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Constitution and Constitutionalism in India

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Abstract

The concepts of "Constitution" and "Constitutionalism" are key to India's political and legal systems. The Constitution of India, adopted on November 26, 1949, and enacted on January 26, 1950, is the highest law in the country. It outlines the main political principles, the structure, procedures, powers, and duties of government institutions, and specifies the fundamental rights, directive principles, and duties of citizens. The Indian Constitution is detailed and covers a broad range of subjects to address the diverse needs of the country. It represents the aspirations of the Indian people for a fair and democratic society. While the Constitution provides the legal framework, Constitutionalism is the philosophy that ensures government power is limited by law. It means the government's authority comes from and is restricted by a fundamental set of laws. In India, constitutionalism is shown through the rule of law, separation of powers, checks and balances, judicial review, and protection of fundamental rights. It ensures that the government acts within the boundaries set by the Constitution, preventing misuse of power. So, while the Constitution sets up the legal structure of governance, Constitutionalism ensures these principles are followed, safeguarding democracy and protecting individual freedoms.

Keywords: Constitution, Constitutionalism, democracy, government, legal framework

Introduction

Each country has a constitution tailored to the intelligence and temperament of its citizens. The term "constitution" originates from the Latin word "constitutio," referring to laws and decrees like imperial enactments. A constitution is considered the state's guiding framework, essential for orderly government operations. As Thomas Paine noted, "Government without a Constitution is a power without a right," emphasizing the necessity of a constitution in any modern state, whether written or unwritten. Various scholars have defined the term differently, reflecting their views on what a constitution should be. Aristotle described it as "the way of life the state has chosen for itself," while C.F. Strong defined it as "the collection of principles according to which the powers of the government, the rights of the governed, and their relationships are balanced". A constitution is a supreme, justiciable document that establishes and upholds equal democratic respect and attention (Suma, 2021) ^[1].

The Constitution of India, which came into effect on January 26, 1950, is the supreme law of the land. It lays the foundation for the nation's legal and political framework and is a comprehensive document that outlines the structure, powers, and functions of various government institutions as well as the rights and duties of its citizens. The Indian Constitution is one of the longest and most detailed constitutions in the world, consisting of a Preamble, 448 Articles, 25 Parts, 12 Schedules, and numerous Amendments. It reflects the aspirations of the Indian people for a sovereign, socialist, secular, and democratic republic and aims to secure justice, liberty, equality, and fraternity for all citizens. The Constitution of India is a living document, continually evolving through amendments to address new challenges and societal changes while maintaining its core principles. Its adoption marked the culmination of India's struggle for independence and its transition to a democratic republic (Basu, 2018) ^[2].

Constitutionalism in India refers to the principle that the authority of the government derives from and is limited by a body of fundamental law. It encompasses the adherence to constitutional principles and ensures that the powers of the government are constrained and exercised within the framework of the Constitution, thereby protecting the rights and liberties of individuals. Constitutionalism in India ensures that the Constitution is not just a

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legal document but a living instrument that governs the functioning of the state, protects individual freedoms, and upholds the rule of law (Bellamy, 2016) ^[5]. It embodies the principles of democracy, justice, and accountability, creating a framework where power is exercised responsibly and the rights of citizens are safeguarded.

Historical overview

The historical development of constitutions is a rich and varied narrative that reflects the evolving nature of governance, law, and society. Early concepts of constitutional governance can be traced back to ancient civilizations. For instance, the ancient Greeks, particularly in Athens, developed ideas about democracy and the rule of law. The Roman Republic also had a complex system of checks and balances through various branches of government and codified laws like the Twelve Tables. One of the earliest and most significant documents in constitutional history, the Magna Carta was issued in England. It limited the powers of the king and established certain legal protections for subjects, laying the groundwork for modern constitutional principles such as due process and the rule of law. During the 17th and 18th centuries, Enlightenment thinkers like John Locke, Jean-Jacques Rousseau, and Montesquieu articulated ideas about individual rights, separation of powers, and the social contract, profoundly influencing modern constitutional design (Grimm, 2016) ^[3].

The U.S. Constitution is among the oldest written constitutions still in effect. It established a federal system of government with a clear separation of powers among the legislative, executive, and judicial branches. The Bill of Rights, the first ten amendments, guarantees fundamental rights and freedoms. The French Revolution (1789) led to the Declaration of the Rights of Man and of the Citizen, which proclaimed universal rights. The subsequent Napoleonic Code influenced legal systems worldwide, particularly in civil law jurisdictions. In the 19th and early 20th centuries, many nations in Europe, Latin America, and beyond adopted constitutions inspired by democratic principles and human rights. This period saw the spread of constitutional monarchies and the establishment of republics. After World War II, many countries, including Germany, Japan, and several newly independent nations in Africa and Asia, adopted new constitutions emphasising democratic governance, human rights, and international cooperation. The Universal Declaration of Human Rights (1948) influenced many post-war constitutions, embedding the idea of universal human rights (McIlwain, 1947) ^[11].

In the late 20th and early 21st centuries, the fall of the Soviet Union and the democratisation of Eastern Europe led to the drafting of new constitutions based on democratic principles and market economies. The South African Constitution (1996) is notable for its comprehensive Bill of Rights and emphasis on equality and justice after the end of apartheid. Modern constitutions continue to evolve, incorporating emerging issues like environmental rights, digital privacy, and gender equality. International organisations and transnational legal principles increasingly influence national constitutions (Grimm, 2016) ^[3].

Evolution of Indian Constitution

The historical evolution of the Indian Constitution is marked by significant milestones that trace the transformation of India's governance from colonial rule to a sovereign

republic. The journey began with the arrival of the British East India Company in 1600, which led to British colonial domination. Key legislative acts by the British Parliament established the administrative framework for India, laying the groundwork for constitutional development (Jain, 2022) ^[4].

The Regulating Act of 1773 was a pivotal step, creating a centralized administrative system and a Supreme Court in Calcutta. However, its defects necessitated further reforms, leading to the Pitt's India Act of 1784, which increased British control over the East India Company. The Charter Act of 1853 introduced a Legislative Council, separating executive and legislative functions, followed by the Government of India Act of 1858, which transferred control from the Company to the British Crown, marking the beginning of direct British rule. The Indian Councils Acts of 1861 and 1892 gradually introduced Indian representation in legislative councils. The Morley-Minto Reforms (Indian Councils Act of 1909) expanded these councils and introduced separate electorates for Muslims, a significant constitutional development. The Government of India Act of 1919, influenced by the Montagu-Chelmsford Reforms, introduced dyarchy in provinces, dividing subjects into transferred and reserved categories. Despite these changes, dissatisfaction with limited self-governance led to the Simon Commission and subsequent Round Table Conferences (Jain, 2022) ^[4].

The Government of India Act of 1935 was a landmark, establishing provincial autonomy and a federal structure with a bicameral federal legislature and a federal court. Although it fell short of full self-governance, it laid the foundation for India's future political structure. The Cripps Mission in 1942 and the Cabinet Mission in 1946 proposed plans for India's constitutional future, culminating in the formation of the Constituent Assembly in 1946 to draft a new constitution. The Indian Independence Act of 1947 partitioned British India into India and Pakistan, granting them independence. The Constituent Assembly, comprising leaders like Jawaharlal Nehru, Sardar Patel, and Dr. B.R. Ambedkar, drafted the Indian Constitution, adopted on November 26, 1949, and coming into effect on January 26, 1950. The Indian Constitution, inspired by global constitutions, established India as a sovereign, socialist, secular, and democratic republic, ensuring justice, liberty, equality, and fraternity for all citizens. Its evolution reflects India's journey from colonial subjugation to becoming the world's largest democracy, with a dynamic and adaptable constitutional framework (Mahapatra, 2019) ^[9].

Features of Indian constitution

The Indian Constitution is notable for its comprehensiveness and unique features. Some of its key characteristics are as follows:

Below are some of its main characteristics

- 1. Longest Written Constitution:** The Indian Constitution is the longest written constitution in the world, containing 448 articles in 25 parts, 12 schedules, and numerous amendments.
- 2. Drawn from Various Sources:** It has borrowed features from several constitutions around the world, including the British, U.S., Irish, and Canadian constitutions.
- 3. Blend of Rigidity and Flexibility:** Some provisions of the Constitution can be amended by a simple majority,

while others require a special majority or the ratification by half of the state legislatures.

4. **Federal System with Unitary Bias:** India has a federal system with a strong central government. During emergencies, the central government becomes even more powerful.
5. **Parliamentary Form of Government:** The Constitution establishes a parliamentary system of government where the executive is responsible to the legislature.
6. **Sovereign, Socialist, Secular, Democratic Republic:** The Preamble asserts that India is a sovereign, socialist, secular, and democratic republic, ensuring justice, liberty, equality, and fraternity for all citizens.
7. **Fundamental Rights and Duties:** The Constitution guarantees fundamental rights to all citizens and prescribes fundamental duties for the citizens to follow.
8. **Directive Principles of State Policy:** These principles aim to establish social and economic democracy in the country and guide the state in making policies for the welfare of the people.
9. **Independent Judiciary:** The Constitution provides for an independent judiciary to protect the rights of citizens and uphold the Constitution.
10. **Single Citizenship:** Unlike other federal countries, India has a single citizenship for all its citizens.
11. **Integrated and Independent Judiciary:** The judiciary in India is integrated, with the Supreme Court at the top, followed by High Courts and subordinate courts. It is independent of the executive and legislature.
12. **Universal Adult Franchise:** The Constitution provides for universal adult suffrage, ensuring that every citizen above the age of 18 has the right to vote.
13. **Emergency Provisions:** The Constitution includes provisions to handle emergencies, allowing the central government to assume greater control in times of crisis.
14. **Special Provisions for Scheduled Castes, Scheduled Tribes, and Other Backward Classes:** There are provisions to protect the interests of these communities and promote their welfare.
15. **Bicameral Legislature:** The Indian Parliament is bicameral, consisting of the Lok Sabha (House of the People) and the Rajya Sabha (Council of States).
16. These features collectively contribute to the unique character of the Indian Constitution, aiming to balance governance, justice, and individual rights.

Philosophical Basis of Indian Constitution

The philosophical basis of the Indian Constitution is rooted in principles of sovereignty, democracy, socialism, secularism, justice, liberty, equality, and fraternity. It envisions a democratic republic where the people hold ultimate authority, ensuring social, economic, and political justice for all. The Constitution promotes secularism, treating all religions impartially, and guarantees fundamental rights, including the liberty of thought, expression, belief, faith, and worship. It upholds equality before the law and aims to reduce inequality, fostering fraternity to ensure the dignity of individuals and national unity. The rule of law underpins all governmental actions, reflecting the framers' aspiration for a just, inclusive, and progressive nation (Basu, 2018) [2].

Economic basis of the Indian constitution

The economic basis of the Indian Constitution is founded on

principles that promote equitable economic development and social welfare. The Directive Principles of State Policy guide the state to ensure adequate means of livelihood, prevent wealth concentration, and promote the welfare of all citizens, emphasizing the right to work, education, and public assistance. The Constitution balances individual property rights with social justice, allowing land reforms to reduce inequalities (Article 31B). It supports a mixed economy, encouraging state intervention to regulate monopolies and ensure economic justice (Articles 38 and 39). Provisions mandate equal pay for equal work and aim to eliminate economic exploitation, particularly of vulnerable sections (Article 39). Additionally, it promotes the formation of cooperative societies to boost grassroots economic development (Article 43B), aiming for an inclusive and equitable economic system (Laxmikanth, 2023) [8].

Social basis of the Indian Constitution

The social basis of the Indian Constitution is founded on principles of social justice, equality, and inclusivity, aiming to address the diverse needs of its population. It abolishes untouchability (Article 17) and ensures affirmative action through reservations for Scheduled Castes, Scheduled Tribes, and Other Backward Classes to uplift marginalized communities. Fundamental rights guarantee equality before the law, prohibit discrimination, and protect individual freedoms. The Directive Principles of State Policy guide the state in reducing social and economic disparities, ensuring equal pay, and securing humane working conditions. Secularism promotes religious harmony by treating all religions equally, while provisions for gender equality empower women and prohibit discrimination based on sex. These elements collectively strive to create a just and inclusive society in India (Laxmikanth, 2023) [8].

Significance of Indian Constitution

The Indian Constitution holds immense significance for several reasons, reflecting its role in shaping the nation and its governance. Here are several key points that underscore its significance:

- **Foundation of Democracy:** The Constitution lays the foundation for a democratic system in India, ensuring that the government is of the people, by the people, and for the people. It establishes a parliamentary system where the executive is accountable to the legislature and, through it, to the electorate.
- **Rule of Law:** It enshrines the principle of the rule of law, ensuring that all individuals and institutions, including the government, are subject to the law. This promotes justice, equality, and fairness in society.
- **Protection of Fundamental Rights:** The Constitution guarantees fundamental rights to every citizen, protecting individual freedoms and ensuring equality. These rights encompass equality, freedom of speech, religion, and access to constitutional remedies.
- **Secularism:** By declaring India a secular state, the Constitution ensures that all religions are treated equally by the state, promoting religious harmony and preventing discrimination based on religion.
- **Social Justice:** The Directive Principles of State Policy set out in the Constitution guide the state in making laws and policies aimed at promoting social and economic welfare. This includes provisions for improving public health, education, and the standard of

living of citizens.

- **Federalism:** The Constitution establishes a federal structure with a division of powers between the central and state governments. This allows for the accommodation of India's diverse linguistic, cultural, and regional identities, ensuring local governance and autonomy.
- **Independent Judiciary:** The Constitution provides for an independent judiciary, which acts as the guardian and interpreter of the Constitution. The judiciary ensures the protection of fundamental rights and resolves disputes between the central and state governments, as well as between individuals and the state.
- **Amenability:** The Constitution's ability to be amended ensures its relevance and adaptability over time. This flexibility allows the Constitution to evolve in response to changing social, economic, and political circumstances.
- **National Unity and Integrity:** By promoting the values of justice, liberty, equality, and fraternity, the Constitution fosters national unity and integrity. It provides a common framework for governance that binds the diverse people of India together.
- **Empowerment of Marginalized Sections:** The Constitution includes provisions for the upliftment and empowerment of marginalized and disadvantaged sections of society, such as Scheduled Castes, Scheduled Tribes, and Other Backward Classes. This is aimed at achieving social equality and reducing disparities.
- **Peaceful Political Transition:** The Constitution provides a framework for peaceful and orderly political transitions through regular elections and established procedures for the functioning of government institutions.
- **Decentralization of Power:** The inclusion of provisions for Panchayati Raj institutions and urban local bodies ensures decentralized governance, bringing government closer to the people and enabling more effective and responsive local administration.

Overall, the Indian Constitution is not just a legal document but a visionary framework that upholds democratic values, human rights, social justice, and national unity, playing a crucial role in the progress and stability of the country.

The concept of constitutionalism

Dr. Basu's concept of constitutionalism is grounded in the principle that governmental power must be controlled to safeguard democratic principles and fundamental rights. He highlights the necessity of a check-and-balance model, where powers are distributed among various independent centres to prevent dominance by any single entity. Central to his view is the rule of law, which demands that both government actions and legislation conform to constitutional limits, thus rejecting absolutism and ensuring objective governance. Dr. Basu also underscores constitutionalism as a framework for aspiring towards social justice, brotherhood, and human dignity, advocating for a written constitution that clearly enshrines these ideals. His perspective integrates historical evolution with contemporary needs, reflecting a balance between limiting power and promoting democratic values (Singh, 2018) ^[10].

Key principles of Constitutionalism

Key principles of constitutionalism often include the following:

1. **Rule of Law:** Constitutionalism upholds the principle that all individuals, including government officials, are subject to the law, and no one is above it. It ensures that government actions are constrained by legal rules and procedures.
2. **Limited Government:** It seeks to restrict the powers of government through constitutional provisions, separating and balancing governmental authority among different branches (such as the executive, legislative, and judicial branches) and levels (national, state, and local).
3. **Separation of Powers:** Constitutionalism advocates for the separation of powers among the various branches of government to prevent the concentration of power in any single institution. This separation serves as a check on potential abuses of power.
4. **Checks and Balances:** It promotes the idea of checks and balances, where each branch of government has the ability to monitor and restrain the actions of the other branches, preventing any one branch from becoming too dominant.
5. **Protection of Individual Rights:** Constitutionalism prioritizes the protection of individual rights and liberties against government infringement. Constitutions typically include provisions guaranteeing fundamental rights such as freedom of speech, religion, assembly, and due process.
6. **Democratic Principles:** It emphasizes democratic governance, including principles such as popular sovereignty, majority rule with minority rights, regular elections, and accountability of government officials to the electorate.

Implementation of Constitutionalism

1. **Written Constitutions:** Many countries adopt written constitutions as the legal foundation for implementing constitutionalism. These constitutions codify the fundamental principles and laws of the state, serving as a binding contract between the government and the governed.
2. **Judicial Review:** Independent judiciaries play a crucial role in upholding constitutionalism by interpreting and enforcing the constitution, including reviewing the constitutionality of laws and government actions.
3. **Constitutional Culture:** Constitutionalism requires a culture of respect for the constitution, where citizens, government officials, and institutions recognize the authority of the constitution and adhere to its principles even in the absence of legal enforcement.
4. **Civil Society Participation:** The active participation of civil society organizations, media, and citizens is essential for promoting constitutionalism by holding the government accountable, advocating for rights, and fostering a culture of constitutional values.

Need for constitutionalism

The need for constitutionalism arises from its fundamental role in ensuring that governmental power is exercised within a framework of laws designed to protect individual rights and promote democratic governance. Here are several key reasons for the necessity of constitutionalism:

1. **Preventing Arbitrary Rule:** Constitutionalism limits

the power of government officials, ensuring that their actions are constrained by law. This prevents the arbitrary use of power and protects citizens from potential abuses.

2. **Protecting Individual Rights:** By enshrining fundamental rights and freedoms within a constitution, constitutionalism safeguards these rights from infringement by the state and other actors. This includes rights to free speech, assembly, and due process.
3. **Ensuring Rule of Law:** Constitutionalism promotes the rule of law, where laws are clear, publicized, stable, and applied evenly. This principle ensures that everyone, including government officials, is subject to the law, fostering a predictable and just legal environment.
4. **Maintaining Democratic Governance:** Constitutionalism establishes and regulates democratic processes, including free and fair elections, the separation of powers, and checks and balances. These mechanisms ensure that power is derived from the consent of the governed and that leaders are accountable to the people.
5. **Promoting Transparency and Accountability:** Constitutional frameworks often include mechanisms for oversight and accountability, such as an independent judiciary, legislative checks, and access to information. These mechanisms help prevent corruption and ensure that government actions are transparent and accountable to the public.
6. **Balancing Power:** By dividing government power among different branches and levels, constitutionalism prevents the concentration of power in any single entity. This separation of powers ensures that no branch can dominate, promoting a balanced and fair governance system.
7. **Providing Stability and Continuity:** Constitutionalism offers a stable legal framework for governance, which is essential for political stability and continuity. This stability fosters public confidence in governmental institutions and helps maintain social order.
8. **Facilitating Peaceful Change:** Constitutionalism provides legal mechanisms for amending the constitution and addressing social, economic, and political changes. This adaptability allows societies to evolve and respond to new challenges without resorting to conflict or upheaval.
9. **Protecting Minorities:** Constitutions often include provisions to protect the rights of minorities and marginalized groups. Constitutionalism ensures that majority rule does not infringe on the rights of minorities, promoting equality and social justice.
10. **Promoting Good Governance:** Constitutionalism lays the foundation for effective and efficient governance by outlining the powers and responsibilities of various government institutions. This clarity helps in the smooth functioning of the state, ensuring that governmental actions are lawful and geared toward the public good.

Constitutionalism is essential for establishing a framework of governance that limits power, protects rights, and promotes democratic principles. It ensures that the government operates within the bounds of the law, fostering justice, accountability, and stability in society.

Constitution vs constitutionalism

A constitution is a formal document or set of documents that outlines the fundamental principles, laws, structures, and processes that govern a country or organization. It serves as the supreme law of the land, providing the legal framework for the functioning of government and the rights and duties of citizens. Constitutions are often codified into a single written document or a series of documents, systematically organizing the principles and rules governing the political system. Constitutions detail the organization of government, the distribution of powers among different branches, the rights and freedoms of individuals, and the procedures for making and enforcing laws. Constitutions are legally binding and hold the highest authority within the legal system of a country, establishing the limits of governmental power and providing mechanisms for resolving disputes. Constitutions provide the legal foundation for the governance of a country, outlining the structures and processes of government and the rights and obligations of citizens. They establish the framework for the separation of powers, checks and balances, and the protection of individual rights, ensuring the stability and functioning of the political system (Andrews *et al.*, 2021)^[12].

Constitutionalism is a broader political and legal philosophy that emphasizes the importance of adhering to constitutional principles and values in governance. It is the idea that government power should be limited by constitutional rules and that political authority should be exercised within the bounds of the constitution. Constitutionalism upholds the principle of the rule of law, ensuring that all individuals, including government officials, are subject to and accountable under the law. It seeks to limit the powers of government through constitutional provisions, checks and balances, and respect for individual rights, preventing arbitrary or tyrannical rule. Constitutionalism promotes democratic principles such as popular sovereignty, electoral accountability, and respect for minority rights within a constitutional framework. Constitutionalism is a philosophy or approach to governance that emphasizes the importance of constitutional principles, norms, and values in shaping the behaviour of government officials and institutions. It fosters a culture of respect for the rule of law, constitutional norms, and democratic values among citizens, government officials, and institutions, promoting political stability, legitimacy, and accountability (Andrews *et al.*, 2021)^[2].

While a constitution provides the formal legal framework for governance, constitutionalism is a broader philosophy that emphasizes adherence to constitutional principles, the rule of law, limited government, and democratic governance within a constitutional framework.

Conclusion

The Indian Constitution, with its detailed and comprehensive structure, leads to significant conclusions about the nature and functioning of the Indian state and its society. It forms the bedrock of India's democratic framework, ensuring governance within the boundaries of the law. The Constitution is not only a comprehensive document outlining the structure and powers of government institutions but also enshrines fundamental rights and principles of justice, liberty, equality, and fraternity. Its adaptability through amendments ensures it remains relevant and responsive to the needs of a diverse and evolving society. Constitutionalism, on the other hand, ensures that governmental power is exercised within the

constraints set by the Constitution. It embodies principles such as the rule of law, separation of powers, checks and balances, and judicial review, safeguarding individual freedoms and preventing misuse of authority. Together, the Constitution and constitutionalism uphold democratic values, promote social justice, and protect individual rights, reflecting the aspirations of the Indian people. As India continues to progress, these principles will remain crucial in guiding the nation towards a more inclusive, equitable, and just society.

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