
CONSTITUTIONAL INFLUENCE ON OUR JUDICIAL AND LEGISLATIVE SYSTEMS

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ABSTRACT

Any decision made by the Judiciary must be obeyed by the people and the government alike. In India, the judicial system is responsible for upholding the law, safeguarding individual liberties, and fostering social cohesion. Every step of the process may come to a stop if judges showed prejudice or gave in to political pressure. An attempt has been made by giving many cases demonstrating that the court is acting impartially or without political interference. The Legislature and the Executive are the other two organs. The Constitution (Ninety-Ninth Amendment) Act, 2014, which amended the Indian Constitution, led to the establishment of the NJAC in India. Amendments to the Indian Constitution need a special parliamentary majority. The assent of at least half of the states is required to make changes to the federal framework of the Constitution. Two distinct but interconnected branches of the Indian judiciary are established under the country's constitution. The Judiciary is one of the three foundations of democracy in India. The Indian Constitution, enacted in 1950, is the longest written Constitution of any independent country. Through the Indian Independence Act of 1947, the British colonial authorities handed constitutional powers to the people of South Asia. It seeks to present a chronological history spanning three and a half centuries, emphasizing major incidents that help lay out the broader narrative. Except for money bills, every legislation must be approved by both Houses - Lok Sabha and Rajya Sabha.

Keywords: The Constitution, Judicial Systems, Legislative System, Amendments.

1. Introduction

Historians have highlighted how many unique characteristics of law and government were experimented with and adopted by the different kingdoms and dynasties that reigned over sections of the Indian subcontinent from 500 BC onwards. Some components of previous legal traditions, particularly religious legislation, exist in the present legal system. Through the Indian Independence Act of 1947, the British colonial authorities handed constitutional powers to the people of the emerging South Asian republics. It seeks to present a chronological history spanning three and a half centuries, concentrating on major incidents that contribute to the overall narrative .[7]

The 1950 Indian Constitution is a written document with approximately 450 Articles and 12 Schedules. It is the world's longest written constitution for any sovereign nation. On January 26, 1950, the Constitution of India took effect after having been authored and accepted by an elected constituent assembly. The Indian Constitution was created by the people of India, not Parliament, and hence is paramount. The first phrase of the Preamble to the Indian Constitution demonstrates India's constitutional supremacy: "We, The People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic." [1]

The Indian Constitution is known as a cosmopolitan document since it incorporates elements from different nations, most notably:

- Parliamentary governance, the separation of powers, and bicameralism in the United Kingdom are all essential.
- Ireland's State Policy Directive Principles.
- American presidential obligations, judicial independence, and fundamental rights.
- Union and state listings in Canada.
- The Concurrent List and Free Trade in Australia.
- The former USSR's fundamental obligations.

The Indian Constitution incorporates federal and unitary constitutions elements, is neither purely federal nor purely unitary, and is widely regarded as quasi-federal.

The Supreme Court found that Parliament's capacity to amend the Constitution is limited but that Parliament cannot alter the "basic structure" of the Constitution.

It is worth noting that the Constitution makes no explicit reference to the 'basic structure' notion. The Judiciary has used its inherent authority of interpretation to determine which of the Constitution's initial sections are sacred and hence immune to amendment. They are the concepts of "constitutional supremacy," the "separation of powers," "legal scrutiny," and "judicial independence".

A bill pending in either House of Parliament or the Council of States may not expire if the House of the People is dissolved. A Bill must be approved by both Houses, either without alteration or with agreed-upon changes. If the Houses mentioned in that section are forced out of office or postponed for further than four days in a row, those days should not be counted. The President may call the Houses to a joint sitting at any time after the date of his notice for a reason mentioned in the notification. A bill is considered to have been enacted by both Houses if it is supported by a majority of the combined number of members from both houses voting and present at the joint sitting, with any amendments agreed upon during the joint sitting[9]. After the House of People passes a Money Bill, they might choose to adopt all or none of the recommendations made by the Council of States. Even after the Assembly of Peoples has been dissolved, a joint session may be called and a bill can be passed in accordance with this article. [9].

1.2 Legislative Process

The Indian Parliament has the authority to legislate at the union level, while state legislatures have the authority to legislate at the state level. Their legislative topics are explicitly outlined in the Indian Constitution via two independent lists, the Union and the State lists. A Concurrent List of issues Parliament and State legislatures may legislate on is also available. Union legislation takes priority over state law in the event of a conflict. It's typically the same for both levels of government, legislatively speaking. Focusing on the Indian Parliament, this section also makes note of the differences between the various state legislatures[6].

1.2.1 Proposal and Drafting

Typically, the relevant government ministry draughts the language of proposed legislation (that is, a bill). The legislation is sent to the appropriate departments and sometimes released to the public for feedback. The measure is then revised as needed and submitted to the cabinet of the Prime Minister for final approval. Legislation that has been authorised is then introduced in

one of Parliament's two houses. Money bills (fiscal bills) are the one exception and may only be introduced in the Legislative Council.

1.2.2 Scrutiny

A bill typically goes through three readings in either House of Parliament: • One for the introduction.

- One to be scrutinized.
- One for a passing grade.

When a bill receives a majority vote of approval in one chamber, it is submitted to the other chamber for consideration. Both Houses must approve all legislation (excluding money bills). In contrast, in state legislatures, the legislative council has no binding jurisdiction and the representative body is the supreme body.

The Lok Sabha has ultimate authority over money bills, whereas the Rajya Sabha has only advisory powers. When a majority in both Houses enacts a law, it is forwarded to the President for his signature.

It is possible that the President would send the bill back to Parliament for amendments after requesting more details about it from the executive branch (but only once). If both Houses re-adopt the legislation (regardless of whether or not the President's recommendation is adopted), the President must provide his or her consent.

1.2.3 Enactment

After the President signs a bill into law, it is formally enacted and published in the government gazette as an Act of Parliament. When the Parliament is not in session, the President may also legislate by issuing an ordinance. This Ordinance will only be in effect if and when the House is in session again, at which point it must be ratified by the Parliament in order to be kept in force. The governor of a state has the same power to enact laws at the state level.

1.3 Judicial System

Chief Justice of India. Hari Lal Kania: To interpret the Constitution "with an enlightened liberality" and to administer the law "with benevolence and sympathy for everyone" are two

qualities that the Supreme Court should have. Chief Justice also defined the judicial institution's position and responsibilities under the Constitution. High-caliber judges and an independent judiciary were essential to the Constitution's preservation.[3]

The legal system in India operates as a unified whole. The Supreme Court and High Courts are part of the superior Judiciary, while the lesser courts are part of the subordinate Judiciary, as outlined in the Indian Constitution. The capital city of India is New Delhi, and it is home to the Supreme Court of India, the country's highest court. The Chief Justice of India presides over it. The nation has twenty-four High Courts. Each state only has one High Court, while certain High Courts have authority over several states and Union Territories. For instance, the northeastern Indian states of Assam, Mizoram, Nagaland, & Arunachal Pradesh are within the purview of the Guwahati High Court. States are further subdivided into districts for administrative purposes, with each having its own District Court. The District Court has initial jurisdiction over civil and criminal proceedings except in a few jurisdictions. The judicial system also includes tribunals and commissions that are created by and deal with particular legislation.[2]

2. The Judiciary's Role

The Indian Constitution protects citizens against any partial judgement. As a result, the Judiciary is given the ability to make decisions in accordance with the rule of law. The courts in India are not administered by the governments and have no political power[5].

2.1 Separation of Power

This judicial independence necessitates a "separation of powers." It implies that neither the legislative nor the administration are permitted to interfere with the operation of the Judiciary. As a result, to effectively exercise their independent power, Judges for the highest courts in the land should be appointed independently of the executive branch, legislative branches, or special interests of any kind.

2.2 Structure of Courts

Just like the legislature and executive, the judiciary is essential to a well-functioning democracy. It takes all three working together to keep the wheels of democracy turning. However, there must be a system of checks and balances between the executive and legislative

branches. There are several important roles that the Judiciary plays in society, including:

- (i) To serve as the Constitution's custodian and interpreter.
- (ii) In order to protect the Indian people's basic and other rights.

In India, the legal system is separated into three tiers of Courts to accomplish the obligation laid on the shoulders of the Judiciary.

- The District Court is the lowest level of court in each state. When people in a town have a difference of opinion on politics or religion, they usually go there to hash it out.
- High Court: Each State has its own High Court, the State's highest judicial authority. Anyone dissatisfied with the District Court's decision may file an appeal with the Supreme Court.
- The Supreme Court is the highest court in any given nation. It has precedence over lower courts such as the High Court and the District Court. All subordinate courts must adhere to the decisions made by the Supreme Court. The ruling of the Supreme Court is final and binding.

2.3 Dispute Resolution

The courts have the power to impose punishments on offenders. Almost every social situation that demands control is handled by the judiciary. As a result, the courts step in to provide remedies whenever there is a conflict. The responsibility for problem-solving is with the State, whether the conflict is between individuals, between individuals and the government, between governments, or between the federal and State governments.

2.4 Judicial Review

The Constitution grants the highest court one of the widest and most exhaustive judicial review powers in the world. To preserve the principle of separation of powers and also the rule of law, the judicial branch must have the capacity to evaluate the actions of the legislature and the executive branch. The Indian government's legislative and executive branches are subject to review and possible nullification by the country's Supreme Court and High Courts if they are found to be in violation of the Constitution. This jurisdiction is used only when the legitimacy

of an action, legislation, or regulation is officially contested in court. Judicial review should be approached with prudence. The courts shall not infringe into legislative or executive areas by altering law provisions or issuing policy judgements[2].

The Value of Judicial Review in India:

- Judicial Review contributes to the Constitution's supremacy.
- The federal equilibrium, or power allocation between the center and the states, is preserved.
- Citizens' fundamental rights are safeguarded.

2.5 Protecting Legal Order and Basic Liberties

The Constitution of India sets down nearly all of the basic liberties enjoyed by Indian nationals. When these rights are violated, citizens may take their cases to the High Court or the Supreme Court, as specified in Articles 226 and 32 of the Constitution, respectively.

2.6 Judicial independence

The Judiciary must be free of any other influences to make independent decisions. As a consequence, the Constitution creates a structure to prohibit judges from being influenced by Parliament or the Executive. A Supreme Court or High Court judge's conduct, for example, cannot be questioned in House until a motion to remove him is submitted. Furthermore, Only demonstrated misconduct or incompetence during a higher court judge's term may result in dismissal by Parliament. Similarly, Parliament's authority over judicial work environment (including such allowances, benefits, and leave) is limited to the extent that they cannot be reduced after his appointment[4].

3. Indian Constitutional Judiciary

The judiciary serves an important duty under the Indian Constitution. Its accomplishment has tremendously impacted all aspects of the nation's existence. As one of the world's most influential organizations, it rules on matters involving all aspects in terms of human existence and relationships. It maintains order within the government and works to ensure that all branches are operating in accordance with one another and with the Constitution, which guarantees individual liberties. The Indian Constitution, which was adopted by the Constituent Assembly and went into effect on January 26, 1950, has various sections concerning the

organisation, functions, and authority of the judiciary. With this law, every state and territory in the union began using the same regulations. It created a three-tiered structure of law enforcement, administration, and adjudication.

Judiciary involvement may range from minimal to extensive, depending on the specifics of each country's legal system. Because there is no written constitution in the United Kingdom, for instance, the Judiciary's ability to evaluate ministerial and delegated legislation is severely constrained. Therefore, the Judiciary's primary role in the UK is to apply and interpret the law.

The Judiciary is considered the highest branch of government in the United States, above both the legislature and the executive branch. The court has the authority under the US Constitution to check the other two branches if they overstep their bounds.

However, the Judiciary in India has developed through time to exercise extensive Judicial Review powers over State legislative and executive bodies and judicial proceedings. The Supreme Court and High Courts of India not only operate as arbiters to decide or settle issues between the center and the States, but they also defend and enforce people's fundamental rights against arbitrary action by the States. They also interpret the legislature's statutes. If any law or presidential order violates a person's constitutional or human rights, the Supreme Court's ruling will be final.

The Indian Apex Judiciary can decide the legitimacy of constitutional modifications, which may be found nowhere else in any other constitution, codified or uncoded[5].

3.1 Amendments

In India, a high threshold of support in Parliament is required for constitutional amendments (and over half of the overall membership and a two-thirds majorities of those in attendance and voting). Amendments to the Constitution's federal framework need approval by at least half of the states in certain instances. Certain modifications can be implemented with a simple majority of the Parliament. However, this latter category of modifications is not technically deemed an "amendment" to the Constitution. The Constitution has been amended 104 times, with the most recent amendment, the Constitution (One Hundred and Fourth Amendment) Act, 2019, taking effect on 25 January 2020. Amendments to the Constitution are subject to judicial scrutiny. In one of the most exceptional constitutional judgements in India (also the longest and with the largest ever bench of 13 presiding judges), the Supreme Court held that the legislature cannot

reform, alter, or destroy the essential structure of the Constitution (a term that originates from this judgment). The Constitution makes no mention of having referendums or plebiscites .[2]

3.2 Legislative Systems vs. Judicial Systems

The three democratic pillars, the executive, the legislative, and the judiciary, are said to be "separate but equal" under the idea of separation of powers. In several instances, the law and policymaking have been issued by the courts through judgements. Noting that the legislature may use its lawmaking powers to overturn the decision of certain rulings is important. The Customs Amendment and Validation Bill 2011 was approved by Parliament in 2011, and it provides retroactive legal standing for all duties and acts made by certain customs employees. In 2011, Commissioner of Customs vs. Sayed Ali brought a challenge to certain of the tariffs before the Supreme Court.

While the Supreme Court had ruled that a particular duty was unconstitutional, Parliament went ahead and changed the Act to allow for its enforcement anyhow. Similar language was used in the recently enacted Essential Commodities (Amendment) Ordinance, 2009. By passing the Enemy Property (Amendment and Validation) Ordinance, 2010, the government hoped to circumvent the Apex Court's ruling. After issuing a writ to the Custodian of Enemy Property, the court ordered the restitution of some assets to their rightful heirs. As a result of the expiration of the Ordinance, a new Bill was submitted in the House of Representatives. Parliament's Home Affairs Select Committee is presently reviewing the proposed legislation[3].

3.3 Is the Indian Judiciary independent of political influence?

It is a tricky question to answer. When politicians are eliminated from a system, political influence is gone. The Supreme Court is the Constitution's defender. It is entirely responsible for defending all people's basic rights in our country, however the transparency of the Judiciary is based on the Honourable Judges and their nominations. Take into account the following points:

The Collegium System was used to nominate judges until August 2014. When judges are appointed in this way, the judicial branch is shielded from the influence of politicians and their agendas.

Then comes a watershed moment. The National Judicial Appointments Commission is an independent commission (NJAC). Judges in India's higher courts are appointed and moved around by this body. The Constitution (Ninety-Ninth Amendment) Act, 2014, was passed by the Lok Sabha on August 13, 2014, and the Rajya Sabha on August 1, 2014, to amend the Indian Constitution and establish the NJAC.

In severe to challenging situations, Indian courts made evaluable decisions. It is the organ that constantly maintains public trust in rem.

Let us look at a few examples.

Nitish Kumar, the Chief Minister of Bihar, claims that any investigation into his role in the 16 November 1991 murder of Congress activist Sitaram Singh is motivated only by "Political Vendetta."

CJI Ranjan Gogoi said the Mayawati case proves the independence of the Indian Judiciary from political pressure.

An individual named Ashok Singh, who presented himself as a cousin of Sitaram, accused Nitish Kumar and others of plotting to murder Sita Ram in order to secure a political victory.

Chief Justice of India Ranjan Gogoi: "Those who attack the judiciary must remember that they are attacking an institution which is indispensable for the survival of the rule of law but which has no means of defending itself."

According to India's Chief Justice, the country's judicial system is independent of politics, public opinion, and, most crucially, hierarchy.

The court's decision was uninfluenced. Court on its Motion in the Matter of Ajay Bansal and Others v. Justices BK.Roy and N.Sud of the Punjab and Haryana High Courts.

The unorthodox ruling issued by the Chief Justice of India was consistent with those issued by other judges throughout the world. Justice Nazmi Waziri of the Delhi High Court issued a historic ruling demonstrating judicial independence when she ordered the five respondents in the well-known 2G Appeal Case to plant 3,000 trees each in exchange for an extension of time to submit their responses[5].

Conclusion

Building a constitution must generate a viable outcome. Furthermore, leadership and foresight are required. The objective is to create a procedure befitting a work as necessary as creating a Constitution that will rule people and be recognized as valid and respected. Creating a constitution requires a consensus to be reached on various opposing interests and concepts typical of contemporary societies. One last, clear lesson from the twenty-first century's experiences is that writing a constitution is difficult. The courts, as the primary custodian of the Constitution, are regularly called upon to determine the constitutionality of legislation enacted by a parliamentary majority. According to Article 12 of India's Constitution, any governing body that falls within its purview is considered a State. The Judiciary must avoid entering the political sphere by not taking on political roles. The Supreme Court has, for the most part, effectively fulfilled its constitutional mandate. However, the court should never forget that the Constitution should have precedence over judicial authority. The Indian Parliament's and State legislatures' legislation is precisely stated in the Indian Constitution. State legislation takes precedence if there is a dispute between federal and State law. The legislative process is typically the same at both levels.

References

1. O. Kumar, “Lok Sabha passes a Bill to regulate doping in sports,” p. 4.
2. A. Bhan and M. Rohatgi, “Legal systems in India: overview,” *A w*, p. 18, 2022.
3. G. Austin, *Working a Democratic Constitution: A History of the Indian Experience*. Oxford University Press, 2003. doi: 10.1093/acprof:oso/9780195656107.001.0001.
4. https://prsindia.org/files/parliament/discussion_papers/Parliament%20and%20Judiciary.
5. Bansal. R., Bansal. V., “The Role of Judiciary in India: If Balancing Activism or Working Under the Influence of Politics?”, IJLHB, 2020.
6. <https://uk.practicallaw.thomsonreuters.com/w-017-5278>.
7. A. K. Thiruvengadam, *The Constitution of India: A Contextual Analysis*. Hart Publishing, 2017. doi: 10.5040/9781849468718.
8. S. Gardbaum, *The Place Of Constitutional Law in the Legal System*. Oxford University Press, 2012. doi: 10.1093/oxfordhb/9780199578610.013.0009.
9. <https://legislative.gov.in/sites/default/files/COI...pdf>
10. M. P. Singh, “Securing the Independence of the Judiciary--The Indian Experience,” *IJCLR*, vol. 10, no. 2, pp. 245–292, Jan. 2000, doi: 10.18060/17703.