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ABOUT US

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We would like to thank our authors who contributed their works and the readers of Lawgic Stratum for their enormous trust and support.



A Trio view on Constitution

Pasapala Syed Mustaq¹

Precis of this Article:

As we all know India has its own written Constitution. In this piece of article, the author would like to exegesis about the “Constitution” in three limbs. Firstly, what is Constitution, Secondly, why we call the Constitution Constitutional law, and thirdly, the concept of Constitutionalism.

Key words: Constitution of India, Trio View, Constitutionalism

What is the Constitution?

A constitution is a document or text. To which the citizens of India consider as sacred as like the Quran, bible, Bhagavadgita to the respective religion. And the citizens of India should obey the text. The text is regarded as one of the lengthiest. It is said to be a Supreme document. The preamble of the Constitution says India is a Sovereign, Socialist, Secular, Democratic, Republic and it gives the entire meaning of the Constitution. The said holy text contains the rights and duties to exercise by the people of India. The said rights and duties are said to be fundamental rights and duties enumerated in Part III and Part IV respectively in the text. It gives the inalienable right to the people, if the person's right got infringed or if the legislation is inconsistent with the said rights then the people of India can invoke Article 32 to the Supreme Court and Article 226 to the respective High Courts to pray to adjudge such act as void. It not only gives the right, duties, to the people but also the three organs of the state.

The draft of the Constitution took almost 2 years, 7 months, and 11 days to complete. Finally, it was adopted on Nov. 26, 1949, and came into enforcement on Jan. 26th of the following year i.e; 1950. The draft has passed by resolution and hence codified it as law. We call it “Constitutional Law”. The question we all as Indians should ponder is that Whether the citizens of India knew that there is a constitution to which we are subordinate and to obey? The answer to this question would be partly Yes, and partly No. There is a lack of

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awareness among the people about the Constitution of India. So, there are not courageous enough to question the government about the promises that they gave in the manifesto and about their administration. Questioning the ruling government about its schemes and administration is the right of every citizen of India. It's very shame to say that even some political leaders and the authorities do not know about the Constitution. Because these days there are illegal arrests and detentions, restricting to free speech were increasing day by day. If any citizen has made any allegations against the ruling government, the said person will be detained in custody without following the correct procedure by the top cops in the respective district or division by obeying orders from the ruling government but failed to obey the Constitution.

As “Udai Raj Rai” one of the chapters in his book stated that the very existence of a Constitution ensures that the rulers are under an obligation to act in accordance with the Constitution and not to act according to their whims and fancies². The objective of the text is to give equal freedom, liberty, justice, etc. therefore, the act which is against the Constitution will defeat the sole purpose of the Constitution. The author had the experience to encounter the students who belong to a non-legal fraternity, had asked them about the Constitution and their rights. Their reply was yes we have studied it till 10th Standard in Social Studies subject but now we are not aware of it, this statements made me shocking. It's not the fault of students but of the state which is bound to make them aware of the text and rights of every individual. There is no rule that only the legal fraternity should read the Constitution and question the authority when they fail to do their duty as prescribed in text and respective legislations. While addressing the Plintium jubilee function of Dr. B.R.Amedkar College of Law, Andhra University the Vice president has quoted one of the quotes from Ambedkar about the Constitution as follows: “Constitution is not a mere lawyers’ document, it is a vehicle of Life, and its spirit is always the spirit of Age.”³

A few takeaways from the speech delivered by “Justice Dr. D.Y. Chandrachud” at Bombay Bar Association on “Why Constitution matters” as follows:

His Lordship stated that Constitution plays individual at his heart to guide the functioning of democratic institutions and it acquires identity through experience, from a combination of aspirations and commitment, that express the nation's past and desires to transcend that past. It also recognized the diverse identities of Citizens. He further emphasized that, when we jail a cartoonist for seduction, when jail instead of

²Udai Raj Rai, Constitutional Law-I, 1st edition, 2016. Eastern Book Company (EBC).

³Press Information Bureau, Government of India, Vice President's Secretariat,
<https://pib.gov.in/PressReleseDetailm.aspx?PRID=1643281>,



bail is given to the blogger who is a critic of religion, when a mob lynches a person, for food that he/she eats, it is the Constitution that is lynched and finally when we deny a human being, the power of love for reasons of religious, caste, it is the Constitution which made to weep⁴.

Constitutional Law:

We call the Constitution Constitutional law because it is regarded as Superior to all laws of the country. Hence, it is the Law of all the laws. The central or state governments while passing legislation, the said legislation should be consonant with the Constitution. If it is passed by either government, the next role lies on the Judiciary to check whether the said law which is passed is within the constitutional parameters. To make the amendments to the Constitutional law is harder than the other laws. The case of *Golak Nath vs State of Punjab*⁵ held that Law must ordinarily include Constitutional Law. Ordinary law is made by the center and state legislation will be made by exercise legislative power and Constitutional law is made by the exercise of Constituent power and in infamous *Indira Nehru Gandhi vs Raj Narain*⁶ held that in a rigid constitution like ours the validity of Constitutional law cannot be challenged but the ordinary law can be challenged on the touchstone of the Constitution. Constitutional law is as much law as ordinary law and further made a remarkable statement that the Constitution cannot consist of a string of isolated dooms. The ordinary legislative power can be used to test whether the law is Constitutional law or not held in the *State of Karnataka vs Union of India*⁷.

Constitutionalism:

The concept of Constitutionalism is very prevalent in India nowadays. Because of the way the government exercising the powers arbitrarily. To limit such arbitrary powers the judiciary should exercise Constitutionalism. The judiciary plays a vital role in limiting the arbitrary powers of the government. So, it is said that the Judiciary should be independent and impartial to render justice. The authority seems to follow the Rule of Law but they are not and they are violating the Rule of Law. Some authorities were not following the procedure while arresting the person, detaining him in custody, there are law and order problems everywhere, etc. There is no equality in giving protections to the Citizens it is manifest in many states of India where there

⁴https://www.youtube.com/watch?v=vr1Dc_-ZKbQ, Lecture by Hon'ble Justice Dr.D.Y. Chandrachud , on Why Constitution Matters.

⁵*Golak Nath vs State of Punjab* (1967) 2 SCR 762

⁶ *Indira Nehru Gandhi vs Raj Narain* 1975 Supp SCC 1

⁷ *State of Karnataka vs Union of India* (1977) 4 SCC 608



is Mob lynching to the particular community. The rights and liberties of Citizens are curtailing by the government. “Prof. C. Perry Patterson” of the University of Texas in his Article titled “ The Evolution of Constitutionalism” has said that Constitutionalism is the means which enables man to draft his Constitution, to establish his government, and to organize the powers in such a form that it will affect his safety and happiness further the professor went ahead to say about and said that Rome’s Constitutionalism consists of 1. Principle of Checks and Balance 2. The doctrine of popular sovereignty, 3. The principle of higher law or doctrine of natural law or the doctrine of a limited government and American’s principle of Constitutionalism are 1. a general law of the land equally applicable to all and affording equal protection to all, 2. It cannot validly operate retrospectively,3. It must be enforced through Courts,4. Legislative power does not include judicial power. Atlast, the professor has quoted “Carl Friedrich” about Constitutionalism as follows; Constitutionalism is probably the greatest achievement of modern civilization, without which little or none of the rest is conceivable, under it, for the first time in the history of man, has a measure of freedom and well-being been achieved for the common man⁸.India’s principle of Constitutionalism is the same as the American's Principle of Constitutionalism. India’s constitutional law also applicable equally without any discrimination of caste, creed, and gender. And it also demarcated the powers to its three organs of the state i.e; Executive, Legislature, and Judiciary. One organ cannot overreach another organ. There are is also checks and balances applicable to three organs. One organ can be check over another organ. For instance, the work of the executive and legislature can be a challenge in a Court of law. The Top Courts of India can act as a check to the rest of the organs of the state. “Professor Upendaxi Baxi” in his speech at Nalsar University stated that he is will not accept the word “Constitutionalism” but he will place C’s instead of that word. 1st C- Constitutional text, 2nd C- Constitutional Interpretation, and 3rd C- the ideology and theory of Constitution⁹.Following Upendra Baxi, yet another “Prof. M.P. Jain” has lamented about Constitutionalism in his book Indian Constitutional Law as follows: He says that a country may have a “Constitution but not necessarily Constitutionalism”. It means that though a country has a Constitution, there should be Rule of law, separation of law, Independent Judiciary thus we can say that there is Constitutionalism in that country. Furthermore, he says the meaning of Constitutionalism itself says to put the limitation on government. Constitutionalism is the antithesis of arbitrary power and the antithesis to Constitutionalism would be despotism¹⁰.In the year 2007, *I.R.Coelho vs*

⁸ C. Perry Patterson, The Evolution of Constitutionalism, Minnesota Law Review(Journal of State Bar Association) Vol.32, April,1948.

⁹<https://www.youtube.com/watch?v=ju0-27KqZKo>, ‘Constitutionalism and Identity’, Prof. Upendra Baxi, Nalsar University.

¹⁰ M.P.Jain, Indian Constiutional Law, 4th Edition.



*the State of T.N.*¹¹ held that the principle of Constitutionalism requires control over the exercise of governmental power to ensure that it does not destroy the democratic principles upon which it is based and the protection of fundamental constitutional rights through the common law is the main feature of common law Constitutionalism. And the following is yet another one of the notable judgments in the recent past i.e; *Navtej Singh Johar vs Union of India*¹², where talks about the concept of Transformative Constitutionalism. Para No. 108 & 109 of the judgment says as follows: the concept of Transformative Constitutionalism has its kernel a pledge, promise, and thirst to transform the Indian Society to embrace therein in letter and spirit, the ideals of justice, liberty, equality, and fraternity. And also says that the ability of the Constitution to adapt and transform with the changing needs of the time.

Conclusion:

The author would like to conclude by citing “Justice Chandrachud's” statement on the Constitution that, Constitution is a living document, it is a document for the future of the Constitution is not framed for the future, it is doomed to fail¹³. The Constitution will live to give direction to the functioning of the three organs of the state, even if we do not believe in it. The Constitution is said to be transforming these days, so the concept of transformative Constitutionalism has evolved by recent notable judgments from Top Court. Hence, for a democratic country like India, Constitution and Constitutionalism area must and we have to obey both to exercise our Inalienable rights without hindrance.

¹¹ (2007) 2 SCC 1

¹² (2018) 10 SCC 1

¹³ Supra, note.3