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CONSTITUTIONAL LAW

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ABSTRACT

Constitutional law is the body of rules, doctrines, and practices that govern the operation of political communities. In modern times the most important political community has been the state. Modern constitutional law is the offspring of nationalism as well as the idea that the state must protect certain fundamental rights of the individual. As the number of states has multiplied, so have constitutions and with them the body of constitutional law, though sometimes such law originates from sources outside the state. The protection of individual rights, meanwhile, has become the concern of supranational institutions, particularly since the mid-20th century. Written constitutions are said to be “normative” when all their binding principles are observed, more or less, in the actual operations of the political system. Constitutions also can be classified as “rigid” or “flexible.” Those that are rigid stipulate that at least some part of the constitution cannot be modified by the same procedures used to enact statutory law. Those that are flexible allow any of the rules of the constitution to be modified through the simple procedure by which ordinary statutes are enacted. The U.S. Constitution is rigid, as an amendment requires supermajorities at both the proposal and ratification stages (the most common method of amendment is a proposal by a two-thirds vote in both houses of Congress followed by ratification by three-fourths of the states).

Keywords: Written Constitution, Individual rights, Rules, Flexible.

INTRODUCTION TO CONSTITUTIONAL LAW

Albert Venn Dicey, a Constitutional theorist and a British Whig jurist, interpreted the term “Constitution” as consisting *“of all rules which directly or indirectly affect the distribution or the exercise of sovereign power in the state, including all rules which define the members of the sovereign power, all rules which*

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regulate the relations of such members to each other, or which determine the mode in which the sovereign power, or the members thereof, exercise their authority.

Modern constitutions incorporate their fundamental principles, ideologies, and governmental structure to clearly define their idea of democracy. It also confers fundamental rights upon its citizens and the general public within its territorial jurisdiction. A constitution is, thus, the most superior legislation that cannot be altered arbitrarily by conventional legislative reform. The substance and character of a constitution, as well as the manner in which it connects with the legal and political order, differ significantly between countries, and therefore, there is no standard and firm interpretation of a Constitution. It has the authority to proclaim and determine the political community's boundaries. The political community's boundaries will encapsulate territorial boundaries, *i.e.*, the state's geographical borders, as well as its claims to any other territory or extraterritorial rights, and also personal boundaries, *i.e.*, the definition of citizenship. Therefore, a constitution commonly differentiates between individuals who are part of the polity and those who are not.

Constitutions, as legal, political, and social instruments, exist at the crossroads of legal, political, and societal structures. A constitution "marries power with justice," ensuring that authority is exercised in a reasonable manner while preserving the rule of law and restraining arbitrariness in the exercise of power. It is the supreme law of the nation, and it establishes the requirements that conventional legislation should achieve.

Generally, the constitution endeavours to embody and mould society in different ways. It could be done by articulating the people's communal identity and objectives or by proclaiming similar principles and values. These elements are most commonly seen in preambles and introductory pronouncements, but they can also be included in oaths and mottos, as well as on flags and other symbols instituted by the Constitution. Other substantive constitutional provisions, such as those outlining socio-economic rights, cultural or linguistic policies, or education, might also fall under these social instruments.

A country's decision-making structures are specified by the constitution, which recognises the supreme power of the text and distributes authority in a way that contributes to prosperous decision-making. The political elements outline how state institutions, *i.e.*, parliament, executive, courts, head of state, local governments, independent organisations, and other institutions are incorporated, what authorities they have, and how they function.

Thereafter, the issue came up before the thirteen-judge constitutional bench of the Supreme Court in **Kesavananda Bharti v State of Kerala (1973)**. The Court held that the Preamble of the Constitution is considered part of the Constitution and it does not lay down a binding obligation or any restriction but is pertinent in the interpretation of statutes and provisions of the Constitution. With regard to amendments, the phrase “amendment of this Constitution” in Article 368 implies that any addition or alteration to any of the Constitution’s provisions made within the wide curvature of the preamble is required to bring out the Constitution’s basic objectives.

The Indian Constitution contemplates the separation of powers among the state’s organs while also ensuring a harmonious relationship between them. The Constitution’s overriding authority has been made applicable to all state organs. The Legislature, the Executive, and the Judiciary are all creations of the Constitution, and they all derive their existence from it. The Constitution establishes and limits their powers, limits their responsibilities, and governs their interactions with one another and the general public. Each organ has been clearly expressed in terms of purpose, intent, and activity areas in which there is very little space for ambiguity or uncertainty. If there is any uncertainty, it is determined on the anvil of the Constitution, which expressly states that all organs must live harmoniously.

Every organ is accountable to the citizens in one form or another as custodians of the nation’s interests. The Indian Parliament has been given a pre-eminent place in the constitutional structure as the supreme representational and legislative body. The Legislature, on the other hand, must adhere to certain constitutional obligations and operate within the confines of a written constitution. The Legislature is accountable to the citizens via elections; the Executive is accountable to the citizens through the provision that it is collectively responsible to the prevalent House of the Legislature; and, in a sense, the Judiciary is accountable to the citizens because its sole responsibility as the custodian of the citizen’s rights is to defend the Constitution. Mr. Soli Sorabjee then succinctly recounts the contribution of the Late Mr. M. K. Nambyar, one of India’s finest constitutional lawyers and legal luminaries. Mr. Nambyar’s interpretation of Article 21 of the Indian Constitution in *A.K. Gopalan v. State of Madras*², the first ever constitutional case heard by the Supreme Court of India, was to be accepted as the law only in 1978 and later went on to galvanise Fundamental Rights litigation in the country.

The Supreme Court’s intervention was also sought after the expulsion of some Members of Parliament who were found guilty of taking bribes to pose questions during the Question Hour in

² AIR 1950 SC 27.

the Parliament. The judgment in **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha**³ entails a thorough analysis of the contours of the immunity granted to the members of a House under Article 105 of the Constitution. By holding that the power to expel a member can be validly granted to the House as a power outside that of Articles 101 and 102, and by further restricting the extent of judicial review on the exercise of this power, the Court has endorsed the freedom of the House to regulate its own proceedings. The distinction that the Apex Court has drawn between penalising on one hand and ensuring unobstructed proceedings within the House at the other could go a long way in curbing unethical practices within the house and furthering the true notion of democracy.

In the comment on curative petitions, the decision of the Supreme Court of India in **Rupa Ashok Hurra v. Ashok Hurra and Anr**⁴ is examined in detail. In this case, the Supreme Court of India allowed 'curative petitions,' which the author argues, are very similar to 'second review petitions.' He has attempted to locate the jurisprudence behind 'curative petitions' and argues that the ex-debito justitiae obligation invoked by the Court in earlier cases was unduly whittled down by the Court in **Rupa Ashok Hurra**. Comparing the present decision with the one in **A.R. Antulay v. R.S. Nayak**⁵, the author points out how the Court misconstrued the ex-debito justitiae obligation as understood in *A.R. Antulay*. Further, the author also points to the practical difficulties with complying with the guidelines laid down by the Supreme Court with respect to curative petitions.

Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President, who shall exercise his/her functions in accordance to the advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head. The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). The judiciary is the final arbiter of the constitution. Its duty (mandated by the Constitution) is to act as a watchdog, preventing any legislative or executive act from overstepping constitutional bounds. The judiciary protects the fundamental rights of the people (enshrined in the constitution) from infringement by any state body, and balances the conflicting exercise of power between the central government and a state (or states).

³ Writ Petition (Civil) No. 1 of 2006, Transferred Case Nos. 82 to 90 of 2006 and Writ Petition (C) No. 129 of 2006

⁴ (2002) 4 SCC 388

⁵ (1988) 2 SCC 602.

The courts are expected to remain unaffected by pressure exerted by other branches of the state, citizens or interest groups. An independent judiciary has been held as a basic feature of the constitution, which cannot be changed by the legislature or the executive. Article 50 of the Constitution provides that the state must take measures to separate the judiciary from the executive in public services.

CONCLUSION

The Indian Constitution stands as a testament to the nation's democratic ideals and aspirations. Its meticulous crafting, rooted in historical struggles and visionary principles, continues to guide India's journey towards a more just, inclusive, and prosperous society. It also is proof of upholding its values, fostering unity amidst diversity, and safeguarding the rights and liberties of every citizen, thus ensuring a brighter future for generations to come. The Constitution of India is called a **“bag of borrowing”** due to its extensive adaptation of principles and provisions from various global sources. It amalgamates elements from multiple constitutions, including the British, American, Irish, Canadian, and others, reflecting India's diverse legal heritage and democratic ideals.

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