

CRITICAL ANALYSIS OF EVOLUTION OF CONSTITUTION

D. JEYASHREE

STUDENT AT GOVERNMENT LAW COLLEGE MADURAI

Abstract

On 26th January, 1950 was considered as a red letter day in the history of India. Everyone must know about the “constituionalism” and “constitution law” before understanding the Indian constitution. After India got Independence, the goal of law makers was to evolve such a possible version of governance that would best serve the country keeping the primacy of the people as control. Our Indian constitution is not a creature of any political revolution. But of research and deliberations of eminent persons of India. Sources of Indian constitution are,

Russia - Five year plan, fundamental Rights

France - Concept of Republic, equality and fraternity

Japan - The procedure established by law

Canada- Federalism and advisory jurisdiction of apex court

England - single citizenship, Rule of law

Germany - suspension of fundamental rights during the emergency

Australia – Trade of commerce (301- 307)

With 395 articles, 22 parts, 12 schedules, Our Indian constitution is the most lengthy written constitution in the world. The sources used to generate the constitution were numerous.

Introduction :

Our Law makers of the constitution tried hard to give the best from the constitutions of several countries and also discovered many characteristics which are outstanding to India. According to Hood and Philips, constitution is an arrangement of laws defines about the configuration of various elements of the government and their relations with particular individuals. Constitution means, A Document having legal sanctity and which set out of some principles. There are Powers of government, functions of government, organs of government. In the Provincial legislature of 389 members, completed the draft and prepared report on various aspects of the constitution. The time duration for completing the draft was 2 years, 11 months, 18 days. This draft constitution was presented to the constituent assembly on November 4, 1948 by Dr. B. R. Ambedkar, the chairman of the drafting committee on 26th November 1949, the third read of the constitution came to termination with the constituent assembly voting in favour of the constitution was signed by members of constituent assembly on 24th June 1950, and it came into an enforcement on 26th January 1950. The sources used to generate the constitution were numerous. The Government of India Act of 1858, The Indian council Act of 1861, 1892 and 1909, The government of India Act of 1919 and 1935, and the Indian Independence Act of 1967 were in the middle of the laws whose provisions were comprised into this while setting in mind the requirements and circumstances of India.

Historical perspective :

All constitutions are the successors of the past as well as testators of the features. The interesting fact of that the Indian constitution of republic is the product not a political mutiny but of the research and conversations of a body of skilful representatives of people who search for improving upon the existing systems of administration, gives the better understanding of this constitution.

- 1600- 1765 Advent and establishment of East India Company
- 1765-1858 Company administration
- 1858-1919 British rule
- 1919-1947 Self Government.

1. 1600 – 1765 (The coming of the British)

This period is considered as “Queen Elizabeth Era”. The company safeguarded for it a charter from Queen Elizabeth in December, 1600, Which settled its constitution powers and privileges. The charter enabled the company in the hands of the governor and 24 members who were recognized to organised and send trading expeditions to the East India.

- The charter of 1601 granted the legislative power to the Governor and company to make the reasonable laws.
- The charter of 1726 recognized the governor and council of the three presidencies to make, ordain bye-laws, rules and regulations for the better governance of the company and give punishment for their violations.

2. **1765 – 1858 (Administration of company)**

This period was the beginning of British rule.

Important Acts under this period:

1. Regulating Act of 1773
2. Act of settlement, 1781
3. The Pitts India Act, 1781
4. The charter Act of 1813
5. The charter Act of 1833
6. The charter Act of 1853

The Act of 1773 is of main constitutional importance because it is asserted for the first time the right of Parliament to govern the affairs of the East India company.

▪ **Act of settlement, 1781 :**

It cleared up the defects of Regulating Act of 1773, Parliament passed the Act of settlement 1781. The Act authorised and confirmed the appellate jurisdiction of Governors-general-in-council in cases decided by the Muffosil courts.

▪ **Pitts India Act, 1784 :**

After the Act of settlement of 1781, parliament has the responsibility to appoint two committees. The committee suggested for the recall of the Governor-General Warren Hastings and the chief justice Impey. This demonstrated the inadequate degree of parliamentary control over the company and its administration. So, this was the main reason for passing of “ Pitts India Act” was passed by the Parliament.

▪ **The charter Act of 1813 :**

Monopoly of the East India company was taken away and Indian Trade was thrown open to all British subjects.

▪ **The charter Act of 1833**

The Act provides a route to the centralisation of power in hands of the Governor-General-in-council by vesting the legislative power solely to him.

▪ **The charter Act of 1853:**

This was the final charter enacted between 1793 and 1853. The charter of 1853 took a decisive step in separating legislative machinery from the executive.

3. **1858-1919 (End of company's rule)**

▪ **The Government of India Act, 1858.**

The Act of 1858 transferred Government of India from the company to the British crown. The Act of 1858 constituted the secretary of state in council as a body corporate, capable of being sued in India and in England. The transfer of company's government to the British crown was declared by the “Royal proclamation” made by the queen of England.

▪ **Indian council Act of 1861**

The Indian council Act of 1861, however, suffered from several deficiencies. And it gave superior power to the Governor-General. The non-official members had no right in the Governor-General's council. They could not ask any questions and discuss the budget.

▪ **Indian council Act, 1892**

- i. It expanded the number of members in the central and provincial council.
- ii. It introduced the election systems partially.
- iii. It enlarged the functions of the council.

▪ **Indian council Act, 1909**

Minto-Morley reforms by this Act, The structure of legislative council, central as well as provincial, was considerably raised.

4. **1949 – 1947 (Introduction to self government)**

Main features of the 1919 Act:

The Declaration - It pledged a responsible government to the Indians.

Dyarchy - Dyarchy in the powers. And Dyarchy means double rule.

Central government – central government is considered as a representative body. The central government remained responsible to the British Parliament through the secretary of state.

Framing of the new constitution :

- ❖ According to the terms of the Act of 1947, it became a sovereign body.
- ❖ The important members of the constituent assembly were Jawaharlal Nehru, Rajendra Prasad, Sardar Patel, Maulana Azad, Gopalaswami Ayengar, Govind Ballabh Pant, Abdul Ghaffar Khan, T. T. Krishnamachari, Alladi Krishna Swami Ayyar, H. N. Kunzuru, Sir H. S. Gour, K. V. Shah, Masani, Acharya Kripalani, Dr. B.R. Ambedkar, Dr. Radhakrishnan, Dr. Jaykar, Liaquat Ali Khan, Khwaja Nazimuddin, Sir Feroze Khan Noon, Suhrawardy, Sir Zafarullah Khan, Dr. Sachchidananda Sinha.
- ❖ The first meeting of Assembly was held on 9th December, 1946 as the sovereign constituent Assembly for India.
- ❖ The drafting of the constitution was produced in January, 1948.

❖ **Commencement of the constitution** – The new constitution of India was adopted by the constituent assembly on 26th November, 1949 and signed by the president, Dr. Rajendra prasad. Article 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force at once. The balance provisions of the constitution came into force on 26th January, 1950.

Comparative study between features of various constitution:

<u>British constitution</u>	<u>American constitution</u>	<u>Japanese constitution</u>
<ul style="list-style-type: none"> ❖ Partly written and partly unwritten ❖ Parliamentary sovereignty ❖ A unitary constitution ❖ A flexible constitution ❖ Rule of law ❖ Parliamentary form of government ❖ Separation of powers combined with concentration of Responsibility ❖ A blend of Monarchy, Aristocracy, and democracy ❖ A bicameral legislature. 	<ul style="list-style-type: none"> ❖ Written character ❖ Rigidity nature ❖ Federal character ❖ U. S constitution is based on the doctrine of “separation of powers”. ❖ No feature of American Government is more characteristic than the separation of powers combined with the precautionary checks and balances. Nothing quite like it can be found in any other leading country of the world. 	<ul style="list-style-type: none"> ❖ Written constitution ❖ Sovereignty of the people – The constitution vests sovereignty with the people whereas the Meiji constitution was a gift to the people. ❖ Rigidity of constitution ❖ Limited monarchy: All the emperor are to be performed “On behalf of the people”. And with the advice and approval of the cabinet. ❖ Parliamentary Government ❖ Unitary Government ❖ Bicameral system ❖ End of dualism ❖ Adult suffrage : Before the war period, suffrage was limited to men of 25 years of age or above provided they paid atleast 10 yen annually in direct taxes.

Conclusion :

Among examples of federal constitutions there may be mentioned those of the united States, U. k is of truly federal type. It may, however, be clearly understood that the nature of federalism is more of historical growth based on Nation's necessity. To accept the same pattern of federalism in all countries is well impossible. Our Indian constitution is sufficiently federal. It is not less federal than American federalism. India is federal and America is more federal in the outline of the constitution. Thus, the Indian constitution is mainly federal with protecting capability for enforcing national unity and growth.

References:

- Dr. J. N. PANDEY , *constitutional law of India, central law agency, fifty ninth edition -2022*
- Vishnoo Bhagwan, Vidya Bhushan, Vandana Mohla, *world constitutions comparative study, sterling publishers, Eleventh revised edition.*
- <https://prepp.in>, *sources of Indian constitution by patil Amrutha, April 10, 2023.*