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ARCHITECTURE OF DEMOCRATIC GOVERNANCE: AN ANALYSIS OF KEY FEATURES OF THE CONSTITUTION OF INDIA

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ABSTRACT

The article analyses the Constitution of India as a philosophical framework for self-governance in a democratic system within an exponentially and increasingly diverse society, rather than merely a legal document. Beginning with the debates within the Constituent Assembly and following Ambedkar's idea of linking political and social democracy, it examines how certain structural decisions reflected the aspirations and concerns of the State. It examines the clash and subsequent reconciliation of the Directive Principles of State Policy and Fundamental Rights, the development of the scope of Article 21 of Constitution as a result of the Indian courts' interpretations and the courts' function in Indian constitutionalism in the spaces of legislative inaction. It discusses the maintenance of the rights of dignity and equality and the distribution of power in India. Every Indian generation has the right to fight for these rights; these rights should not be taken for granted.

INTRODUCTION

The Constitution of India is one of the very few constitutional documents in the world that have been shaped by both an overwhelming sense of historic need and the aspirational power of a philosophical vision for governance. Adopted on 26th November 1949 and implemented on 26th January 1950, the Constitution did not evolve as a result of deliberate planning. As stated earlier, the Constituent Assembly was no ordinary legislative body. The Assembly met eleven times in almost exactly three years. In addition to being composed of lawyers, freedom fighters, economists and social reformers, the membership represented diverse backgrounds.

The Drafting Committee was chaired by Dr. B.R. Ambedkar, who was assisted by such prominent figures in India's independence movement as Jawaharlal Nehru, Sardar Vallabhbhai Patel and Dr. Rajendra Prasad, along with Alladi Krishnaswami Ayyar. More importantly, Ambedkar's constitutional philosophy provided the primary impetus behind the drafting process. Specifically, he believed that political democracy cannot be meaningful if there are no accompanying measures of social democracy; therefore, the Constitution would necessarily have to address the long-standing social hierarchies present within Indian society. Thus, the relationship between formal legal equality and deep-seated social inequality is an electrifying thread throughout the entirety of this constitutional document. As such, what evolved was a Constitution that remains to date the lengthiest written Constitution ever ratified.

Furthermore, it is far beyond a Charter of Government containing 448 Articles and 12 Schedules with well over 100 Amendments. Rather than simply being a static document, it is also a dynamic vehicle of social change. The Constitution has been characterized as "a lawyer's paradise" due to its clarity, as a "Social Revolutionary Document" due to its commitment to equality and as a "Federal Charter" due to the principles of federalism enshrined within it. While each characterization captures some essential aspects of the Constitution, together they capture nothing less than all. This article represents a study of the major characteristics of the Indian Constitution. Herein are discussed the structural, philosophical and institutional characteristics of the Constitution, which represent its identity and distinguish it from similar documents across the globe. The essence of this argument is that these characteristics do not exist solely as provisions.

A WRITTEN AND ALL-INCLUSIVE CONSTITUTION

The selection of a written Constitution was neither by accident nor by necessity. Given their colonial history, the drafters felt they could not trust the "unwritten" or customary nature of a Constitution. They believed the unwritten traditions of Britain were a means to ensure the continued dominance of the ruling elite at the expense of the majority. A written document would be able to establish clear guidelines, make them easily accessible to citizens and allow courts to enforce those guidelines. Moreover, given that a large number of citizens are still illiterate (in 1951, the literacy rate in India was approximately 18.3%), a codified document provided a means of educating citizens on how their country would be governed. Therefore, this philosophy, when fully developed, has created a lengthy and highly comprehensive Constitution. The U.S. Constitution is quite short and sets forth general principles, whereas the

Indian document attempts to address virtually every possible aspect of government. Not only does the Constitution set forth the structure of government and fundamental rights, but it also addresses issues such as citizenship, election procedures, official languages, emergencies, civil service personnel and the administration of scheduled districts/tribal lands.

For example, the sixth schedule¹ establishes a highly specific framework for the autonomous administration of tribal lands in Northeast India, an approach that is seldom taken with respect to regular legislative enactments. This level of specificity reflects the unique characteristics of Indian society. India sought both to modernize and incorporate many traditional institutions into its governance system simultaneously therefore, a highly specified constitutional framework was essential. Some critics argue that such specificity makes the document overly rigid.

SOVEREIGN, SOCIALIST, SECULAR AND DEMOCRATIC REPUBLIC

The Preamble to the Constitution, which was described by the Supreme Court in *Kesavananda Bharati v. State of Kerala (1973)*², as a means to unlock the minds of those who created the Constitution of India; it states that India is a Sovereign, Socialist, Secular, Democratic and Republic and is dedicated to securing Justice, Liberty, Equality and Fraternity. In 1976, through the Forty- Second Amendment³ during the period of Emergency and afterward, these words have been the basis for much Constitutional debate. The word "sovereignty" refers to the highest form of authority for the state of India with no external powers. This can be seen in the ability of parliament to create legislation regarding national issues and the government's ability to make decisions concerning foreign relations without being dictated by an outside force. One descriptor, "secular", may be the most controversial. The type of secularism used in India is not necessarily a total separation of religious and governmental institutions.

In the case of *S.R. Bommai v. United States (1994)*⁴ the court stated most clearly that secularism is one of the core values of the Constitution and could never be taken away by a constitutional amendment. Together, "democratic" and "republic" refer to the fact that sovereignty is in the

¹ 6th Schedule of the Constitution of India.

² *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

³ 42nd Amendment of the Constitution of India.

⁴ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

hands of the people and authority is based upon democratic elections, rather than inherited. These tenets, in summary, are the philosophical base for the entire Constitution.

THE PARLIAMENTARY SYSTEM OF GOVERNMENT

India decided to adopt the Westminster Model of Parliamentary Government. However, this decision faced some challenges during the Constituent Assembly. A few members were strongly advocating that India should opt for a Presidential System. They believed that it would provide stability and would also serve to separate the Legislative Branches from the Executive. Members who advocated that the Parliamentary Model was best suited to Indian Conditions did so based on their understanding of the Familiarity gained through Colonial Experience; Structural Necessity to ensure that the Elected Legislature held the Executive accountable; and Flexibility for Governments to respond to Changing Political Circumstances. Articles 74 and 75⁵ clearly outline that the President of India is the Nominal Head of State (Executive), while the Real Power lies within the Council of Ministers led by the Prime Minister under the Parliamentary System. The Council collectively holds responsibility before the Lok Sabha, the Lower House of Parliament, which is directly elected and can withdraw support for the Council of Ministers at any time.

In other words, in order for the Council of Ministers to continue in office, they must have the confidence of the Lok Sabha. Collective Responsibility of all Cabinet Members toward each other and the Lok Sabha is the central tenet of the Westminster System. Once an Opposition Party gains enough strength in the Lok Sabha to remove a Government's Majority status, then there are two options available to them: Dissolve Parliament or Resign.

FEDERAL STRUCTURE WITH A STRONG CENTRAL GOVERNMENT

The Indian Constitution outlines a federal framework, but it is a distinctively centralizing form of federalism. A major source of the centralizing characteristics of Indian federalism is the provisions of the Seventh Schedule of the Constitution. The Seventh Schedule divides legislative authority among the Union, States and Concurrent Lists. The Union List contains seventy-seven subjects on which only Parliament may enact legislation, including defense, foreign affairs and atomic energy. The State List contains sixty-six subjects concerning which state legislatures will be given precedence. Examples include public order and agriculture. Both states and union authorities are empowered to make laws regarding the twenty-four items listed

⁵ Article 74 and 75 of the Constitution of India.

in the Concurrent List. In cases where there is conflict between the two forms of authority, however, the laws enacted by the union authority take precedence. The combination of this tripartite classification of legislative authority and Article 248 of the Constitution⁶ (which grants residuary powers to the Parliament) thus places considerable power in the hands of the centre. Article 356⁷ permits the president to declare President's rule in any state in which the functioning of the government according to the Constitution has ceased.

However, since its introduction in 1950, this article has been used frequently to remove democratically elected state governments from office. From 1950 until 1994, President's Rule had been declared ninety-one times. More than half of those declarations were made when no genuine emergency existed. In response to such abuses of executive discretion, the Supreme Court decided *S.R. Bommai v. Union of India* (1994) and held that dissolution of a state assembly under Article 356 would be open to judicial review. Similarly, Article 352⁸ empowers the president to declare a national emergency under certain circumstances. Such an emergency automatically transfers all legislative authority from the states to the Centre for a period of six months.

FUNDAMENTAL RIGHTS

The fundamental rights, referred to by Jawaharlal Nehru as the "soul of the Constitution," include Articles 12-35 within Part III of the Constitution. These rights provide the minimum irreducible individual liberty that every person will have the right to receive from the state. In addition, these rights were judicially guaranteed through the writ jurisdiction of the Supreme Court established by Article 32⁹ of Constitution, which was described by Dr. B.R. Ambedkar as ***"the most important article in the whole Constitution, without which this Constitution would be a nullity"***.

There are six categories for the Fundamental Rights: (i) Right to Equality provides for equality before the law and prohibits discrimination based on religion, race, caste, gender or place of birth (ii) Right to Freedom allows for freedom of speech, assembly, association, movement, residence and profession (iii) Right against Exploitation prohibits forced labor and child labor (iv) Right to Freedom of Religion (v) Cultural and Educational Rights protect the rights of

⁶ Article 248 of the Constitution of India.

⁷ Article 356 of the Constitution of India.

⁸ Article 352 of Constitution of India.

⁹ Article 32 of the Constitution of India.

linguistic and religious minorities (vi) Right to Constitutional Remedies. For example, the Forty-fourth Amendment of 1978¹⁰ repealed the original Article 19(1)(f)¹¹, which had provided for protection of the right to property and reduced it to merely a legal right under Article 300A¹².

It is possible to fundamentally alter the Constitution itself. In many respects, therefore, the intellectual history of Fundamental Rights in India is an account of judicial interpretation. Article 21¹³ guarantees the right to life and personal liberty. Originally, this right prohibited only arbitrary deprivation of life without due process of law. However, through judicial interpretation, it has evolved into a substantive right encompassing such additional rights as the right to livelihood; the right to health and medical care; the right to a clean environment; the right to education (which is now also separately guaranteed by Article 21A¹⁴ and the right to privacy . Consequently, Article 21 is the most frequently litigated and significant provision in the entire Indian Constitution.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy, in Part IV of the Constitution (Articles 36-51), occupy a singularly philosophical position within the constitutional structure. These Directives represent the vision of a welfare state and were partly modelled after the Irish Constitution of 1937. The Directives are social and economic objectives for the government established by the Constitution, but are not immediately judicially enforceable. Article 37¹⁵ states that they are “*fundamental in the governance of the country*”, however, they cannot be enforced by any court. The relationship between Fundamental Rights and Directive Principles of State Policy has perhaps been the most contentious issue in the history of Indian constitutional law.

Early in its development, the Supreme Court considered the Directives to be inferior to Fundamental Rights and found legislative enactments concerning property and tenancy reform unconstitutional under Article 19(1)(f), based upon violations. As a result, a number of constitutional amendments were enacted including the First Amendment of 1951 and the Fourth Amendment of 1955, as well as a protracted struggle between the judiciary and the

¹⁰ 44th Amendment of the Constitution of India.

¹¹ Article 19(1)(f) of the Constitution of India.

¹² Article 300 of the Constitution of India.

¹³ Article 21 of the Constitution of India.

¹⁴ Article 21A of the Constitution of India

¹⁵ Article 37 of the Constitution of India

executive resulting in the decision in *Kesavananda Bharati* (1973). After *Kesavananda*, post-judgment jurisprudence began moving toward reconciling or harmonizing Fundamental Rights and Directive Principles of State Policy. In *Minerva Mills Ltd. v. Union of India* (1980)¹⁶, the Supreme Court determined that the balance between Fundamental Rights and Directive Principles of State Policy constitutes a basic feature of the Constitution and that neither can have precedence over the other. Thus, since then, "harmonious construction" has provided the basis for the relationship of Parts III and IV; with the Court interpreting rights and directives conjunctively rather than mutually exclusive.

FUNDAMENTAL DUTIES

In this way, the duties themselves can be seen as creating a social obligation in addition to providing the potential for legal recourse for those whose rights have been violated. As such, the duties represent both an articulation of what it means to uphold constitutional morality, i.e., the values enshrined within the Constitution of India, and how to implement that morality through active participation in society. The inclusion of the duty to "renounce practices derogatory to the dignity of women" reflects a growing concern among feminist scholars about the need to address gender-based violence at all levels of society. This concern is reflected in the increasing number of studies and reports regarding violence against women in India. The fact that there exists a duty to "promote harmony and the spirit of common brotherhood amongst all the people of India" reflects another key component of the fundamental duties, one that addresses issues of social solidarity. These duties create a responsibility upon individuals to act as a collective unit to support and protect each other.

In short, the fundamental duties of Indians are not merely responsibilities to the state, but rather also to each other. By articulating these duties, the framers of the Constitution of India created a sense of social responsibility. Furthermore, many of these duties articulate the importance of protecting individual freedoms while simultaneously promoting social order.

Therefore, the fundamental duties demonstrate that individual freedom is best protected when there is a strong sense of community and respect for others.

CONSTITUTIONAL SUPREMACY AND RULE OF LAW

¹⁶ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

At the heart of the Constitutional Order of India lies perhaps the most important commitment, the rule of law. Based upon the principles established by Dicey regarding equality under the law, and the pre-eminence of regular law over discretionary executive power, Article 14¹⁷ of the Constitution ensures equality under the law, and equal protection of the laws, while Article 13¹⁸ establishes the superiority of Constitutional Provisions over all ordinary Legislation. Thus, no individual within the governmental structure whether the President, the Prime Minister, or indeed Parliament itself stands outside the jurisdiction of the law as defined through interpretation by the Courts. By establishing the concept of constitutional supremacy, this implies that the Constitution is both the supreme law of the land as well as the source from which the legitimacy of all other law derives. All governmental acts whether legislative, executive or judicial are without legal justification if they do not find their roots in a constitutional source of authority. The combination of an active and innovative Judiciary has given rise to an expansive public interest litigation tradition in India whereby the Courts have taken steps to enforce constitutional rights against both governmental non-action and governmental action.

In terms of operationalizing constitutional supremacy against governmental omission, there appears to be considerable evidence to support such an argument. In *Vishaka v. State of Rajasthan (1997)*¹⁹, although no legislation existed at the time of the decision, the Supreme Court provided a regulatory impetus for what had been neglected for decades by Parliament and provided mandatory guidelines for preventing sexual harassment at workplaces pursuant to Articles 14, 19 & 21 of the Constitution²⁰.

CONCLUSION

The combination of all of this makes up the Indian Constitution. It is an extraordinary legal instrument, a Charter for Social Change, A Federal Compact Between Centre & States, a protection for individual rights against excessive government reach and a declaration of National Aspiration. Characteristics include a completely written Constitution, Parliamentary Democracy, Federated structure, Fundamental Rights, Directive principles, Judicial Independence, Basic Structure doctrine, Universal Franchise and are not just structural provisions. They are deliberate decisions taken by a nation about the conditions under which

¹⁷ Article 14 of the Constitution of India.

¹⁸ Article 21A of the Constitution of India.

¹⁹ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

²⁰ Articles 14, 19 & 21 of the Constitution of India.

democratic self-government can occur in a large, complex and plural society. The glory of the Constitution is not that it's perfect, but that it is serious. It is serious regarding the social inequality of India and how urgent is to address that. It is serious about the danger of concentrated power and has given us numerous mechanisms against abusing power, including federalism, separation of powers, judicial review and fundamental rights. It is serious regarding the claim from each citizen (no matter their poverty or margin) that he/she will be treated with dignity and as a full member of the political community.

Although, these promises were often broken, there exists a gap between the constitutional text and the reality of society. Every generation of Indians has had to face the same challenges. Dr. B.R. Ambedkar was concerned before the Constitution was adopted on 25 November 1949, when he said, ***“No matter how good a Constitution may be, if those responsible for working it happen to be a bad lot, then the Constitution must be bad.”***

In other words, the Constitution does not protect itself. Instead, it demands, in every generation, that a conscious decision be made to honour its values, to defend its institutions and to uphold its promises as practical commitments to the type of society that truly democratic people wish to create.