

Class 11th | Political Science



**BOOK: Indian
Constitution at work**

Constitution: Why & How?

Chapter : 1 | Lecture 4

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.

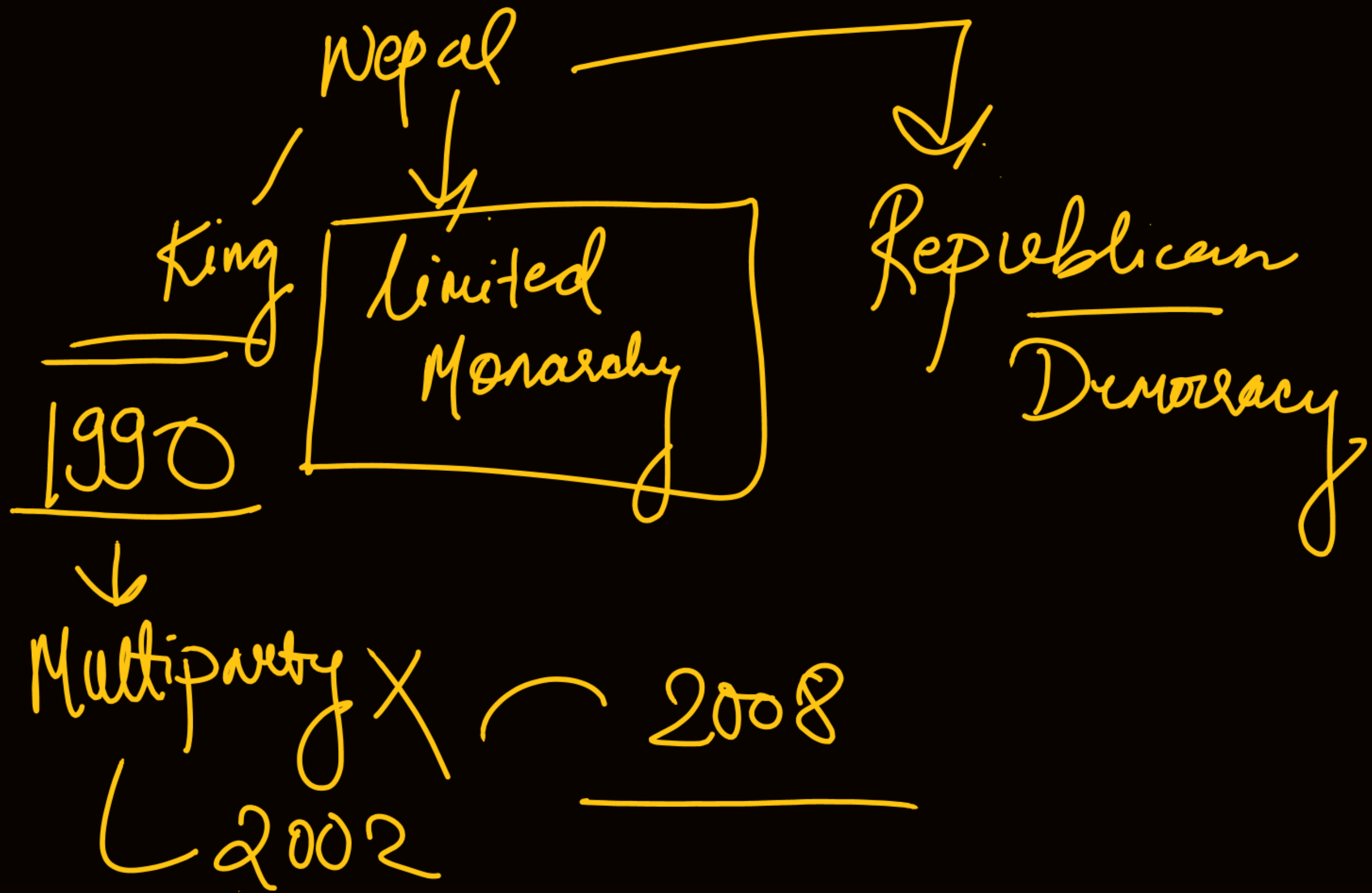
DEBATE OVER CONSTITUTION MAKING IN NEPAL:

- 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.

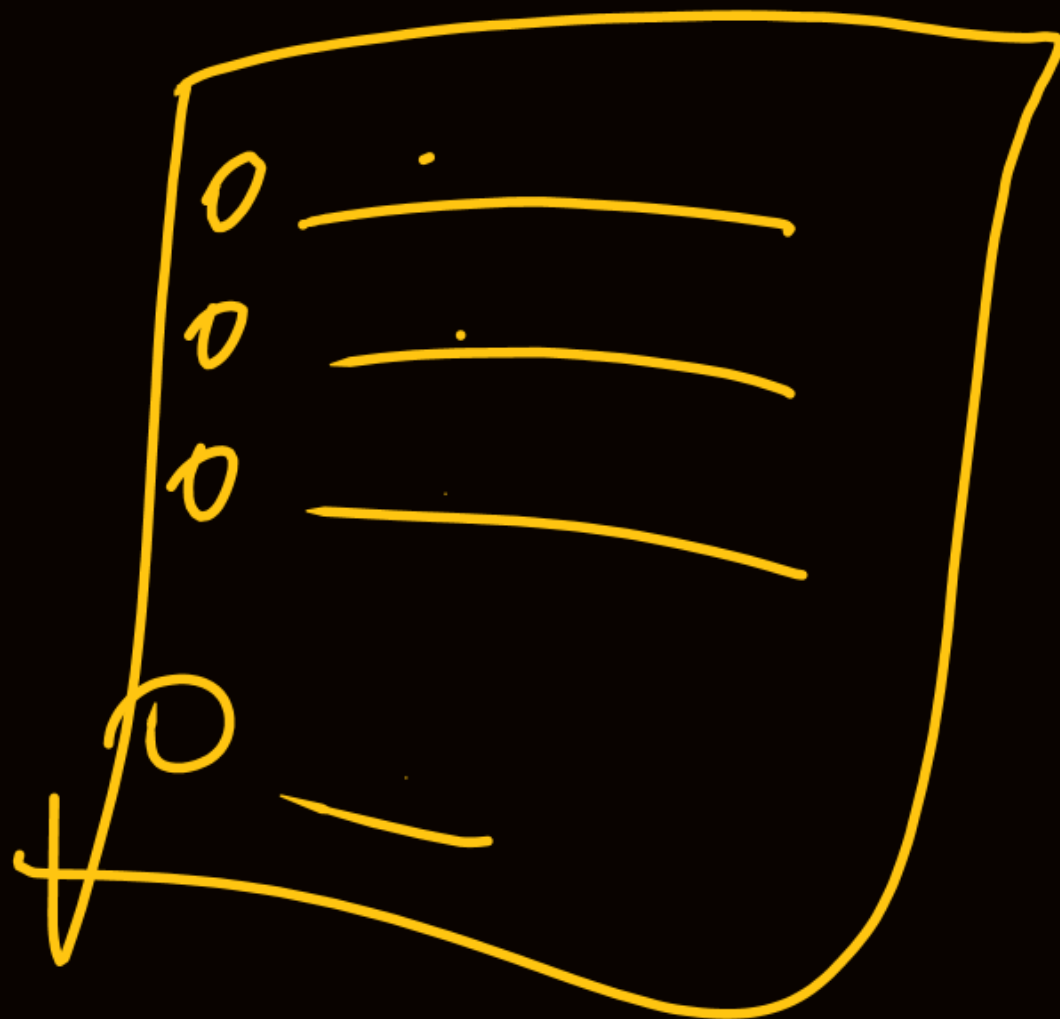




THE SUBSTANTIVE PROVISIONS OF A CONSTITUTION

- It is the hallmark of a successful constitution that it gives everyone in society some reason to go along with its provisions. A constitution that, for instance, allowed permanent majorities to oppress minority groups within society would give minorities no reason to go along with the provision of the constitution.
- Or a constitution that systematically privileged some members at the expense of others, or that systematically entrenched the power of small groups in society, would cease to command allegiance.





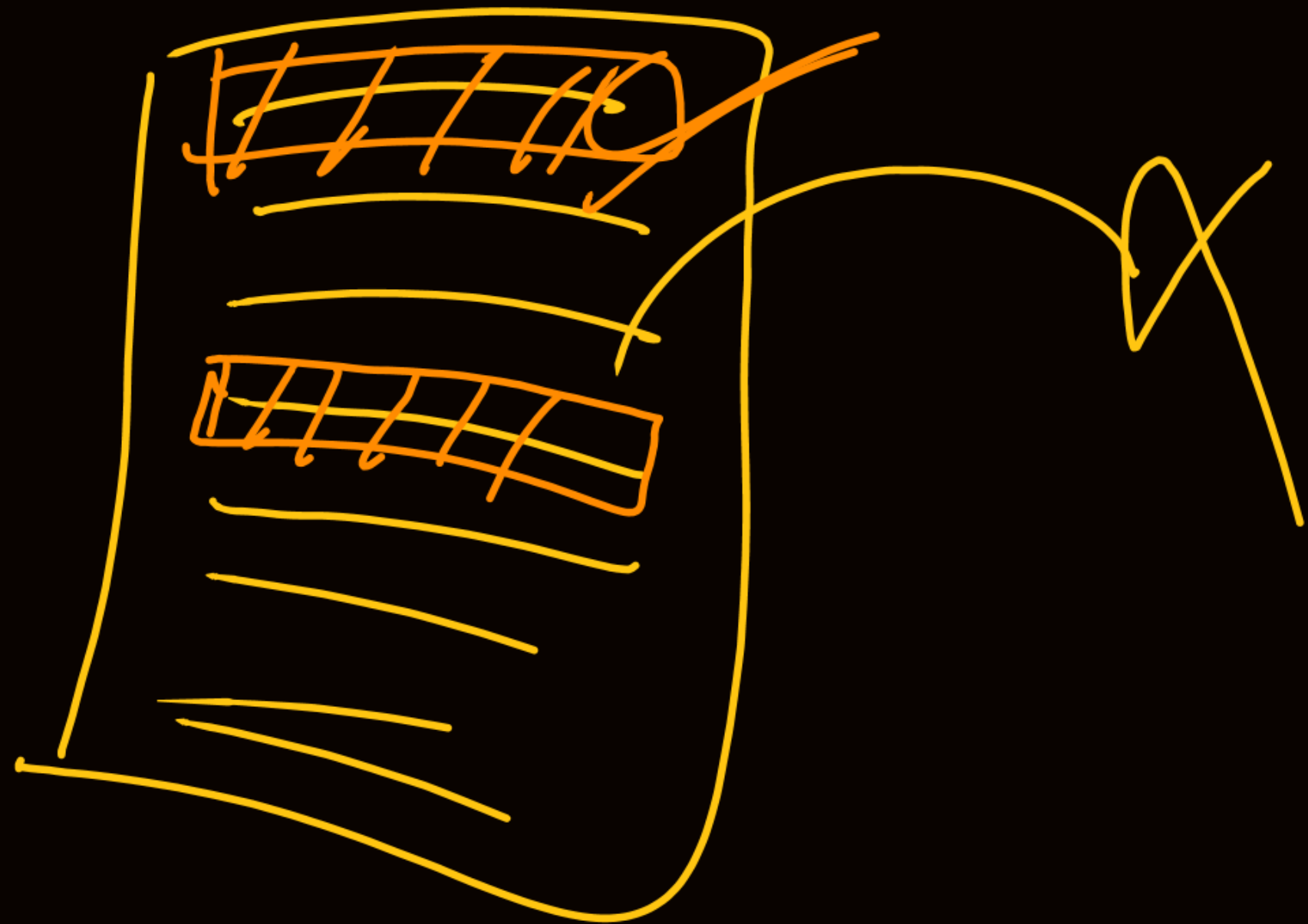
- If any group feels their identity is being stifled, they will have no reason to abide by the constitution.
- No constitution by itself achieves perfect justice. But it has to convince people that it provides the framework for pursuing basic justice.
- Do this thought experiment. Ask yourself this question: What would be the content of some basic rules in society, such that they gave everyone a reason to go along with them?
- The more a constitution preserves the freedom and equality of all its members, the more likely it is to succeed.
- Does the Indian Constitution, broadly speaking, give everyone a reason to go along with its broad outlines?
- After studying this book, one should be able to answer this question in the affirmative.

BALANCED INSTITUTIONAL DESIGN

- Constitutions are often subverted, not by the people, but by small groups, who wish to enhance their own power.
- Well crafted constitutions fragment power in society intelligently so that no single group can subvert the constitution. One way of such intelligent designing of a constitution is to ensure that no single institution acquires monopoly of power.
- This is often done by fragmenting power across different institutions.
- The Indian Constitution, for example, horizontally fragments power across different institutions like the Legislature, Executive and the Judiciary and even independent statutory bodies like the Election Commission.

- This ensures that even if one institution wants to subvert the Constitution, others can check its transgressions.
- An intelligent system of checks and balances has facilitated the success of the Indian Constitution.
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- An intelligent system of checks and balances has facilitated the success of the Indian Constitution.





- Another important aspect of intelligent institutional design is: that a constitution must strike the right balance between certain values, norms and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances.
- Too rigid a constitution is likely to break under the weight of change; a constitution that is, on the other hand, too flexible, will give no security, predictability or identity to a people.
- Successful constitutions strike the right balance between preserving core values and adapting them to new circumstances.

- You will notice the wisdom of makers of the Indian Constitution in the chapter on the Constitution as a living document (Chapter 9).
- The Indian Constitution is described as 'a living' document.
- By striking a balance between the possibility to change the provisions and the limits on such changes, the Constitution has ensured that it will survive as a document respected by people.
- This arrangement also ensures that no section or group can, on its own, subvert the Constitution.

Therefore in determining whether a constitution has authority you can ask yourself three questions:

- Were the people who enacted the constitution credible? This question will be answered in the remaining part of this chapter.
- Secondly, did the constitution ensure that power was intelligently organised so that it was not easy for any group to subvert the constitution? And, most importantly, does the constitution give everyone some reason to go along with it? Most of this book is about this question.
- Also, is the constitution the locus of people's hopes and aspiration? The ability of the constitution to command voluntary allegiance of the people depends to a certain extent upon whether the constitution is just. What are the principles of justice underlying the Indian Constitution? The last chapter of this book will answer this question.

*Maza
aaya !*

*agar maza aaya
toh yea maza
mein pura desh
ko dena chahta
hoon...*

Designed by Trisha ❤️

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





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