



A Critical Study on Indian Constitution: its Success and Failures

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Abstract: - Indian Constitution is a living document tied up with golden threads i.e. rule of law protected by independent Judiciary. It is a great document prepared by the visionary statesmen. It is a young constitution but behaving maturedly. One, two or a few constitutional failures do not count complete non fundamental behavior of our constitution. When mother democratic countries like Britain, U.S.A., Switzerland and others are in the process of experiment to beautify their constitutional system either, through written or unwritten process, then how can we predict our young constitutional mechanism is derailed. Maturity is judged from behavior on function of the system. Ours is 67 Years young and pretty matured constitution having no comparison with others. Iver Jennings says constitution is Lawyers paradise; and it is a brilliant master piece. It has assimilated different noble thoughts of access different political and social intelligentia. It is the greatness of our constitution that it has withstand against troubles and turmoil's during its journey of last six decades. Whiles most of the neighboring countries have succumbed to undemocratic regimes, India files the democratic flag atop as the largest democracy of the world.

Keywords: - Preamble, Federalism, Fundamental Rights, D.P.S.P., Judicial Review, Parliamentary Form of Government.

Introduction

On 26th Nov 1949 "We the People of India..." in our Constituent Assembly resolved to adopt, enact and give to ourselves the constitution of Independent India. The day is celebrated every year as Constitution Day or the Law Day. The Chairman of Drafting Committee, Dr B.R. Ambedkar and the president of the Assembly, Dr. Rajendra Prasad speaking on 25th and 26th Nov. 1949 sounded words of wisdom and warning for us. If the people who are elected are capable and men of character and integrity, they would be able to the best even of a defective constitution "If they are lacking in these, the constitution cannot help the country. India needs today nothing more than a set of honest men of strong character, men of vision, men who will

not sacrifice the interest of the country at large for the sake of smaller groups and areas."

Our Constitution came into operation and the largest ever "Sovereign Democratic Republic" on the earth was born on 26th January 1950. That is therefore remembered as Republic Day.

Democracy and Freedom demand vigilance and active participation of people in the process of governance. We are supposed to know what the scheme of our constitution is, how it works, how we are governed and what are our constitutional rights and responsibilities. Effective steps are taken on the priority basis to provide to all our people in different sections and at various levels adequate knowledge and understanding



of our constitution, its objectives, basic values and working of its institution.

Constitution is not only what is written in the text of its provisions. Constitution is a living organism of the functioning of the institutions. Every constitution gets newer and a newer meaning the people by whom it is worked, the amendments that are made, the effects it acquires, how its provisions are interpreted by courts of land.

Constitution of a country lays down the basic structure of the political system under which people are to be governed. It establishes the main organs of a state – the Legislature, the executive and judiciary, defines their powers, demarcates their responsibilities their responsibilities and regulates their relationship with each other and with the people. The constitution of a country may also be described as its basic or fundamental Law of the land which ordains the fundamentals of its polity.

The preamble is the basic structure of the constitution. The Preamble says that people are the ultimate authority and constitution emerges for them. In fact preamble contain with the declaration that “to secure to all citizens justice, social, economic and political, liberty of thoughts, expression and belief, faith and worship- equality of status and opportunity.”

Ours’ is a longest constitution of the world. It has been 22 parts with 395 Articles (Total Number Articles is now 448) and 12 schedules. Originally the text had 22 parts 395 Articles and 8 Schedules. During the last 65 Years there have been 100 constitutional amendments on an average our Constitution has been amended roughly every seven months or so.

Under the basic feature doctrine invented by Supreme Court some amendments have been struck down as been violative of the basic features/ structure of the constitution. Recently the 99th amendment provide for National Judicial Commission for selection of judges for the Supreme Court and High Courts has been held unconstitutional on the ground of its being violative of what the Supreme Court calls the primacy of judiciary in the matter of selection of judges and independence of judiciary under the basic feature of constitution.

As we all know our’s is a democratic constitution having a parliamentary democracy. India is a Republic with an elected president as the head of the state with all executive power of the union vesting in him.

Our constitution disregards the absolute judicial review of the U.S. Model and provides for only limited judicial review protecting the law making and constitutional power of parliament.

In view of the *Kehavananda Bharati v. State of Kerala*¹ the Apex Court held that the basic features or fundamental features of the constitution which cannot be taken away or abridged. Parliament cannot destroy the basic features of constitution. The majority opinion was that although no part of the constitution, including two fundamental rights was beyond the amending power of the parliament, the basic structure of the constitution could not be abrogated even by constitutional amendments. Ten Judges held that *Golak Nath’s case*² was wrongly decided and that an amendment to the constitution was not a ‘Law’ for the purpose of Article 13. Chief Justice Sikri, writing for majority indicated that the basic structure was:

(1) The supremacy of the constitution.



- (2) A republican and democratic form of Government.
- (3) The Secular character of the Constitution.
- (4) Maintenance of the Separation of Powers.
- (5) The Federal character of the Constitution.

Salient Features of Indian Constitution:-

Initially the constitution was meant for thirty crore people having divergent languages and communities.

I. A COMPREHENSIVE DOCUMENT:-

Our constitution is the largest or longest constitution and having detailed document. In the United Kingdom there is a constitution but it is not written, Israel also has no written constitution. New Zealand until recently had largely written constitution. United Kingdom has no written constitution does not mean that there is no constitution for the governance of the country. There are various constitutional instruments such as the Scotland Act, 1998 and the Govt. of Wales Act 1998 which have by devolution created a Scottish parliament and Wales Assembly.

II. DEVOLUTION & FEDERALISM:-

Devolution means transfer or delegation of power to a lower level by the Central Govts. to the Local and regional administration. In the devolution central Govt. of a Sovereign State grants power to the Govt. at a sub national level e.g. regional, local & state level. It is a form of decentralization.

In federalism there is division of powers between the federal Govt. and the units is known as States or Provinces. Such division of power is guaranteed by constitution.

III. DUAL POLITY WITH SINGLE CITIZENSHIP:-

Indian Union consists of the Union & States. In United States of America, every American National has two citizenship- the citizen of U.S.A. and that of each state. Dual citizenships creates problem that is stationary in certain cases, say social security, discriminate in favor of own citizens. Single Citizenship in India seeks to avoid the problems. Generally every citizen in India has same rights wherever he may reside.

IV. LESS RIGID FEDERAL SYSTEM:-

On the basis of the amending process the constitution has classified as flexible and rigid. A flexible constitution can be amended by ordinary legislative process and (Article 368) while rigid constitution needs special method of amendment. The U.S. Constitution is rigid. Article V of the Constitution provides for amending power. An amendment may be proposed by a two their vote of both the houses of congress or by National Convention called by the congress on the application of legislatures of two thirds of the States.

Congress decides which method of ratification shall be used between 1789 to 1967 over 5000 amendments introduced in Congress. A federal institution is usually rigid. Indian constitution is Federal which was decided in case of **S.R. Bommai v. Union of India**⁹. But its amending process is not so rigid as that of the constitution of United States of America.

V. CENTRE-STATE RELATION DEALT IN DETAIL:-

The constitution of India deals in detail with relation between Union and the States and the Units (States) Inters. To avoid Conflict between federal Govt. and the Federating Units, it exhaustively lists the legislative and administrative relation.



VI. LEGISLATION TO SUPPLEMENT THE CONSTITUTION:-

In order to meet various situations framers of the constitution have made various provisions to supplement it. In certain cases, it was not possible to lay down detailed provisions e.g. powers, privileges and immunities of each house of parliament, state legislatures, members of respective houses and committees thereof are to be defined by law by parliament or state legislation as the case may be.

VII. FEDERATION WITH STRONG CENTRALISING TENDENCY:-

The constitution of India is federal but in emergency it can be converted more on less unitary system. During national emergency parliament can make law, on state subject and such law, if comes in conflict with state law, the parliament law prevails. Besides the executive power of the union extend to the giving directions to any state as to the manner in which the executive power of the state is to be exercised. Parliament has got power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries under Article 253. A very wide power has been given to the central Govt. By Article 356 under which President's rule can be imposed in a state.

VIII. VILLAGE PANCHAYATS & MUNICIPALITIES:-

Provisions panchayats and municipalities were made in the constitution by inserting Part-IX and IXA of the constitution (73rd Amendment) Act, 1992 and 74th Amendment Act, 1992 respectively.

IX. FUNDAMENTAL RIGHTS:-

Incorporation of fundamental rights and their guarantee is another

feature of Indian Constitution. The rights are action. The fundamental rights are basic freedom guaranteed to the individuals and citizens of India against State action. The fundamental rights are basic freedom guaranteed to the individual. Article 12 to 35 deal with fundamental rights in part-III of the constitution. There are six fundamental rights including right to basic education. The fundamental rights are freedoms guaranteed but the freedoms are not absolute given in part-III of the constitution but are justiciable. Justiciable means judicially enforceable. The legal rights are protected and enforced by ordinary law on the contrary fundamental right is protected and guaranteed by constitution. Constitution 86th amendment in the year 2002 inserted Article 21 A for the right to education. Generally it falls under right to freedom. These fundamental rights are:-

1. Rights to equality (Article 14 to 18)
2. Rights to freedom (Article 19 to 22)
3. Rights to against exploitation (Article 23 to 24)
4. Rights to freedom of religion (Article 25 to 28)
5. Rights to cultural educational rights (Article 29 to 30)
6. Rights to constitutional remedies (Article 32)

Before 44th Amendment in 1978 the right to property was fundamental right under Article 31, but now it is a legal and constitutional right under Article 300 A.

Article 32 gives a right to every individual to move to Supreme Court directly in case of violation of his fundamental right.

The rights given in Part-III as guaranteed in case of infringement the aggrieved person can move the High Court and the Supreme Court for their



enforcement. The courts have power to issue orders or writs in the nature of habeas corpus, mandamus, certiorari, prohibition and quo warranto.

The Supreme Court in **M. Nagaraj v. Union of India**⁴ has observed that Part- III of the Constitution does not only confer fundamental rights, it confirms their existence and gives them protection.

X. DIRECTIVE PRINCIPLES OF STATE POLICY:-

Part-IV of the constitution lists certain principles for the Government. These principles couldn't be made enforceable because it required tremendous amount of money. But welfare of the people was also the purpose of the constitution and the Govt. was constantly being reminded to fulfill the promise of the preamble. These principles are not enforceable by any court but never the less are fundamental in the governance of the country. The state is mandated to apply these principles in making laws. Article 36 to 51 deals with directive principles of the state policy.

XI. FUNDAMENTAL DUTIES:-

Fundamental duties of the citizens in Article 51-A were inserted by the 42nd amendment Act, 1976. The duties cannot be enforced by writs. There are 11 fundamental duties of every citizen of India. Of these, the very first duty requires all of us "to abide by the constitution and respect its ideals and institutions". Vast majority of our citizens are unaware of the constitution and even more ignorant of any fundamental constitutional duties of citizenship. In such a scenario, how can we expect any understanding or appreciation of our constitution and respects for its ideals & institutions.

XII. INDEPENDENT JUDICIARY:-

Judiciary plays an important part in a federal set up. It is final interpreter of constitution. The judiciary determines the dispute between the citizen and the State. The constitution provides for independence of judiciary. The appointment of judges, their tenure and conditions of service ensure their independence from the executive.

XIII. THE SUPREME COURT:-

The Supreme Court Consists of Chief Justice of India and 25 other judges, The Chief Justice and other judges are appointed by President of India and they hold office up to age of 65 Years (Article 214 (1) and (2)). In each state there is one High Court (Article 214). Each Judge of High Court appointed by President of India and holds office up to age of 62 Years (Article 217).

XIV. SUBORDINATE COURTS:-

The District Judge is appointed by the Governor in consultation with High Court. His appointment is subject to recommendation of High Court (Article 233).

XV. JUDICIAL REVIEW:-

Judicial Review is the power of Judges, ultimately those of Supreme Court to interpret the constitution and refuse to enforce those measures that in their opinion are conflict with constitution (Article 13, 32,226,227).

XVI. PARLIAMENTARY FORM OF GOVERNMENT:-

The constitution establishes parliamentary form of Govt. both at the centre and in the State's following the British Model. The Union Parliament consists of the President and the two Houses – Lok Sabha and Rajya Sabha. Lok Sabha is the popular house consisting of members directly elected by the people while Rajya Sabha is the Houses of States and consists of representation of States elected by



Legislative Assemblies. The President is elected by the elected members of the two houses of parliament and the State Legislature assemblies. He is the constitutional head of the Republic in whose name Government is carried on by the council of Ministers (Article 52).

Article 123 of the Constitution empowers the President to issue ordinance at anytime except when both the houses of parliament are in session, the President is satisfied that Circumstances exist which render it necessary for him to take immediate action, he may promulgate ordinances as circumstances appear him to require. Being a constitutional head, satisfaction of President means satisfaction of Council of Ministers on whose advice he issues ordinances. In **R.K. Garg v. Union of India**⁵ it was contended that ordinance was unconstitutional because it amended taxing Law and was in nature of Money Bill which can be introduced in the House People and can be passed by following the procedure laid down in Articles 109 and 110. Rejecting these arguments court said that Presidents Power under Article 123 is co-existent with that of parliament and no limitation can be read into this Legislative Power of the President Clause (2) of Article 367 also provides that any reference to Laws made by Parliament shall include reference and ordinance issued by the President.

The Council of Ministers includes members from both the Houses but is responsible to Loksabha. On losing the confidence of the popular House, the Govt. has to go. The system at the level of States is largely similar except the constitutional head in a Governor who is appointed by the President/ Union Govt.

Indian polity is unique in many ways. It represents the compromise between rigidity and flexibility in

constitution amending procedure (Article 368).

The way certain intelligentsia of the country is protesting against the growing state of intolerance in the country is 'poetic' and it is non-violent in nature. India should set an example to the whole world as this is land of Mahatma Gandhi who is championed the non violent movement in India. There is no other better country like India and no better neighbour than a Hindu to an Indian Muslim. What is the situation in Muslim Countries and Europe? This is intolerance everywhere said B.J.P. National spokes person Shahnawaz Hussain.

"India is a most secular State where Muslims enjoy equal rights. In our country an artist's is not judged by his caste and religion but by his art"⁶. Chief Justice of India T.S. Thakur on 06.12.2015 said the debate on growing intolerance in society had a "Political dimension" and assured citizens that Judiciary was there to protect them from any victimization or discrimination.

Justice Thakur said there was no intolerance towards any community in the country and it would never happen as a rule of Law and Judiciary were there. He said the Judiciary was committed to protect the country's heritage of religious diversity. He however refused to elaborate on 'Political dimension' to the intolerance debate. Justice Thakur emphatically stated that no person belonging to any community should be afraid of living in the country as judiciary would take care of every citizen's rights and freedom⁷.

"Our existence is based on philosophy of tolerance and I do not think it (intolerance) is there. No one should have any reason to fear that they would be thrown out of the country or would be



victimized". So long as rule of Law is there and Judiciary is functioning, no one should feel threatened. We are capable of protecting rights of citizens, he said.

Justice Thakur said India has always welcomed people from different religion with open arms and they have been living in the country peacefully for centuries. He said all the religion teach brotherhood and harmony.

We are proud of our constitution. It has proved to be the greatest force for national integration and protection of human rights. We are able to work for such a long time of some 65 Years a fully democratic constitution in such a large and populous country with all its varieties and diversity whatever problems we faced were sought to be resolved within framework of constitution without it breaking down by undemocratic forces. We have successfully conducted 16 general Elections for the largest electorate on earth under our constitution.

It is pertinent to note that reforms on various fronts like- economic, administrative, judicial, parliamentary, educational and others are urgently called for. The highest priority needs to be accorded to the electoral and political party reforms for which the most essential requisites is wide spread dissimilation of constitutional education is the need of the hour.

References:

¹ AIR 1973 SC 1641

² Golak Nath v. State of Punjab AIR 1967 SC

³ AIR 1994 SC 1918

⁴ AIR 2007 SC 71 (CB)

⁵ AIR 1981 SC. 2138

⁶ Article on "Growing State of Intolerance Poetic" Published in The Times of India November 25, 2015, see R-5 of Article

⁷ Article on "Intolerance Debate has Political Dimension: Chief Justice of India", The Times of India, Published on 07.12.2015, see Ref-13 of Article