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THE EVOLUTION OF INDIAN CONSTITUTIONAL LAW

-MANIMARAN SARAVANAN

INTRODUCTION

“The Indian Constitution is not a mere lawyers’ document, it is a vehicle of life, and its spirit is always the spirit of Age” said by B.R. Ambedkar¹. If you breakdown the above quote, you will understand the significance of our constitution. It means that the constitution of India is not just a bare text for judges, advocates or any other person from legal field alone. It affects each and every citizen. It creates a huge impact on our daily life – education, employment, liberty, equality etc... The Constitution is a means through which life in a democratic society moves forward—socially, politically, legally, and morally. The constitution’s essence evolve with time. It reflects the values, issues and challenges of each era. It grows with nation, adaptable, inclusive and it’s a tool to protect, empower and progress. Through this we can understand how significant constitution is in our country. In this Blog we will see about evolution of constitution over the period of time to understand the adaptability and its importance.

HISTORICAL FOUNDATIONS OF INDIAN CONSTITUTIONAL LAW

The foundations of governance, law and justice existed even before the British rule. Ancient Books like Dharmashastra, Manusmriti, and Arthashastra plays a vital role and reflected the principle of modern constitution. For example it lays down the rights of the people, duty of the ruler, and finally the rule of law. After India came under colonial rule, it marked not only the beginning of a new era—characterized by industrialization—but also laid the foundations for the development of its constitutional framework. The act and charters were introduced which created a huge impact not only positive but negative also. For example, The Charter Act opened

¹ Writings and Speeches: A Ready Reference Manual [D.C. Ahir](#).

educational and administrative access to Indians at the same time Indian Councils Act limited Indian participation in Law making. The most important act which was introduced by British Government was The Government of India Acts of 1919 and 1935. It introduced, diarchy in Provinces where subjects are categorized into reserved (controlled by British officials such as police) and transferred (handled by Indian ministers such as education), Expanded Legislative Councils & introduced bicameralism at the Centre, introduction of direct elections, establishment of Public Service Commission to recruit civil servants, provincial autonomy which made India to gain more administrative power but still it was under British governors. Hence this act directly influenced Indian constitution.

THE MAKING OF THE CONSTITUTION

As said above before independence, India was governed by the Government of India Act. When the independence movement gained momentum, it became clear that people of India require a new constitution which reflect their ideals, values, justice and equality. This in December 1946, constitution assembly was formed consisting of 389 member which latter reduced to 299 after partition. Latter in 29th August 1947, a drafting committee was formed to draft the constitution which was headed by Dr.B.R. Ambedkar as a chairperson. The committee examined various constitution (including USA, UK, Ireland, Canada etc...) and submitted a draft in 4th November 1948 after which it was discussed clause by clause. Ambedkar once said “We are going to enter a life of contradictions... in politics we will have equality and in social and economic life, we will have inequality.”² This quote by Dr. B.R. Ambedkar highlights the paradox that, although India would achieve political equality through universal adult franchise and equal rights, deep-rooted social and economic inequalities like caste discrimination and poverty would still persist in daily life. After 2 years, 11 months, and 18 days of debate and deliberation, the Constitution was adopted on 26 November 1949. It came into force on 26 January 1950 which is celebrated as Republic Day.

THE BASIC STRUCTURE DOCTRINE - THE KESAVANANDA BHARATI CASE

This case is a landmark case which says about basic structure of Doctrine. The main issue in this case was how to interpret article 368 of constitution. Whether it gives unlimited power to

² Dr. B. R. Ambedkar, Constituent Assembly Debates, vol. XI (New Delhi: LOk Sabha Secretariat, November 25, 1949), 974-975.

parliament to amend constitution or not. Before, in Golak Nath case (1967)³, the Supreme Court ruled that Parliament does not have unlimited power to amend constitution as it is against essence of constitution. So to counter this ruling, parliament passed 24th amendment in 1971 which aimed at restoring Parliament's power to amend any part of the Constitution, including Part III (Fundamental Rights). By excluding constitutional amendments from the purview of Article 13, Parliament removed the primary basis of the Golak Nath decision but while Parliament's amending power was restored, it was no longer unqualified or unlimited. The basic structure served as a check⁴.

POST-EMERGENCY CONSTITUTIONAL REFORMS AND JUDICIAL ACTIVISM

Emergency period was declared by the Prime Minister Indra Gandhi during 1975-1977. *"The Constitution of India was not designed to be a paper tiger. The Emergency transformed it from a shield of liberty into an instrument of authoritarianism."*⁵ Through this statement we can understand why it is called as a dark phase in Indian democracy. The Minerva Mills v. Union of India (1980) judgment reaffirmed that judicial review and limited amending power are part of the Basic Structure. The 44th Constitutional Amendment Act, 1978 tried to undo the problems caused by the 42nd Amendment, which had been passed under the Emergency. After the Emergency, the new government under the Janata Party (1977–1980) to reverse the authoritarian measures and protect democratic institutions took some steps. Post emergency constitutional reform includes - rights under Articles 20 and 21 cannot be suspended even during an Emergency, emergency declaration requires written recommendation of the Council of Ministers, emergency can only be declared in case of external aggression or armed rebellion, not internal disturbances etc...

RECENT DEVELOPMENTS AND CONTEMPORARY CHALLENGES

The Constitution is a living document that evolves through amendments, judicial interpretation, and socio-political transformation. The recent developments in constitution includes right to privacy as a fundamental right⁶, Striking down adultery law as unconstitutional⁷, abortion of

³ Golak Nath v. State of Punjab (1967)

⁴ Indian Constitutional Law by M.P. Jain.

⁵ We, the People by Nani A. Palkhivala.

⁶ Justice K. S. Puttaswamy v. UOI (2017) 10 SCC 1.

⁷ Joseph Shine v. Union of India, delivered on 27 September 2018, is reported as AIR 2018 SC 4898 and (2019) 3 SCC 39.

article 370, Citizenship Amendment Act (CAA), NRC, and NPR which Challenges secularism and equality under Article 14. Similarly new challenges are also arising such as Constitutional Morality vs. Political Expediency, judicial delays, pendency, and selective prioritization of cases, Constitutional challenges due to mass surveillance, facial recognition, and use of AI by the state, newer demands for caste census and equitable distribution of resources.

CONCLUSION

Our constitution underwent a lot of transformation and still evolving as the society changes. Lot were not able to cover in this blog such as interpretation of article 21 (Right to Life)⁸ by Supreme Court and federalism and Centre-State relation in *S.R. Bommai v. Union of India*. As the society evolves, new challenges arises. To face it constitution and to administer the rights, it is also evolving constantly.

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⁸ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.