

TRACE THE EVALUATION OF INDIAN CONSTITUTION THROUGH IT'S CHANGING DIMENSIONS

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Introduction

India is the country , which contained so many variety of culture, caste, religion , language etc. Before independence, India is not a unified country , it included number of states . After independence it was united. India is a democratic country. The main aim of the democratic country is “by the people , of the people, for the people. Indian constitution was drafted by the eminent representatives of Indian people, to govern them. Preamble of Indian constitution starting with this line that, ‘we the people of India’ . This ensures the democratic nature of India.

Indian constitution:

India got independence in August 15 , 1947 after so much of struggles. There was a need of democracy system to live as a sovereign state. Constituent Assembly was established, to frame new constitution for India.

Important members of Constituent Assembly :

- i. Mr. Jawaharlal Nehru
- ii. Rajendra Prasad
- iii. Sardar Patel
- iv. Maulana Azad
- v. Gopalaswamy Ayyangar
- vi. Govind Ballabh kunzru
- vii. H.S. Gourmet
- viii. K.V. Shah Masani
- ix. Acharya Kripalani
- x. Dr. B.R. Ambedkar
- xi. Dr. Radha Krishnan
- xii. Dr. Jaykar
- xiii. Liaquat Ali Khan
- xiv. Khwaja Nazimuddin
- xv. Sir Feroze Khan Noon
- xvi. Suhrawardy
- xvii. Sir Zafarullah Khan
- xviii. Dr. Sachchidananda Sinha

The drafting committee which was headed by Dr. B.R Ambedkar framed Indian constitution. Indian constitution came into force in January 26, 1950.

Article 393

This Constitution may be called the Constitution of India.

Article 394

This article and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution.

Article 394A

(1) The President shall cause to be published under his authority, –

(a) The translation of this Constitution in the Hindi language, signed by the members of the Constituent Assembly, with such modifications as may be necessary to bring it in conformity with the language, style and terminology adopted in the authoritative texts of Central Acts in the Hindi language, and incorporating therein all the amendments of this Constitution made before such publication;

(b) The translation in the Hindi language of every amendment of this Constitution made in the English language.

(2) The translation of this Constitution and of every amendment thereof published under clause (1) shall be construed to have the same meaning as the original thereof and if any difficulty arises in so construing any part of such translation, the President shall cause the same to be revised suitably.

(3) The translation of this Constitution and of every amendment thereof published under this article shall be deemed to be, for all purposes, the authoritative text thereof in the Hindi language.

Sources of Indian constitution

CONSTITUTION PARTS	DERIEVED FROM
Fundamental duties , Social & economic & political justice in preamble	Russian constitution
Liberty, equality, fraternity & judicial review	French constitution
Preamble, Vice president, independent judiciary, fundamental rights, Supreme Court & High Courts judges	USA
Parliamentary form, single citizenship, rule of law, Writs, law-making procedure	UK
DPSP, Election method of president, Nomination of rajya sabha members	Irish constitution
Article 21	Japan constitution
Trade and commerce	Australia constitution
Suspension of fundamental rights during emergency	Germany constitution
Procedure of amendment	South Africa
Federal scheme , Emergency provisions , Public service commissions, Office of governor , Administration details	Government of India Act,1935

Amendment procedure

The Indian constitution is partly rigid and partly flexible . The amendment of article 4 , 169 and 239 A can be made by simple majority of Parliament.

The following provisions of Indian constitution can be amended by special majority and ratification by states:

- a) Election of president – Article 54 and 55
- b) Extent of the executive powers of the union and states – Article 73 and 162, Article 241 and 279A
- c) Articles dealing with judiciary , supreme court , High court in the states and union territories- Article 124 to 147, 214 to 231,241
- d) Distribution of legislative powers between the centre and state – Article 245 to 255
- e) Goods & services tax council – Article 279A
- f) Any lists of the VIIth schedule
- g) Representation of states in parliament IVth schedule
- h) Article 368 itself.

Article 368

(1)Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill.

Provided that if such amendment seeks to make any change in-

- (a) article 54, article 55, article 73, 9 5[article 162, article241 or article 279A]or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) Any of the Lists in the Seventh Schedule, or

(d) The representation of States in Parliament, or

(e) The provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in article 13 shall apply to any amendment made under this article.

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

7TH AMENDMENT

The state reorganization Act was introduced in 1956, by this amendment. It made major reforms and changes in the organisation of Indian States and schedule 1. The 1st schedule of the Indian constitution was amended by this Act and Bihar & west Bengal (transfer of territories) Act, 1956.

24TH AMENDMENT

The constitution (24th amendment) Act, 1971 was passed on November 15. By this amendment Act, in article 368 was amended and that, "it should be presented to the president for his assent and upon such assent being given to the bill" was added.

It made that the assent of president is mandatory to amend the Indian constitution provisions.

In article 13 (4) Nothing in this article shall apply to any amendment of this Constitution made under article 368 was inserted.

Article 13

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law, which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires, –

(a) "Law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "Laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

It means, all laws which commenced before the constitution shall be held void, if that laws are inconsistent with part 3 of Indian constitution. If the state make any law, which abridges the fundamental rights, that shall be held void. By this 2th amendment, this article 13 shall not applicable to any amendment of Indian constitution made under Article 368.

42ND AMENDMENT

This amendment was called as "Mini constitution".

This amendment modify the preamble and made major amendments in the provisions of Indian constitution.

Tittle	Original constitution	Amended constitution
Preamble	Sovereign, Democratic, Republic	Sovereign, Socialist, Secularist, Democratic, Republic
	Unity of nation	Unity and integrity of the nation

7 th schedule	List 2 : 1. Education 2. Forests 3. Weights and measures 4. Protection of wild animals and birds 5. Administration of Justice	These subjects were transferred from state list to Concurrent list.
DPSP	There are only Article 39,43 and 48.	Article 39A, Article 43A & Article 48A were inserted.
Fundamental duties	There is only fundamental rights not fundamental duties.	Article 51A was included by this amendment.

61st AMENDMENT

This amendment reduced the voting age from 21 years to 18 years.

Article 326

The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than [eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

This amendment was made by considering the adult suffrage.

73RD AMENDMENT & 74TH AMENDMENT

This amendment was known as the panchayat raj and Nagarpalika constitution amendment Act. This Act was introduced in 1992. Article 243(A) to 243(O) was included by this amendment.

ARTICLE 243 A

A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may provide by law.

ARTICLE 243B

- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
- (2) Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

ARTICLE 243G

The Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

ARTICLE 243H

The Legislature of a State may, by law,

- (a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- (c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

These are the important provisions of this amendment.

Effect of the 73rd and 74th amendment :

- This amendment has emphasized the local self government in india.
- In part (a) panchayat system was introduced. In part 9A Municipalities are established. In part 9B co operative society was established.

86TH AMENDMENT

The constitution (86th amendment) Act was introduced in 2002.

In this amendment, Article 21A was inserted in Indian constitution.

ARTICLE 21A

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

For the better implementation of Article 21A, the right to education was introduced in 2009. This Act ensures free and compulsory education to the children below the age of 14.

KESHAVANANDA BHARATHI VS STATE OF KERALA ¹

This is the most significant case in Indian constitutional history. Thus case is challenged the constitutional validity of 24th and 25th Constitutional (amendment) Act. In this case the question was arised that, whether the parliament have the unlimited power to amend the Indian constitution ?

To answer this question, the Hon'ble judges of supreme court evolved the basic structure doctrine. The parliament can amend the Indian constitution without affecting the basic structure doctrine. The supreme court held that 25th constitution amendment as intra vires.

The following things are considered as basic structure doctrine :

- The supremacy of the constitution
- Republic and democratic form of government
- Secular nature of constitution
- Division of Powers between legislature, executive, judiciary branches
- Federal nature of the constitution
- DPSP
- Unity and integrity of the country
- Sovereignty of India
- Core elements of individual freedoms
- Preamble of the constitution.

In **INDRA NEHRU GANDHI VS RAJ NARAIN** ²case, this doctrine was introduced.

In this case, 4 things were added as fundamental principles to the basic structure doctrine.

- Secularism and freedom of conscience and religion
- The rule of law
- Sovereign democratic republic status
- Equality of status and opportunity for all people.

Conclusion :

Constitution is a codified fundamental rules or principles which determines how a country or state is to run. Indian constitution is a dynamic one. So many interpretations are made by Indian judiciary system. Indian constitution system has been evolved through the effective amendments and landmark cases.

REFERENCES

- 1) The Indian constitution, 1950
- 2) Constitutional law of India by Dr.J.N. Pandey
- 3) Indiankanoon.com
- 4) Case brief on Keshavananda bharathi vs State of Kerala. Article by Shiristi Suman
- 5) Basic structure of Indian constitution. Article by kishita gupta
- 6) The constitution (amendment) Act, 1971
- 7) The constitution (amendment) Act, 1956
- 8) The constitution (amendment) Act,1992
- 9) The constitution (amendment) Act,2002
- 10) The constitution (amendment) Act,1989

¹ Writ petition (civil) 135 of 1970

² Appeal (civil) 887 of 1975