

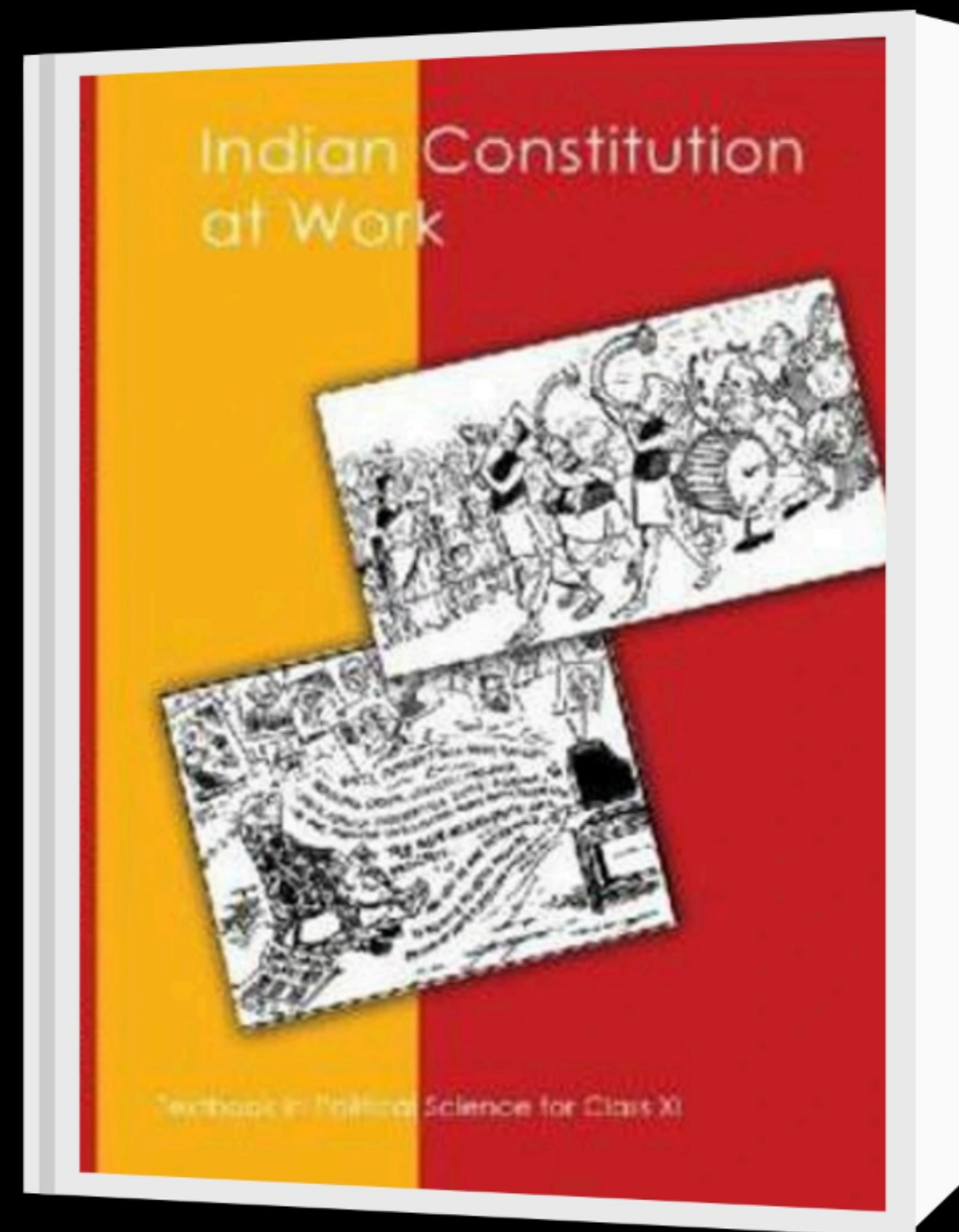
Class 11th | Political Science



**BOOK: Indian
Consitution at work**

Consitution: Why & How?

Chapter : 1



WHY DO WE NEED A CONSTITUTION?

- What is a constitution?
- What are its functions?
- What role does it perform for a society?
- How does a constitution relate to our daily existence?



💀 YEH TOH MAINE SOCHA HI NAHI 🤔

CONSTITUTION ALLOWS COORDINATION AND ASSURANCE

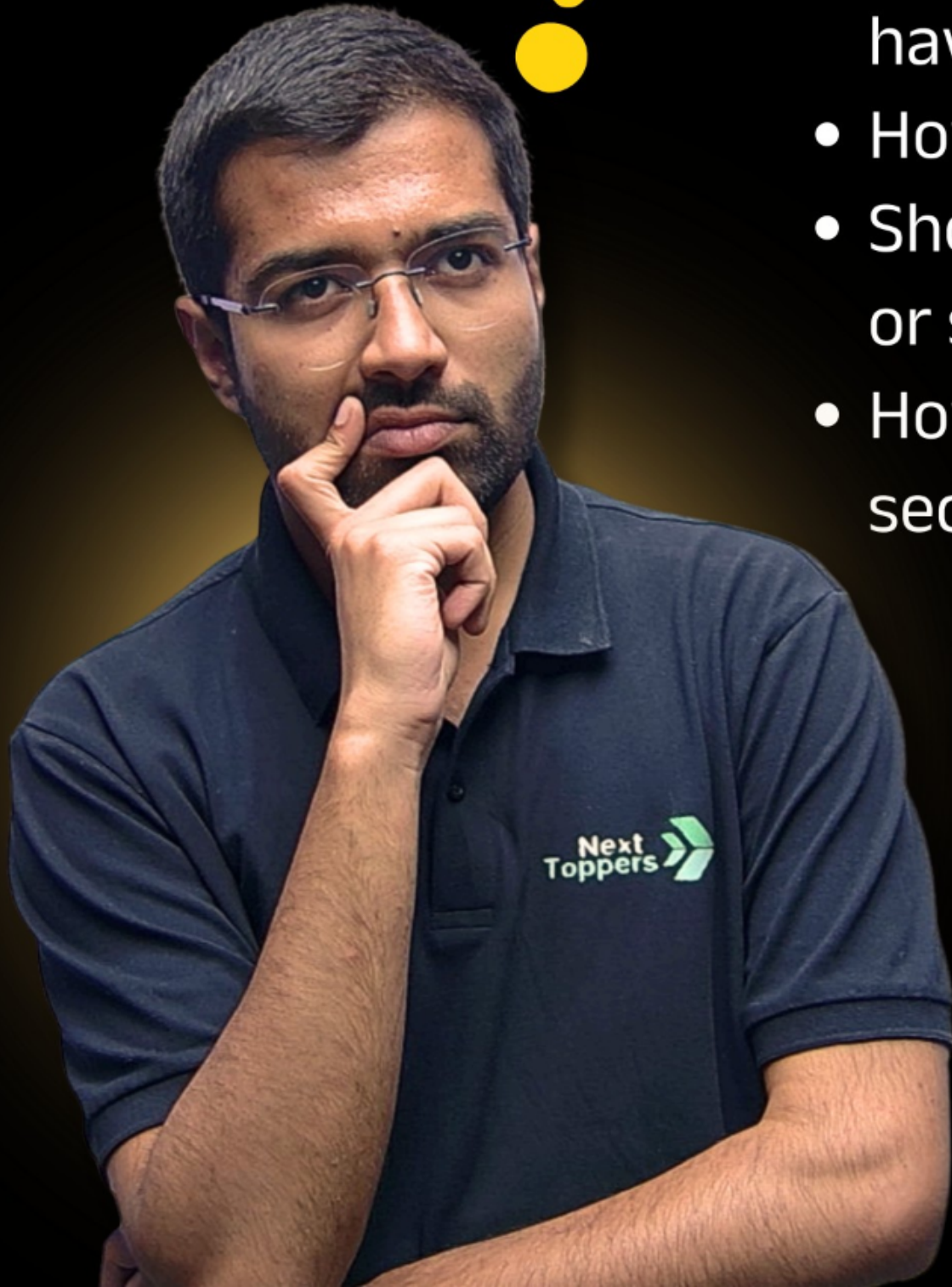
- Imagine yourself to be a member of a reasonably large group. Further imagine that this group has the following characteristics.
- The members of this group are diverse in various ways.
- They have different religious allegiances: some are Hindus, some are Muslims, some Christians and some perhaps profess no religion at all.
- They are also varied in many different respects:

- They pursue different professions, have different abilities, have different hobbies, different tastes in everything from films to books.
- Some are rich and some are poor. Some are old, some young.

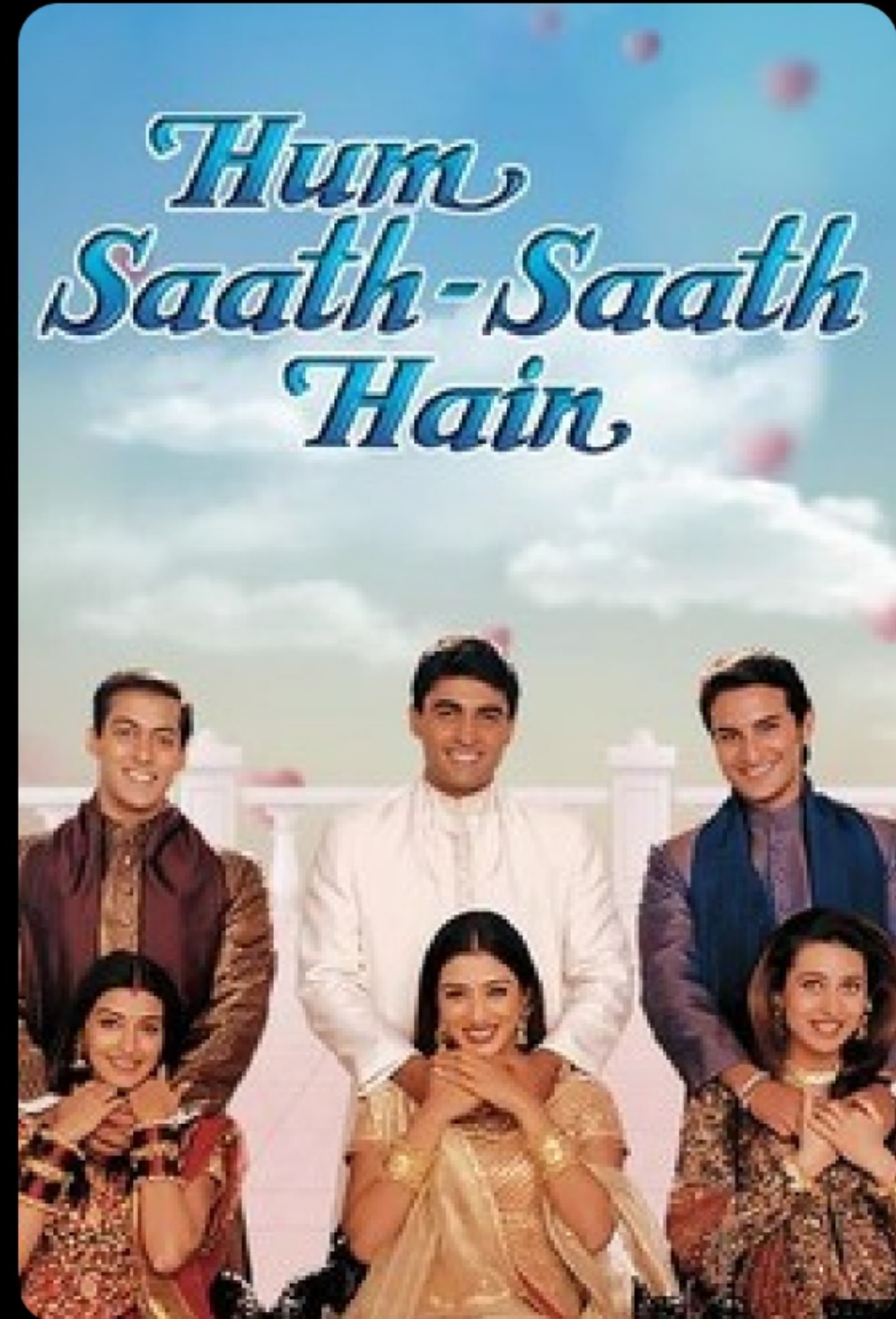




- Imagine further that members of this group are likely to have disputes over various aspects of life:
- How much property should one be allowed to own?
- Should it be compulsory that every child be sent to school or should the parents be allowed to decide?
- How much should this group spend on its safety and security? Or should it build more parks instead?



- Should the group be allowed to discriminate against some of its members? Every question will elicit a variety of answers from different people. But, for all their diversity, this group has to live together. They are dependent upon each other in various ways.
- They require the cooperation of each other. What will enable the group to live together peacefully?



- One may say that perhaps members of this group can live together if they can agree on some basic rules.
- Why will the group need certain basic rules?
- Think of what would happen in the absence of some basic rules.



**DAAR HONA
JARURI HAIN**

- Every individual would be insecure simply because they would not know what members of this group could do to each other, who could claim rights over what.
- Any group will need some basic rules that are publicly promulgated and known to all members of that group to achieve a minimal degree of coordination. But these rules must not only be known, they must also be enforceable.
- If citizens have no assurance that others will follow these rules, they will themselves have no reason to follow these rules. Saying that the rules are legally enforceable gives an assurance to everybody that others will follow these, for if they do not do so, they will be punished.



- The first function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society.

SPECIFICATION OF DECISION MAKING POWERS

- A constitution is a body of fundamental principles according to which a state is constituted or governed.
- But what should these fundamental rules be? And what makes them fundamental?
- Well, the first question you will have to decide is who gets to decide what the laws governing the society should be? You may want rule X, but others may want rule Y. How do we decide whose rules or preferences should govern us? You may think the rules you want everyone to live by are the best; but others think that their rules are the best. How do we resolve this dispute?
- So even before you decide what rules should govern this group you have to decide: Who gets to decide?

- The constitution has to provide an answer to this question.
- It specifies the basic allocation of power in a society. It decides who gets to decide what the laws will be.
- In principle, this question, who gets to decide, can be answered in many ways:

Monarchical constitution → Monarch decides

Old Soviet Union → One single party decide

Democratic Constitutions → People decide

- But this matter is not so simple. because even if you answer that the people should decide, it will not answer the question
- How should the people decide? For something to be law, should everyone agree to it?
- Should the people directly vote on each matter as the ancient Greeks did?
- Or should the people express their preferences by electing representatives
- But if the people act through their representatives, how should these representatives be elected? How many should there be?



**BHAI ITNE SAWAL
TOH MUJHSE OLIVIA
BHI NHI PUCHTI** ❤️

- In the Indian Constitution for example, it is specified that in most instances, Parliament gets to decide laws and policies, and that Parliament itself be organised in a particular manner.
- Before identifying what the law in any given society is, you have to identify who has the authority to enact it. If Parliament has the authority to enact laws, there must be a law that bestows this authority on Parliament in the first place.
- This is the function of the constitution. It is an authority that constitutes government in the first place.



- The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted.

LIMITATIONS ON THE POWERS OF GOVERNMENT

- But this is clearly not enough. Suppose you decided who had the authority to make decisions. But then this authority passed laws that you thought were patently unfair.
- It prohibited you from practising your religion for instance. Or it enjoined that clothes of a certain colour were prohibited, or that you were not free to sing certain songs or that people who belonged to a particular group (caste or religion) would always have to serve others and would not be allowed to retain any property.

- Or that government could arbitrarily arrest someone, or that only people of a certain skin colour would be allowed to draw water from wells.
- You would obviously think these laws were unjust and unfair. And even though they were passed by a government that had come into existence based on certain procedures there would be something obviously unjust about that government enacting these laws.



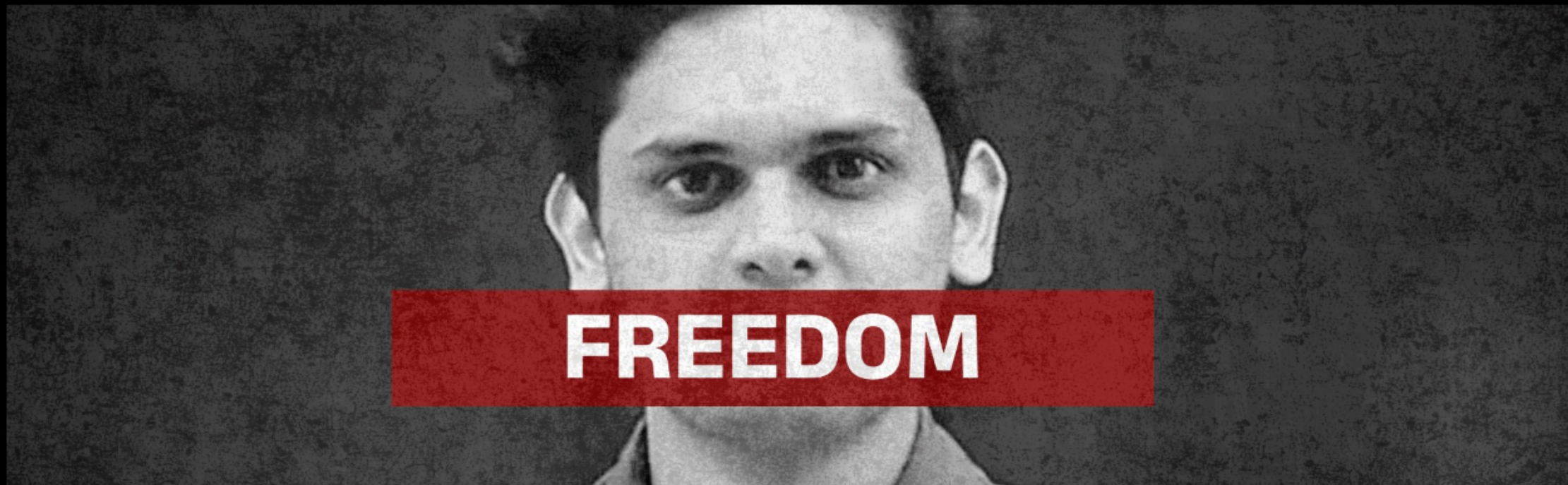


- So the third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them.

Constitutions limit the power of government in many ways.

- The most common way of limiting the power of government is to specify certain fundamental rights that all of us possess as citizens and which no government can ever be allowed to violate.
- The exact content and interpretation of these rights varies from constitution to constitution. But most constitutions will protect a basic cluster of rights.
- Citizens will be protected from being arrested arbitrarily and for no reason. This is one basic limitation upon the power of government.

- Citizens will normally have the right to some basic liberties: to freedom of speech, freedom of conscience, freedom of association, freedom to conduct a trade or business etc.
- In practice, these rights can be limited during times of national emergency and the constitution specifies the circumstances under which these rights may be withdrawn.
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Class 11th | Political Science



**BOOK: Indian
Constitution at work**

Constitution: Why & How?

Chapter : 1 | Lecture 2

What is Constitution?

↳ Sup. Law

• Functions
of the Constitution.

① → Coordination.

② → How govt is Constituted

③ → limit → govt

ASPIRATIONS AND GOALS OF A SOCIETY

- Most of the older constitutions limited themselves largely to allocating decision-making power and setting some limits to government power.
- But many twentieth century constitutions, of which the Indian Constitution is the finest example, also provide an enabling framework for the government to do certain positive things, to express the aspirations and goals of society.



**MEIN BHI TO DIN RAAT ❤️ OLIVIA KE
SAPNE DEKH RAHA HU**

ASPIRATIONS AND GOALS OF A SOCIETY

- The Indian Constitution was particularly innovative in this respect. Societies with deep entrenched inequalities of various kinds, will not only have to set limits on the power of government, they will also have to enable and empower the government to take positive measures to overcome forms of inequality or deprivation.
- For example, India aspires to be a society that is free of caste discrimination. If this is our society's aspiration, the government will have to be enabled or empowered to take all the necessary steps to achieve this goal.
- In a country like South Africa, which had a deep history of racial discrimination, its new constitution had to enable the government to end racial discrimination. More positively, a constitution may enshrine the aspirations of a society.

- The framers of the Indian Constitution, for example, thought that each individual in society should have all that is necessary for them to lead a life of minimal dignity and social self-respect — minimum material well-being, education etc.



- The Indian Constitution enables the government to take positive welfare measures some of which are legally enforceable. As we go on studying the Indian Constitution, we shall find that such enabling provisions have the support of the Preamble to our Constitution, and these provisions are found in the section on Fundamental Rights.
- The Directive Principles of State of Policy also enjoin government to fulfil certain aspirations of the people.



- The fourth function of a constitution is to enable the government to fulfil the aspirations of a society and create conditions for a just society.

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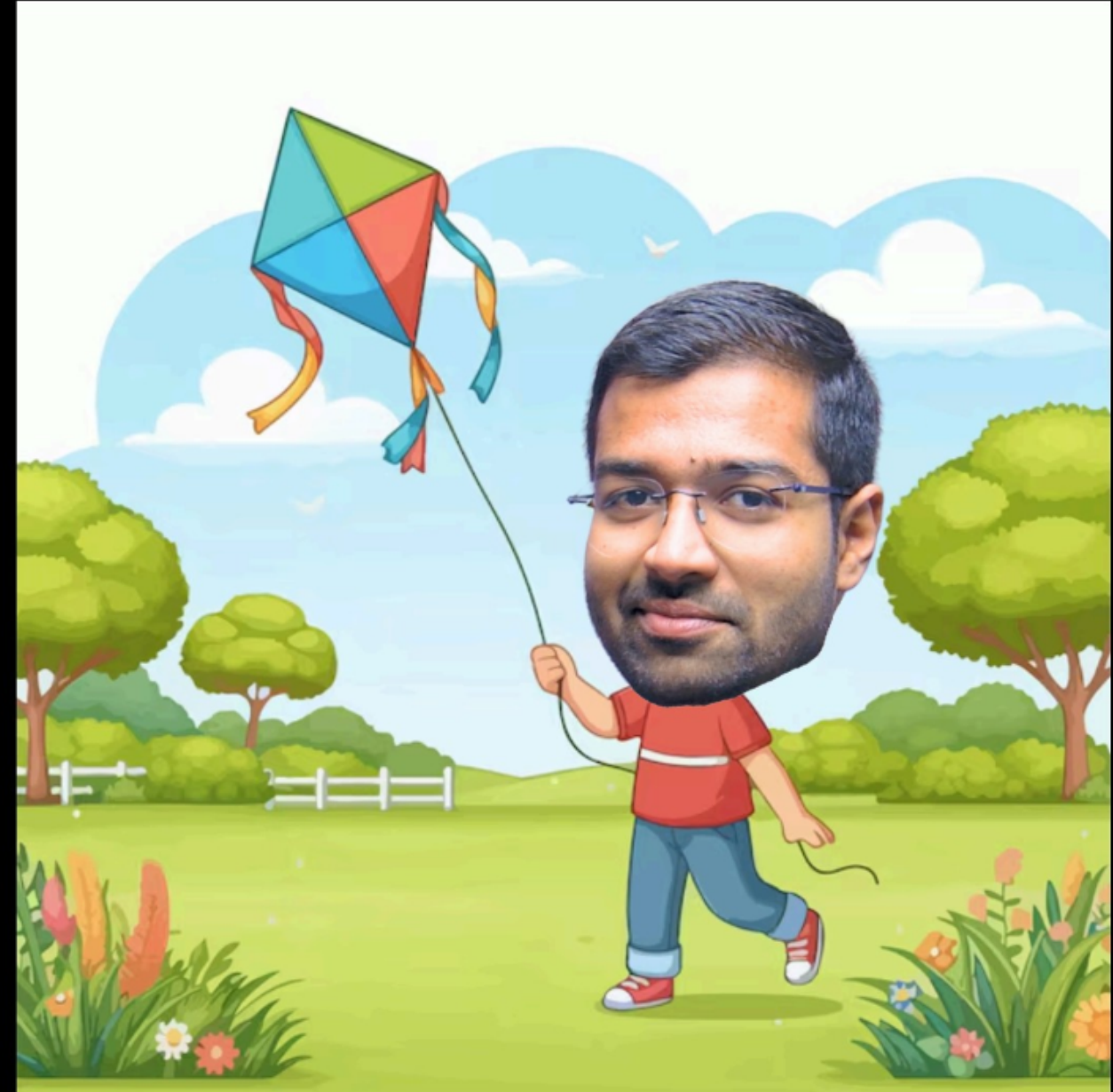
- ① coordination
- ② decision making power - how govt is
Conet.
- ③ Limit on power of govt.
- ④ Aspiration & Goals of Society.

FUNDAMENTAL IDENTITY OF A PEOPLE

- Finally, and perhaps even most importantly, a constitution expresses the fundamental identity of a people.
- This means the people as a collective entity come into being only through the basic constitution. It is by agreeing to a basic set of norms about how one should be governed, and who should be governed that one forms a collective identity. One has many sets of identities that exist prior to a constitution.



- But by agreeing to certain basic norms and principles one constitutes one's basic political identity.
- Second, constitutional norms are the overarching framework within which one pursues individual aspirations, goals and freedoms. The constitution sets authoritative constraints upon what one may or may not do. It defines the fundamental values that we may not trespass, so the constitution also gives one a moral identity.





- Third and finally, it may be the case that many basic political and moral values are now shared across different constitutional traditions.
- If one looks at constitutions around the world, they differ in many respects — in the form of government they enjoin in many procedural details.
- But they also share a good deal. Most modern constitutions create a form of government that is democratic in some respects, most claim to protect certain basic rights.
- But constitutions are different in the way they embody conceptions of national identity.



- Most nations are an amalgamation of a complex set of historical traditions; they weave together the diverse groups that reside within the nation in different ways. For example, German identity was constituted by being ethnically German. The constitution gave expression to this identity.
- The Indian Constitution, on the other hand, does not make ethnic identity a criterion for citizenship. Different nations embody different conceptions of what the relationship between the different regions of a nation and the central government should be, this relationship constitutes the national identity of a country.

THE AUTHORITY OF A CONSTITUTION



- We have outlined some of the functions a constitution performs. These functions explain why most societies have a constitution. But there are three further questions we can ask about constitutions:
 - What is a constitution?
 - How effective is a constitution?
 - Is a constitution just?



- In most countries, 'Constitution' is a compact document that comprises a number of articles about the state, specifying how the state is to be constituted and what norms it should follow.
- When we ask for the constitution of a country we are usually referring to this document. But some countries, the United Kingdom for instance, do not have one single document that can be called the Constitution. Rather they have a series of documents and decisions that, taken collectively, are referred to as the constitution.
- So, we can say that constitution is the document or set of documents that seeks to perform the functions that we mentioned above.



**MAIN TO BHARAT KA HU
LEKIN TUM BTAO OLIVIA❤
KAHA SE HAI**

- But many constitutions around the world exist only on paper; they are mere words existing on a parchment. The crucial question is:
 - How effective is a constitution?
 - What makes it effective?
 - What ensures that it has a real impact on the lives of people? Making a constitution effective depends upon many factors.



MODE OF **PROMULGATION**

- This refers to how a constitution comes into being.
- Who crafted the constitution and how much authority did they have?
- In many countries constitutions remain defunct because they are crafted by military leaders or leaders who are not popular and do not have the ability to carry the people with them.
- The most successful constitutions, like India, South Africa and the United States, are constitutions which were created in the aftermath of popular national movements.
- Although India's Constitution was formally created by a Constituent Assembly between December 1946 and November 1949, it drew upon a long history of the nationalist movement that had a remarkable ability to take along different sections of Indian society together.

MODE OF PROMULGATION

- The Constitution drew enormous legitimacy from the fact that it was drawn up by people who enjoyed immense public credibility, who had the capacity to negotiate and command the respect of a wide cross-section of society, and who were able to convince the people that the constitution was not an instrument for the aggrandisement of their personal power. The final document reflected the broad national consensus at the time



- Some countries have subjected their constitution to a full-fledged referendum, where all the people vote on the desirability of a constitution. The Indian Constitution was never subjected to such a referendum, but nevertheless carried enormous public authority, because it had the consensus and backing of leaders who were themselves popular.
- Although the Constitution itself was not subjected to a referendum, the people adopted it as their own by abiding by its provisions. Therefore, the authority of people who enact the constitution helps determine in part its prospects for success.

DEBATE OVER CONSTITUTION MAKING IN NEPAL:

- Making a constitution is not always an easy and smooth affair. Nepal is an example of the complicated nature of constitution making. Since **1948**, Nepal has had five constitutions, in **1948, 1951, 1959, 1962 and 1990**.
- But all these constitutions were 'granted' by the King of Nepal. The **1990** constitution introduced a multiparty competition, though the King continued to hold final powers in many respects.
- For many years Nepal was faced with militant political agitations for restructuring the government. The main issue was the role of the monarchy in the constitution of Nepal.

DEBATE OVER CONSTITUTION MAKING IN NEPAL:

- Some groups in Nepal wanted to abolish the institution of monarchy and establish republican form of government. Others believed that it may be useful to shift to limited monarchy with a reduced role for the King. The King himself was not ready to give up powers. He took over all powers in October 2002.



- Many political parties and organisations demanded the formation of a new constituent assembly. The Communist Party of Nepal (Maoist) was in the forefront of the struggle for a popularly elected constituent assembly.
- Finally, under pressure of popular agitation, the King had to install a government acceptable to the agitating parties. This government has stripped the King of almost all powers.
- In 2008, Nepal emerged as a democratic republic after abolishing the monarchy. Finally, Nepal adopted a new constitution in 2015.



चाणक्यनीति से लेके
राजनीति तक
तुम्हे जो चाहिए सब है मेरे पास ।





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