

SOS POLITICAL SCIENCE & PUBLIC ADMINISTRATION

M. A PUBLIC ADMINISTRATION II SEM

CONSTITUTIONAL SYSTEM IN INDIA (204)

UNIT- IV

TOPIC - RELEVANCE OF THE PRESENT CONSTITUTION REFORM

INTRODUCTION-

Last year, the Government decided to celebrate 26th November as Constitution Day as on this day in 1949, the Constituent Assembly of India adopted the Constitution of India. The date is very pious to the idea of India and reminds of the great struggle by our countrymen to achieve freedom and a constitution of their own.

The constitution of India is the supreme law which provides the framework for governance, establishes the structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens. It declares India as a sovereign, socialist, secular, democratic republic state while assuring its citizens of justice, equality, liberty and to promote fraternity among them.

Last year, many parliamentarians debated widely on the constitution and spoke on it. They were engulfed on the issues of intolerance, secularism and freedom

of expression mainly. However the gamut of the Constitution is much wider and we need to analyze the relevance from multiple views. As the country is facing the heat of demonetization to wipe out black money and end corruption on the one hand while on the other we are facing constant firing from across the border and myriad issues affecting the day to day functioning of the governance and public administration.

The constitution has imparted right to equality where we have political equality but socio-economic equality is still a distant dream when our about 300 million population are still poor having very tough time to access basic facilities. Almost 69 percent of India lives in villages and among them a majority doesn't have good health, education, sanitation, etc. We are still striving to provide work, food and decent living to large mass.

Even on the parameter of justice system, the delayed processes and overloaded judicial structure is well known so much so that CJI Thakur bursted into tears few months back while pleading the Government to provide necessary infrastructure. The long tussle between judiciary-executive is not a secret which hampers overall process of Governance. And our legislature has started waning given their pathetic disruptive show on live television. People have started to lose faith in the representatives they have selected.

While in the era of high internet penetration and information overflow, the Government has regularly censored the contents demeaning the freedom of expression. In the times of instability, insecurity and unsustainability; the question that we need to ask is that how relevant is our supreme law which was framed decades ago in different times when population of country was lesser and problems were very different from the present times.

To begin with a famous critical quote by a constituent assembly member who said : “We wanted the music of Veena or Sitar, but here we have the music of an English band.” It sums up the way he saw the whole constitution making process but giving full credit to our founding fathers of the constitution, the document became very pragmatic, effective and living. Granville Austin comments, “Yet a constitution, no matter how well conceived, can only establish institutions on paper. Breathing life into them is up to the succeeding generations.”

Our constitution was framed with right intent with accommodative ideas from diverse backgrounds and has very much proved to be a living document. It is flexible and amendments have occurred from time to time to adjust any dynamic change. Yet it is beauty of our constitution that it provides for a platform where our representatives can make changes in it if required. While our neighbors and many other big democracies of the world has faced immense difficulty with their constitution, India has successfully continued to demonstrate the world how Constitution can guide a large country to function in smooth manner.

As the constitution has provided fundamental rights to people to live in a way which they want, it has also given us fundamental duties. These fundamental duties are guidelines to realize the dreams of a peaceful and prosperous country. In the same way, the Governments are also provided with set of instructions known as Directive Principles which must guide their way to make society more inclusive having equal opportunity for all citizenry. It is totally

upon the people of India, our representatives, our office-bearers, etc who are holding important posts how they take forward the legacy of our founding fathers. Time to time, from emergency era to arrival of new millennium, we have raised this same question of relevance of our constitution and the continuance of the same constitution bears testimony to the fact of greatness of our holy book. In the conclusion of his *Making of India's Constitution*, Justice Khanna writes:

“If the Indian constitution is our heritage bequeathed to us by our founding fathers, no less are we, the people of India, the trustees and custodians of the values which pulsate within its provisions! A constitution is not a parchment of paper, it is a way of life and has to be lived up to. Eternal vigilance is the price of liberty and in the final analysis, its only keepers are the people.”

Constitution reform

British politicians and bureaucrats tried to cure India's ailing body politic with periodic infusions of constitutional reform. The separate electorate formula introduced for Muslims in the Government of India Act of 1909 (the Morley-Minto Reforms) was expanded and applied to other minorities in the Government of India Acts (1919 and 1935). Sikhs and Christians, for example, were given special privileges in voting for their own representatives comparable to those vouchsafed to Muslims. The British raj thus sought to reconcile Indian religious pluralism to representative rule and no doubt hoped, in the process of fashioning such elaborate constitutional formulas, to win undying minority support for themselves and to undermine the arguments of Congress's radical leadership that they alone spoke for India's "united nationalist movement." Earlier official support of, and appeals to, India's princes and great landowners had proved fruitful, especially since the inception of the crown raj in 1858, and more concerted efforts were made in

1919 and 1935 to wean minorities and India's educated elite away from revolution and noncooperation.

The Government of India Act of 1919 (also known as the Montagu-Chelmsford Reforms) was based on the Montagu-Chelmsford Report that had been submitted to Parliament in 1918. Under the act, elections were held in 1920, the number of Indian members to the viceroy's Executive Council was increased from at least two to no fewer than three, and the Imperial Legislative Council was transformed into a bicameral legislature consisting of a Legislative Assembly (lower house) and a Council of State (upper house). The Legislative Assembly, with 145 members, was to have a majority of 104 elected, while 33 of the Council of State's 60 members were also to be elected. Enfranchisement continued to be based on property ownership and education, but under the act of 1919 the total number of Indians eligible to vote for representatives to provincial councils was expanded to five million; just one-fifth of that number, however, were permitted to vote for Legislative Assembly candidates, and only about 17,000 elite were allowed to choose Council of State members. Dyarchy (dual governance) was to be introduced at the provincial level, where executive councils were divided between ministers elected to preside over "transferred" departments (education, public health, public works, and agriculture) and officials appointed by the governor to rule over "reserved" departments (land revenue, justice, police, irrigation, and labour).

Although any change in the Constitution can be labeled a reform, the broad term "constitutional reform" is usually reserved for proposed amendments that would alter in some fundamental way the structure of the government established by the nation's charter—that is, the organization of the legislative, executive, and judicial branches, the distribution of power among them, and their interrelationships.

Rarely have structural amendments to the Constitution been adopted. Of the twenty-six amendments ratified since 1787, only two have affected the form or character of the institutions as they were designed by the Framers. The seventeenth amendment, ratified in 1913, required United States senators to be chosen by popular election rather than by state legislatures. The twentysecond

amendment, approved in 1951, limits presidential tenure to two full terms. The other twenty-four amendments either have added substantive provisions (guaranteeing freedom of speech and religious liberty, abolishing slavery, providing for woman suffrage, and so on) or, while dealing with the governmental structure, have corrected flaws or made minor adaptations in the constitutional design without altering the nature or relationships of the institutions that compose the government.

The stability of the American constitutional structure contrasts sharply with the impermanence of governmental systems in many other countries, some of which have written, discarded, and rewritten entire constitutions during the period that the United States constitutional structure has remained virtually unchanged. The American experience undoubtedly reflects a general satisfaction with the governmental system, particularly with that system's original and distinctive feature—its separation of powers and checks and balances. It may also reflect the fact that the Constitution embodies probably the most difficult amending process of any constitution in the world. In the normal process, an amendment must be approved by two-thirds of each house of Congress and then be ratified by the legislatures (or constitutional conventions) of three-fourths of the states. The requirement for such extraordinary majorities confers an effective veto power on any sizable political bloc; an amendment must be favored by Republicans and Democrats alike, by both conservatives and liberals, by advocates of a strong presidency as well as defenders of Congress. Yet structural amendments redistribute power and hence create winners and losers among the political blocs. The potential losers can usually muster enough support, either in the Congress or in the state legislatures, to block action. (As an alternative to initiation by the Congress, amendments may be proposed by a constitutional convention organized at the request of two-thirds of the state legislatures; but no such convention has ever been called. ratification by three-fourths of the states would still be required.)

During the 1980s, the objective of constitutional reform attracted authoritative and well-organized support, expressed through two organizations made up of persons with long experience in high office. One, which included former officials of every administration from Dwight D. Eisenhower to Ronald Reagan, was created in 1982 to advocate a single six-year term for the President—a proposal with a history of

support going back to Andrew Jackson. Ineligibility for reelection, the group argued, would enable the President to rise above politics and put the national interest ahead of personal reelection concerns. But the proposal encountered the objections, among others, that if the President is ineligible for reelection, he becomes a "lame duck" and hence loses authority, and that six years would be too long for a President who turned out to be ineffective. The proposal failed to win widespread support, and the movement faded.

The second organization, established in 1981, was the Committee on the Constitutional System, consisting of former members of Congress, former high executive officials, academics, and other political observers. Identifying the principal structural problem as one of conflict and deadlock between the executive and legislative branches, the committee undertook a broad consideration of remedies. Rejecting the six-year term for the President, the group recommended instead that the term of members of the House of Representatives be extended from two years to four (a proposal advanced in 1966 by President Lyndon B. Johnson) and the term of senators from six years to eight. All House members and half the senators would be chosen in each presidential election, thus eliminating the present midterm congressional contests. Proponents contend that a four-year time horizon for the whole government would enable it to make difficult decisions that it does not now make because the next election is always imminent; opponents respond that the midterm election is a necessary check to enable the voters to register approval or disapproval of their government.

The committee also endorsed an amendment to permit members of Congress to serve in the presidential cabinet and other executive branch positions (a variation of proposals that won considerable support in earlier decades to give cabinet members nonvoting seats in the Congress and to require cabinet members, or even the President, to appear before Congress to answer questions). And it proposed to ease the process for approving treaties, by reducing the present requirement for a two-thirds vote of the Senate to either 60 percent of the Senate or a constitutional majority of both houses.

Finally, the committee recommended consideration of two more radical reforms. One would reduce the likelihood of divided government (that is, one party controlling the executive branch and the opposing party ruling one or both houses

of Congress), which the committee identified as conducive to deadlock and inaction, by requiring voters to choose between party slates for President, vice-president, Senate, and House. The second would provide a means for reconstituting a government that had proved incapable of governing—because of deadlock between the branches, presidential incapacity, corruption, or any other reason—by means of a special election in which the presidency, vice-presidency, and congressional seats would be at stake. Such a procedure would correspond to those by which legislatures in parliamentary democracies are dissolved and new elections held. These proposals, too, attracted little popular support, and constitutional reform remained a subject only for academic debate.

Here are some Important Constitution Reforms

1. Abolition of states according to classes and the introduction of Union Territories and reorganisation of states by language (1956):

This was one of the first significant reforms of the boundaries of Indian states and territories, organising them by the language spoken in those areas. This systematically arranged the states and lowered the complexity of state boundaries. Apart from this, it also abolished the classification of states by progress and per-capita income of the states.

2. The mini-constitution (42nd amendment) inserted Socialism and Secularism in the preamble, a provision on fundamental (1976):

Secularism and socialism were inserted to restore the faith of the nation that minorities would be safe and not be exploited by the rich strata. Also, the rich would not be allowed to dominate the country's economy. The main reason to add socialism was to promote social as well as economic equality in the country. Similarly, the main reason to add secularism was to imply that there was no official state religion of the country.

3. Right to Property deleted from the list of fundamental rights (1978):

The fundamental right to property in India was removed to permit the reorganisation of land and to facilitate land acquisition for developmental

projects. This was carried out by the Indian government at that time since it was not affluent enough to pay people whatever they demanded their land.

4. Lawmakers may be disqualified on the grounds of defection (Law of Defection) (1985):

This was quite a controversial amendment in itself since it was felt that this law would invade on the right of free speech of lawmakers. Under the amendment, a Member of Parliament or state legislature was considered to have defected if they either on their own resigned from their party or violated the directions of the party leadership on a vote. That is, they may not vote on any issue in violation to the party's decision. Independent members would be disqualified if they joined a political party. Nominated members who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.

5. Voting age reduced from 21 to 18 (1989):

The then Prime Minister Rajiv Gandhi explained it as an expression of the government's full faith in the youth of the country. The youth are aware and informed and thus, lowering of the voting age would provide an opportunity to the unrepresented youth of the nation to vent out their feelings and motivate them to become a part of the political process eventually.

6. Introduction of Nagarpalikas and Municipalities (1993):

During the early 90s local bodies in states had become ineffective in holding regular elections or the maintenance of public infrastructure, electricity and water supply. Thus, an immediate need to introduce effective authorities to execute the numerous plans and programs was felt by the government.

7. Free and compulsory education to children between 6 to 14 years (2002):

One of the most important amendments, the government directed private schools to take 25% of their class strength from economically weaker or disadvantaged groups of society through a random selection process with the help of the government funding. This initiative was taken to try and provide elementary education to all. Moreover, the local and state governments were made to ensure its proper implementation.

8. Allowed the government to pass laws relating to reservations to socially, economically backward classes, scheduled castes and scheduled tribes in public and private higher educational institutions (2014):

Scheduled castes and scheduled tribes have been the most neglected and exploited people in India. The curse of untouchability has always been a dark

spot on Indian civilisation and culture. Despite the constitutional declaration of its abolition under Article 17, it was still quite prevalent in many subtle and not so subtle ways. Therefore, for the very integrity, survival and the nation's unity the amendment to pass laws relating to such reservations were quite a need of the hour.

9. Introduction of the Goods and Services Tax (GST), to present the idea of One Nation, One Tax (2016):

The most recent important amendment came with the implementation of the GST, where consumers would not be subjected to double/ multiple taxations. All taxes that are imposed while purchasing goods will include both the central government's taxes as well as the state government's taxes. The introduction of GST has deterred the state governments .

10.The Constitution (One Hundred and Twenty-Sixth Amendment) Bill, 2019 was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad, on December 9, 2019. The Bill amends provisions related to reservation of seats for Scheduled Castes (SCs) and Scheduled Tribes (STs).

1. The Constitution provides for reservation of seats for SCs and STs and representation of the Anglo-Indian community by nomination, in Lok Sabha and Legislative Assemblies of states. This has been provided for a period of 70 years since the enactment of the Constitution and will expire on January 25, 2020. The Bill seeks to extend the reservation for SCs and STs by another 10 years till January 25, 2030.

11.The Constitution (Amendment) Bill, 2020 (insertion of new article 47A) was introduced by Shri Anil Desai as *Private Members' Bill* in Rajya Sabha on 7th February 2020. It says that The State shall promote small family norms by offering incentives in taxes, employment, education etc. to its people who keep their family limited to two children and shall withdraw every concession from and deprive such incentives to those not adhering to small family norm, to keep the growing population under control.