



# The Indian Journal for Research in Law and Management

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## THE EVOLUTION OF THE INDIAN CONSTITUTIONAL LAW

~ Pareena Arora

### INTRODUCTION

The Indian constitutional law is a dynamic framework shaped by centuries of legal traditions, colonial rule, and the requirement for a modern democratic state. From its colonial roots to the adoption of India's Constitution in 1950, to its current state with more than 100 amendments, 448 articles, 25 parts and 1X schedules, Indian constitutional law reflects the country's transformation into the world's largest democracy. This blog traces the development of Indian constitutional law, highlighting its evolution from British colonialism to present-day governance.

### COLONIAL RULE

The journey of Indian constitutional law begins under British colonial rule, where several acts shaped the legal framework of the country. Prior to British rule, India had a diverse legal system, but British colonial rule led to uniform laws focused on consolidating British power.

The **Regulating Act of 1773**<sup>1</sup> was the first attempt to regulate governance in India, establishing the Governor-General's position and the Supreme Court in Calcutta. The **Indian Councils Act of 1861**<sup>2</sup> expanded the legislative council, allowing for limited Indian representation but maintaining British control. The **Government of India Act of 1919** introduced federalism and

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<sup>1</sup> Regulating act, 13 Geo (1773) Eng

<sup>2</sup> Indian councils act, 24 and 25 Vict. 67 (1861)

the concept of diarchy, where power was shared between British and Indian officials, but it did not grant full autonomy.

The **Government of India Act of 1935**<sup>3</sup> was the most significant of colonial legislation, laying the foundation for a federal structure and constitutional governance. It established a bicameral legislature and defined powers for both federal and provincial governments. The act heavily influenced the drafting of the Indian Constitution.

## **NEED FOR A GOVERNING FRAMEWORK**

As India approached independence, the need for a permanent constitutional framework grew to facilitate effective governance of the country and to remove the colonial influence, key figures such as **Jawaharlal Nehru**, **B.R. Ambedkar**, and **Sardar Vallabhbhai Patel**, advocated for self-rule. In 1946, the British government agreed to set up a **Constituent Assembly** to draft a new constitution for India. B.R. Ambedkar was appointed as chairman of the **Drafting Committee**.

The **Constituent Assembly** was tasked with creating a constitution that reflected India's democratic ideals while balancing diverse cultural, social, and political needs. Ambedkar and others envisioned a legal framework that would protect civil liberties, ensure social justice, and establish a modern democratic state.

## **ADOPTION OF THE CONSTITUTION OF INDIA**

On 26th November 1949, the Constituent Assembly adopted the **Constitution of India**, which came into effect on 26th January 1950 incorporating elements from the British parliamentary system, American Bill of Rights, Irish Directive Principles, and Canadian federalism.

The Constitution established India as a federal, democratic republic with a strong central government. It guaranteed fundamental rights to citizens, ensuring equality, freedom of speech, and protection from discrimination. The Preamble of the Constitution declared India a

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<sup>3</sup> Government of India act, 1935, 25 geo (eng)

**sovereign, socialist, secular, democratic republic**<sup>4</sup>. It also provided for a separation of powers between the executive, legislature, and judiciary.

The Constitution also laid down the **Directive Principles of State Policy** (DPSP) to guide government policies toward social and economic justice.

## **EVOLUTION THROUGH JUDICIAL JUDGEMENTS**

With ambiguities surrounding the effective power distribution among the legislature, executive and judiciary, the Indian constitution had made sure that the independence of each pillar must always be ensured. The judiciary in such powers make sure that the legislative- empowered with making of the law, function within its jurisdiction and be accountable not only to the constitution of India but also to its citizens.

One of the most crucial judicial developments was the **Kesavananda Bharati case**<sup>5</sup> (1973), where the Supreme Court laid down the **basic structure doctrine**. The Court ruled that while Parliament could amend the Constitution, it could not amend its “basic structure” like the rule of law, separation of power, democracy etc.

The case of **Maneka Gandhi v. Union of India**<sup>6</sup> (1978), expanded the scope of **Article 21**<sup>7</sup>, which guarantees the right to life and personal liberty. The Court ruled that the right to life did not merely mean existence but included the right to live with dignity, thus broadening the scope of fundamental rights.

The **Minerva Mills case 1980**<sup>8</sup>, also known as the judicial review case, in its judgement overruled the 42nd Amendment, giving full authority for judicial review. This case reaffirmed the basic structure doctrine and emphasized that the balance between fundamental rights and DPSPs

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<sup>4</sup> the constitution of India (1950)

<sup>5</sup> Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 (India).

<sup>6</sup> Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India)

<sup>7</sup> Indian Const. art.21

<sup>8</sup> Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625 (India)

In recent years, judicial interpretations have played a crucial role in expanding the scope of rights. For example, the Supreme Court in **Navtej Singh Johar v. Union of India**<sup>9</sup> (2018) struck down Section 377 of the Indian Penal Code, decriminalizing **same-sex relations** between consenting adults. This decision was a significant step forward for human rights and the protection of marginalized communities in India.

The **right to privacy** was also recognized as a fundamental right by the Supreme Court in **K.S. Puttaswamy v. Union of India**<sup>10</sup> (2017), affirming the right to personal autonomy and privacy as part of the right to life and liberty.

## CONSTITUTIONAL AMENDMENTS

The Indian Constitution recognises amendments as a **need** to keep it updated with the changing society. The **First Amendment Act of 1951** introduced restrictions on **freedom of speech** to curb hate speech and protect national security. Subsequent amendments focused on issues such as **reservation for backward classes** and **empowerment of women**.

One of the most controversial amendments took place during the **Emergency period (1975-77)** under Prime Minister Indira Gandhi. The **42nd Amendment Act**<sup>11</sup> of 1976 limited the judicial power, allowed parliament to amend fundamental rights and restricted judicial review. However, these changes were reversed by the **44th Amendment Act of 1978**<sup>12</sup>, which included safeguards regarding national emergency, reaffirmed importance of judicial review and amended the DPSPs.

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<sup>9</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)

<sup>10</sup> K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India)

<sup>11</sup> The Constitution (Forty-second Amendment) Act, 1976

<sup>12</sup> The Constitution (Forty-fourth Amendment) Act, 1978

The **73rd<sup>13</sup> and 74th<sup>14</sup> Amendment Acts of 1992** introducing provisions for the local- self-government- panchayats and municipalities aimed at decentralizing power and promoting grassroots democracy .

The **Right to Education** was made a fundamental right under the **86th Amendment Act of 2002<sup>15</sup>**, ensuring free and compulsory education for children aged 6 to 14.

### **Conclusion: A Living Constitution**

The **Constitution of India** is not just a written document, it is a beacon of hope, promise of justice and a shield of dignity for its citizens. It is through the field of constitutional law, that the rights of citizens are protected every day in front of the court of law. As India grows, the Constitution will continue to adapt. However, its core principles of democracy, justice, and equality will remain the bedrock of Indian governance, ensuring that the vision of the framers of the Constitution endures for future generations.

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<sup>13</sup> The Constitution (Seventy-third Amendment) Act, 1992

<sup>14</sup> The Constitution (Seventy-fourth Amendment) Act, 1992

<sup>15</sup> The Constitution (Eighty-sixth Amendment) Act, 2002