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## EVOLUTION OF INDIAN CONSTITUTIONAL LAW

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### ABSTRACT

The history of India's Constitution and the demand for its creation did not begin with independence from British rule, rather, it was rooted in the very spirit of the freedom struggle through which the nation sought it. This research paper covers the evolution of Indian constitution from the rule of Britisher to the present time of India. The British rule shaping the country under different rules for their profit to adopting its own constitution is a remarkable journey of our nation. Being inspired from the constitution of other nations for framing our own constitution, talks about how a nation can learn from others and adopt the things from them. The adaptation of constitution from other according to our diversity and traditions, makes our constitution unique. Further this paper analyses the evolution of constitution through major landmark judgement from Supreme Court of India.

**Keywords:** Indian Constitution, historical evolution, constituent assembly, constitution after 1950

### INTRODUCTION

The Indian Constitution serves as the supreme legal framework, offering a definitive guide for the functioning of both federal and state government branches. Each branch of government is bound to operate within the limits set by the Constitution; none possesses supreme authority. For any governmental action to be legitimate, it must conform to constitutional provisions. The Indian Constitution is more than a legal charter; it stands as a living testament to the nation's freedom struggle and its vision of a just, inclusive society. It marks a remarkable milestone in constitutional history, deeply influenced by India's diverse cultural, social, and political heritage.

### HISTORICAL EVOLUTION OF INDIAN CONSTITUTION: BRITISH RULE

Britishers arrived in India in 1600, as traders in the form of East India Company. Where at first, they were only engaged in trade with us and not motivated by the political gains. After their victory in the Battle of Buxar in 1764 they gained Diwani rights (rights over revenue) of Bengal, Bihar, and Orissa. In 1858 the company control went under the British Crown, they ruled India till its independence on 15<sup>th</sup> August, 1947. Many features of India's constitution and polity trace their origin in the British rule. Key events under British rule shaped the legal framework of governance and administration in India. Such as:

**Regulating Act, 1773:** This act was of great constitutional importance as it was the first step taken by the British government, to control and regulate the affairs of the East India Company in India. It laid the foundation of the central administration and established a Supreme Court in Calcutta (Kolkata) in 1774, in India.

**Government of India Act, 1858:** Also known as the Act of Good Government of India, abolished the East India Company and enacted to transfer the powers of the government, revenues and territories to the British Crown. It aimed to keep the Indian Government in check, but the established system of governance continued without substantial modification.

**Indian Councils Act, 1909:** This act also known as Morley-Minto Reforms, 'legalised communalism' by introducing a system of communal representation for Muslims by accepting the separate electorate. It introduced separate representation of chambers of commerce, universities, zamindars and presidency corporations. The number of representatives were increased in legislative councils, both central and provincial.

**Indian Councils Act, 1919:** It introduced bicameralism and direct elections for the first time in the country. Further divided the provincial subjects into two parts, transferred subjects and reserved subjects. This dual system of governance also known as dyarchy. It extended the principle of communal representation by providing separate electorates for Anglo-Indians, Indian Christians, Europeans and Sikhs. For the first time it separated the provincial budgets from central budget and gave authority to provincial legislatures to enact.

**Government of India Act, 1935:** This act consists of 321 Sections and 10 Schedules, making it the lengthiest and detailed document. It abolished the dual form of government and granted the provincial autonomy in its place. Federal court was established in 1937, under this act. Reserve Bank of India was established to control the currency and credit of the country. It further extended the communal representation by separating electorate for the women, labour (workers) and depressed classes (schedule castes).

## **CONSTITUENT ASSEMBLY AND THE CONSTITUTION**

The Constituent Assembly played an important role in the creation and framing of the Indian Constitution. It was established in 1946 under the scheme formulated by Cabinet Mission Plan, to draft and adopt the constitution of India. The 272 representative and 15 women were elected through indirect election by the members of the provincial assemblies. The Assembly comprised people from all section and different regions, communities and socio-political backgrounds, assuring broad based consensus in the decision-making process of constitution.

The Constituent Assembly employed a comprehensive and structured procedure in the process of constitution-making. It set up numerous committees and sub-committees to study specific issues and provide recommendations on different aspects on constitution. Among these, the Drafting Committee under the leadership of Dr. B.R. Ambedkar was especially significant, as he played an important role in shaping the final text of the Constitution.

### **Key timelines of the formation of the constitution of India**

**6 December 1946:** Formation of the Constitution Assembly

**13 December 1946:** An “Objective Resolution” was presented by Jawaharlal Nehru. It laid down the fundamentals and philosophy for the structure of constitution.

**15 August 1947:** India achieved independence, while splitting into two the Dominion of India and the Dominion of Pakistan.

**29 August 1947:** Drafting committee was established

**6 December 1947:** Constituent Assembly formally assembles for the first time, to start the process of writing a constitution

**4 November 1947:** Draft is finalized and submitted

**26 November 1949:** The Constitution of India was passed and adopted by the assembly

**26 January 1950:** The constitution came into force

The Constitution of India at time of effect consisted of a Preamble and 395 articles, divided into 22 Parts, and had 8 Schedules. It took three years to draft the Indian Constitution, which is most detailed and unique constitution of the world. The Constituent Assembly considered features of different countries for drafting the Indian Constitution. Some features are also taken from the Government of India Act, 1935 such as Federal Scheme, Emergency provisions,

judiciary, office of Governor, Public Service Commissions and Administrative details. The framers borrowed Fundamental Duties from Soviet Union (USSR), Parliamentary Government from the UK, Directive Principles of State Policy and method of election of the president from Ireland, Fundamental Rights, Judicial Review and impeachment of the president from USA. The framers inspired from constitution across the world, created a constitution for India which reflected its geographical diversity and traditions.

## **EVOLUTION OF THE CONSTITUTION AFTER 1950**

As times and circumstances evolve, so too do the aspiration of the people. To remain relevant and effective, the constitution must reflect these changes through amendments. Otherwise, it risks becoming outdated and losing its significance. The Indian constitution does not contain a provision where the powers of it are limited to amend the constitution. Currently, Indian constitution has around 448 Articles, organized into 25 Parts, and 12 Schedules. These changes evolved with time, which are like these:

### **Early years of Indian Constitution (1950-1975)**

The initial 25 years following independence were pivotal in establishing the legal and institutional foundations of India's governance. The first amendment took place in 1951. The Indian government passed the Zamindari Abolition Act, by which zamindars lost their land holdings. Dissatisfied with this, zamindars filed a legal challenge, claiming that article 31 (of the constitution of India stipulates that no individual can be stripped of their property without the approval of an appropriate authority) violated their fundamental right to property. The Constitution Amendment Act, 1951 was passed by the Union Government.

*Shankari Prasad vs Union of India (1951)*: In this judgment, the Supreme Court affirmed that Parliament, acting under Article 368, holds the power to amend any provision of the Constitution, including the fundamental rights. The Ninth Schedule of the Indian Constitution, introduced through the First Amendment Act of 1951, contains laws shielded from judicial review, primarily land reform measures. At its inception, 13 laws were included in the schedule. This measure was pivotal in India's post-independence land reform initiatives, designed to curtail the dominance of large landowners (zamindars) and ensure redistribution of land to peasants.

*Sajjan Singh vs State of Rajasthan (1965)*: Reiterating its decision in the *Shankari Prasad* case (1951), the Supreme Court held that Parliament possesses the authority under Article 368 to

amend any provision of the Constitution. In a concurring opinion, Justices Mudholkar and Hidayatullah voiced concerns over Parliament's unrestricted power to amend the Constitution, cautioning that such authority could undermine citizens' fundamental rights.

**Golak Nath vs State of Punjab Case (1967):** In this case, the Supreme Court of India overturned the Shankari Prasad ruling, clarifying that Article 368 does not confer absolute authority on Parliament to alter any provision of the Constitution, but merely lays down the procedure for its amendment.

**24<sup>th</sup> Constitution Amendment Act (1971):** The 24th Amendment Act amended Article 368 to empower Parliament to alter fundamental rights, enacted to overcome the limitations imposed by the Golaknath ruling. It further mandated presidential assent for all constitutional amendment bills.

**Kesavananda Bharti vs State of Kerala (1973):** It established the Basic Structure Doctrine, holding that parliament can amend the Indian Constitution, but it cannot alter its fundamental or basic structure which includes principles like secularism, democracy and judicial review, by preserving the constitution's core identity and restricting parliament's amending authority under article 368, the Supreme Court ruling became a landmark affirmation of judicial independence and constitutional supremacy.

### **The Emergency Era and its aftermath (1975-1980)**

The emergency of 1975 imposed by then Prime Minister Indira Gandhi tested the strength of the India's constitution framework.

**Indira Nehru Gandhi vs Raj Narain (1975):** The principle of the basic structure doctrine was propounded in the Kesavananda Bharati v. State of Kerala (1973), affirming that Parliament's amending power under Article 368 cannot alter the Constitution's essential features. Two years later, in Indira Nehru Gandhi v. Raj Narain (1975), the Allahabad High Court invalidated the Prime Minister's election on grounds of electoral malpractices and undue influence. In response, Parliament enacted the 39th Constitutional Amendment Act, 1975, which sought to immunize the elections of the President, Vice-President, Speaker, and Prime Minister from judicial review, thereby nullifying the High Court's verdict and altering election dispute provisions. The amendment's validity particularly its override of judicial pronouncements was subsequently challenged before the Supreme Court.

42<sup>nd</sup> Amendment Act (1976): The amendment significantly transformed the Constitution, earning the nickname “Mini-Constitution” for its sweeping reforms such as inserting “Socialist” and “Secular” into the Preamble, prioritizing Directive Principles over Fundamental Rights, strengthening central authority, curtailing judicial review, and extending legislative terms. It limited the power to declare an emergency.

Minerva Mills vs Union of India (1980): The Supreme Court held that parliament possesses the power to amend the constitution, without jeopardising the fundamental structural concept. Fundamental Rights can be amended by parliament as long as they are uniform with the structural theory.

### **Expanding Rights (1981-2000)**

During the 1980s and 1990s, the judiciary underwent a significant transformation, with courts interpreting the constitution in ways that broadened the scope of fundamental rights.

Waman Rao vs Union of India (1981): The Supreme Court ruled that all laws included in the constitution’s ninth Schedule prior to the 1973 Kesavanand Bharti ruling were valid and immune from challenge on the grounds of violating basic rights. This affirmed that laws enacted prior to this landmark case were excluded from the basic structure doctrine, while establishing a clear limit on its retrospective application.

Indira Sawhney and Others vs Union of India (1992): This case is also known as the Mandal Commission Case. It is a landmark judgement of the Indian Supreme Court that upheld reservations for Other Backward Classes (OBCs) while introducing key limitations, including a 50% cap on total reservations, the “creamy layer” (excluding OBCs) and a prohibition on reservations in promotions, establishing the foundation for India’s affirmative action framework.

Kilhoto Hollohan vs Zachillu (1992): In the Defection case, the Supreme Court expanded the Basic Structure doctrine to encompass the democratic, republican, and sovereign systems, along with the principle of free and fair elections.

S. R. Bommai vs Union of Inida Case (1994): It is a landmark Supreme Court judgment that curtailed the central government’s misuse of Article 356 (President’s Rule), affirming that the authority to dismiss a state government is limited, subject to judicial review, and contingent upon parliamentary approval before dissolving the assembly. The Supreme Court affirmed that

Federalism, Secularism, and Democracy constitute essential elements of the Constitution's basic structure.

### **The digital age and Modern Challenges (2000-Present)**

In recent years, India has encountered novel constitutional challenges arising from the digital age and an increasingly globalized world.

**Aadhaar judgement (2008):** In 2018, the Supreme Court upheld the constitutional validity of the Aadhaar Act but invalidated several provisions, including the use of Aadhaar by private entities (Section 57) and mandatory linking with bank accounts, mobile numbers, and school admissions. However, it retained Aadhaar's compulsory use for PAN/Income Tax filings and welfare subsidies, striking a balance between privacy protection and public benefit.

**Justice K. S. Puttaswamy vs Union of India (2017):** The Supreme Court ruled that the Right to Privacy is a fundamental right protected under article 21 and Part 3<sup>rd</sup> of the Indian Constitution. Arising from a challenge to the Aadhaar biometric identification system, the judgment affirmed privacy as integral to human dignity, autonomy, and self-determination, with implications for data protection, surveillance, and personal choices such as sexual orientation, thereby establishing a new benchmark for data governance in India.

### **CONCLUSION**

This research paper explores the historical trajectory of the Indian Constitution, offering a comprehensive account of the pre-constitutional period, the Constituent Assembly, its adoption and implementation, and its subsequent evolution after 1950s. It analyses the influences and events that shaped the Indian constitution. Through an analysis of constitutional provisions, amendments and landmarks judgements this paper explains the Indian constitution's impact and struggles.

The Constitution is a living document that must embrace necessary changes to withstand the passage of time. If it ceases to evolve, it risks losing the very essence of its creation. To preserve its vitality, the framers vested Parliament with the authority to amend it. The concept of the basic structure has steadily evolved since its inception in the 1970s, with successive years witnessing the inclusion of additional rights within its ambit. What we recognize today as the basic structure is the result of decades of judicial oversight of fundamental rights and the broader constitutional framework. The basic structure doctrine must continue to serve as a safeguard of constitutional governance.

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