of government.
 3. Separation of powers among legislature, executive and judiciary.
 4. Fundamental Rights.
 5. Secularism.

Glossary

ARBITRARY	:	When nothing is fixed and everything is, instead, left to one's whims and fancies.
CONSTITUTION	:	A large document containing a broad framework under which a country has to run. It contains basic and primary laws of the land.
POLITY	:	An organised political structure.
STATE	:	It refers to a political institution that represents a sovereign people who occupy a definite territory.
TYRANNY	:	Cruel and unjust use of power and authority.
ATHEIST	:	One who does not believe that there is a God.

TIME TO LEARN

TASKS FOR SA

A. Multiple Choice Questions (MCQs)

1. When was the Indian Constitution enforced?
 - (a) 26th November, 1949
 - (b) 26th January, 1950
 - (c) 30th January, 1950
 - (d) 15th August, 1950
2. Which of the following is a major function of the Indian Constitution?
 - (a) To prevent tyranny of the majority
 - (b) To prevent tyranny of the minority
 - (c) To prevent the domination of the majority by the minority
 - (d) All of these
3. How long did it take to prepare the Indian Constitution?
 - (a) Almost 2 years
 - (b) Almost 3 years
 - (c) Almost 4 years
 - (d) Almost 5 years
4. Which one of the following is not included in the Union list?
 - (a) Defence
 - (b) Foreign affairs
 - (c) War and peace
 - (d) Local government
5. Which of the following statements regarding Dr. B.R. Ambedkar is incorrect?
 - (a) He is called the father of the Indian Constitution
 - (b) He was the chairman of the Constitution Drafting Committee
 - (c) He was the law minister in Nehru's first cabinet
 - (d) He was the first vice president of India
6. Which of the following pairs is incorrect?
 - (a) Right to Equality : Art 14 – 18
 - (b) Right to Freedom : Art 19 – 22
 - (c) Abolition of untouchability : Art 20
 - (d) Right to Freedom of Religion : Art 25 – 29

B. Match the following

- | | |
|----------------|---|
| 1. Federalism | (a) Makes laws |
| 2. Legislature | (b) Implements laws |
| 3. Executive | (c) Interprets laws |
| 4. Judiciary | (d) No official religion |
| 5. Secularism | (e) Existence of two or more levels of government |

C. Fill in the blanks.

- _____ have been referred to as the 'conscience', of the Indian Constitution.
- The Fundamental duties are _____ in number.
- During national emergency, Article _____ is fully or partly suspended.
- The term 'secular' was added to the Preamble of the Constitution in the year _____.
- _____ was the President of Constitution Drafting Committee.

D. Short answer type questions.

- What would happen if there were no restrictions on the power of elected representatives? **[HOTS]**
- Why does the Constitution provide for 'separation of powers'?
- Explain the 'Right to Freedom'.
- Explain the 'Right to Equality'.
- Why did the people of Nepal abolish monarchy?

E. Long answer type questions.

- Why does a democratic country need a Constitution?
- Describe the key features of the Indian Constitution.
- What do you mean by 'tyranny of the majority'? Explain the constitutional safeguards provided for the protection of minority in India. **[Value Based Question]**

TIME TO DO

TASKS FOR FA

F. Discussion

Hold a discussion in class on the following topics :

- "Can a democracy survive without a Constitution?"
- "Does secularism mean being an atheist?"

G. Assignments

- 'Right to freedom is the most important right.' Do you agree? Explain.
- Dr. B.R. Ambedkar said, "It is the very soul of the Constitution and the very heart of it." Which Fundamental right was he referring to? Do you agree with Dr. Ambedkar? Why/Why not?

H. Making a chart and a poster

- Make a chart containing our Fundamental Rights.
- Make an interesting and eye-catching poster on 'key features of Indian Constitution'.

LIFE SKILLS

Study the Fundamental Rights carefully. How do they help in improving the life skills of Indian citizens? Explain and analyse.