

10. The Philosophy of Constitution

Q1. The following are certain laws. Are they connected with any value? If yes, then what is the underlying value? Give reasons.

- a. Both daughters and sons will have share in the family property.
- b. There will be different slabs of sales tax on different consumer items.
- c. Religious instructions will not be given in any government school.
- d. There shall be no begar or forced labour.

Answer:

- (a) This is connected with social justice under the right to equality, no one can be discriminated on the ground of colour, race, religion or sex, etc.
- (b) This is based on the principle of utility of different items only, it comes under economic justice.
- (c) This is primarily related with secularism.
- (d) This is also related to social justice, not to be discriminated on any grounds except capability.

Q2. Which of the options given below cannot be used to complete the following statement?

- I. Democratic countries need a constitution to check the power of the government.
- II. Protect minorities from majority.
- III. Bring independence from colonial rule.
- IV. Ensure that a long-term vision is not lost by momentary passions.
- V. Bring social change in peaceful manner.

Answer: (iii) Bring independence from colonial rule.

Q3. The following are different positions about reading and understanding Constituent Assembly debates.

- i. Which of these statements argues that Constituent Assembly debates are relevant even today? Which statement says that they are not relevant?
- ii. With which of these positions do you agree and why?
 - a. Common people are too busy in earning livelihood and meeting different pressures of life. They can't understand the legal language of these debates.
 - b. The conditions and challenges today are different from the time when the Constitution was made. To read the ideas of Constitution makers and use them for our new times is trying to bring past in the present
 - c. Our ways of understanding the world and the present challenges have not changed totally. Constituent Assembly debates can provide us reasons why certain practices are important. In a period when constitutional practices are being challenged, not knowing

the reasons can destroy them.

Answer:

- (i) (a) This statement shows relevancy today.
- (b) This statement is not relevant today.
- (c) It states that these are relevant today.

(ii)

- (a) Yes, I agree with this because it is necessary to understand and interpret the various articles which contain a lot of legal terms, not to be easily comprehended.
- (b) I do not agree with this statement, because the constitution has been amended more than 100 times till date to match with the changing times.
- (c) I Agree with it. Because present challenges have not changed totally.

Q4.Explain the difference between the Indian Constitution and western ideas in the light of

- a. Understanding of secularism.**
- b. Articles 370 and 371.**
- c. Affirmative action.**
- d. Universal adult franchise.**

Answer:

Understanding of secularism

- I. The western ideas of secular state treat religion as a private matter which is not given either public or official recognition.
- II. In India, all religions are given equal status to be honoured and the state could also help the religious communities in the form of educational aid to institutions run by them.

Articles 370 & 371

- I. Unlike the constitutional symmetry of American federalism, Indian federalism has been constitutionally asymmetric.
- II. The accession of J & K was based on the commitment to safeguard its autonomy, which is governed by its own constitution under

Article 371

- III. The privileges of special status were accorded to the North-Eastern states under

(A).Affirmative action

- I. Affirmative action programmes in the U.S. were begun after the 1964 Civil Rights Movement,almost two decades after they were constitutionally entrenched in India
- II. Indian Constitution upholds the principle of social justice without compromising on individual liberties. The constitutional commitment to castebased affirmative action programme shows how

much ahead India was compared to other nations.

III. The constitution makers provided a number of special measures to protect the interests of Scheduled Castes and Scheduled Tribes such as the reservation of seats in legislatures.

Universal adult franchise

In western democracies the right to vote has been recently extended to women but India exercises this from the very beginning without any discrimination.

Question 5: Which of the following principles of secularism are adopted in the Constitution of India?

- a. that state will have nothing to do with religion
- b. that state will have close relation with religion
- c. that state can discriminate among religions
- d. that state will recognize rights of religious groups
- e. that state will have limited powers to intervene in affairs of religions

Answer:

- a. that state will have nothing to do with religion
- d. that state will recognize rights of religious groups
- e. that state will have limited powers to intervene in affairs of religions

Question 6:

Match the following.

- a. Freedom to criticise treatment of widows i. Substantive achievement
- b. Taking decisions in the constituent assembly on the basis of reason, not self interest ii. Procedural achievement
- c. Accepting importance of community in an individual's life iii. Neglect of gender justice
- d. Article 370 and 371 iv. Liberal individualism
- e. Unequal rights to women regarding family property and children v. Attention to requirements of particular religion

Answer 6:

- (a) - (i)
- (b) - (ii)
- (c) - (iv)
- (d) - (v)
- (e) - (iii)

Question 7: This discussion was taking place in a class. Read the various arguments and state which of these do you agree with and why. Jayesh: I still think that our Constitution

is only a borrowed document. Saba: Do you mean to say that there is nothing Indian in it? But is there such a thing as Indian and western in the case of values and ideas? Take equality between men and women. What is western about it? And even if it is, should we reject it only because it is western? Jayesh: What I mean is that after fighting for independence from the British, did we not adopt their system of parliamentary government? Neha: You forget that when we fought the British, we were not against the British as such, we were against the principle of colonialism. That has nothing to do with adopting a system of government that we wanted, wherever it came from.

Answer:

I do not agree with Jayesh that there is nothing original in the constitution of India because many provisions have been borrowed from the constitutions of other countries. But it was never a blind borrowing. It was innovative borrowing. When we were drafting the Constitution, efforts were made to amalgamate western and traditional Indian values. It was a process of selective adaptation and not borrowing. I agree with Saba's view. Many Indians have not only adopted modern ways of thinking, but have made these their own. For them westernization became a form of protest against the filth in their own tradition. When western modernity began to interact with local cultural systems, something like a hybrid culture began to emerge, possibly by creative adaptation, for which a parallel can be found neither in western modernity nor in indigenous tradition. Neha countered him that our national movement was not against the British, but it was against the principle of colonialism. Hence, we may adopt the goodness of any entity if it suits us. So we can say that there is no issue in borrowing the provisions from other countries as per our suitability.

Q8. Why is it said that the making of the Indian Constitution was unrepresentative? Does that make the Constitution unrepresentative? Give reasons for your answer.

Answer:

- The constitution of India was framed in November 1946 through indirect election of its members by provisional legislature under the provisions of Cabinet Mission Plan 1946.
- The Assembly consisted of 389 members out of which 292 were to be elected from the provinces, 93 were to be nominated from Chief Commissioner's areas.
- Each provincial Assembly elected its own members through single transferable vote system.
- Due to partition in June 1947 under Mountbatten Plan, this membership reduced to 299 and finally 284 members signed on the constitution on 26 November, 1949.
- On August 15, 1947, the Constituent Assembly functioned as a sovereign entity but it is considered unrepresentative because its members were chosen by restricted franchise in place of universal suffrage.
- But Constituent Assembly included the members from each and every section of society to be represented and on a thorough reading, we may find that no section is untouched on the various issues and opinions.

Q9. One of the limitations of the Constitution of India is that it does not adequately attend to gender justice. What evidence can you give to substantiate this charge? If you were

writing the Constitution today, what provisions would you recommend for remedying this limitation?

Answer:

• On the social conditions, there may be very controversial matters which may need careful revision:

- Most important issue is gender justice, particular within the family
- Women enjoy unequal rights on property, inheritance and children
- Equal pay for equal work (Article 39) for both men and women has been inserted in the directive principles in place of Fundamental rights. Following are the recommendation:
 1. Empowerment of women
 2. Provisions for inheritance of property in favour of women on equal basis.
 3. Provision for reservations of seats.

Question 10. Do you agree with the statement that “it is not clear why in a poor developing country, certain basic socio-economic rights were relegated to the section on Directive Principles rather than made an integral feature of our Fundamental Rights”? Give reasons for your answer. What do you think are the possible reasons for putting socio-economic rights in the section on Directive Principles?

Answer:

The directive principles of state policy focus on the need of an egalitarian society:

- Complementary to fundamental rights because fundamental rights ensure the political democracy while these principles aim at socio-economic democracy.
- Fundamental rights are justiciable or protected by law where directive principles are moral values supposed to be followed by the government.
- So, in a poor country, certain basic socio-economic rights were inserted in directive principles rather than making it in the fundamental rights.
- Our country was so poor at that time, when it was not possible to give much pressure on the states for economic moral values.
- Under Article 37 of the constitution, It shall be the duty of the state to apply these principles in making laws.
- If any government overlooks these, it will lose confidence of people and cannot remain in power.