

To Study The Legislative And Judicial Branches' Interaction And Disputes

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ABSTRACT

The Constitution of India, incorporates all such concepts and features, as may be expected of a modern democratic constitution and in their effort to draw balance and harmony, the makers have departed from accepted notions of constitutional democracy as they stood at the time. However, it must be noted that the various features of constitutionalism are retained in essence and where the Constitution of India departs is in the methodology of their application. A thorough analysis of several such concepts lend credence to this constitution's claim to uniqueness. The honourable Supreme Court of India has, in several landmark judgements attempted at unearthing this unique identity vis-à-vis the basic structure doctrine. Although a precise definition or even the clear scope of this 'basic structure' still eludes us, it has been considered by many as having been ambiguous, some even suggesting that the ambiguity was advantageous to the judiciary. Furthermore, the concept of *Constitutional identity* has in the recent past been considered as an important subset of constitutional jurisprudence. The same is acknowledged by the Hon'ble Supreme Court of India in the *Minerva Mills Case*, "Constitution is a precious heritage; therefore, you cannot destroy its identity". However, the concept of constitutional identity as examined in many of these judgements was of a generic kind, rather than focused on the Indian Constitution.

Keyword: Constitution, Harmony, Destroy, Judgements, Judiciary

1. INTRODUCTION

After deciding to declare India a sovereign, democratic republic and articulating this decision in a lengthy preamble, the authors went on to create a complex constitution for India. The attempt to incorporate the wealth of expertise passed down as a legacy from numerous other constitutions that were already in effect was the main cause of the document's length, among other factors. The country's size, diversity of cultures, population, and erratic ideas all contributed to its size. In order to prevent the mechanism from becoming inconsistent with the form prescribed in the Constitution, the authors decided to include the form of administration in the Constitution itself rather than leaving it to the legislature, given that India was emerging as an independent nation after a protracted period of foreign rule. In addition to having complex and detailed laws defining the numerous factors governing the connection between the center and the states, it deals with the organization and structure of both the federal and state governments. Another reason is that the Indian Constitution allows for the expansion and development of conventions, which has significantly increased its size.¹

2. STATEMENT OF THE PROBLEM

2023 marks nearly fifty years in Indian legal history since the Apex Court's ground breaking ruling in the *Kesavananda Bharti case*, which established the concept of "basic structure." Unfortunately, Professor Dietrich Conrad, a renowned German academic and the true creator of the basic structure philosophy, is not given much credit in India. The Indian Constitution is a dynamic governing text that must be updated to reflect shifting societal demands. Furthermore, Article 368 gives Parliament the authority to alter "any provision" of the Constitution in addition to outlining the process for doing so. However, the Apex Court's notion of basic structure is solely a judicial innovation.

3. REVIEW OF LITERATURE

¹ Granville Austin, *The Constituent Assembly - Microcosm in Action*, in *The Indian constitution cornerstone of a Nation* 1-31 (2018).

Pavone, T. (2014). Constitutional Identity: An Overview and Some Conceptual Concerns. Princeton University.

A thorough analysis of the idea and its consequences for constitutional theory and practice may be found in Pavone's summary of constitutional identity. The essay examines the beginnings and evolution of constitutional identity and talks about how it helps define and uphold a constitution's fundamental principles. Pavone discusses a number of conceptual issues surrounding constitutional identity, such as how it relates to democratic values, the rule of law, and judicial scrutiny. The paper also looks at the relationship between ideas of constitutional change and adaptation and constitutional identity. Pavone's work adds to the continuing discussion on the importance of constitutional identity in preserving constitutional integrity and tackling current legal and political issues by providing a critical analysis of the idea.

Seetharamanan, B., Kumar, S., & Shiva, Y. (2013). The Quest for Constitutional Identity in India. Indian Journal of Constitutional Law, 6, p.191.

The paper by Seetharamanan, Kumar, and Shiva examines how Indian constitutional law both shapes and is shaped by the idea of constitutional identity. With an emphasis on important constitutional provisions, court rulings, and legal precepts, the study explores the evolution of Indian constitutional identity across time. The writers examine how constitutional identity defines the fundamental ideals and tenets of the Indian Constitution, as well as how it affects judicial review and constitutional modifications. The difficulties of preserving constitutional identity in a multicultural and changing society are also discussed in the article. The paper advances knowledge of how Indian constitutionalism and legal procedures are impacted by this idea by offering a thorough analysis of constitutional identity in India.

Jacobsohn, G.J. (2006). Constitutional Identity. The Review of Politics, 68(3), pp.361-397.

The theoretical and practical aspects of constitutional identity are examined in Jacobsohn's article, which offers a thorough examination of how constitutional identity operates within political and legal frameworks. The concept of constitutional identity is examined in relation to the upholding of fundamental constitutional ideals and principles. Jacobsohn talks about how judicial interpretation, constitutional changes, and the general structure of constitutional governance are all influenced by constitutional identity. The difficulties of preserving constitutional identity in the face of shifting social and political environments are also discussed in the paper. Jacobsohn's study advances knowledge of how constitutional identity affects the evolution and stability of constitutional systems by providing a thorough examination of the idea.

4. OBJECTIVES OF THE STUDY

1. To investigate the dispute about Parliament's plenary authority under Article 368.
2. To research the legislative and judicial branches' interaction and disputes.

5. RESEARCH METHODOLOGY

The fundamental goal of research has always been to draw specific findings and offer recommendations based on the study. This has been made possible by obtaining valuable material based on a thorough comprehension of the pertinent text on the topic. The current study project's methodology is essentially meant to be thorough. The research design used in this study is analytical, doctrinal, and descriptive. The study of primary and secondary sources of information forms the basis of the research project. Journals, periodicals, magazines, articles, and news items are examples of secondary materials that have been used in this study. Primary sources include literature on the revision of the Indian Constitution and Basic Structure concept. The primary focus has been on covering every pertinent aspect of the research investigation.

6. RESULT AND DATA INTERPRETATION

The pre-axial concept of good and wrong, discovered in the Rig Veda, was the earliest mention of a systematic attempt to control human behavior. The RTA is the most fundamental interpretation of the idea that guides all behavior. Ancient texts describe rta in a variety of ways, including "proper, right, fit, apt, suitable, able, brave, honest; fixed or settled order, law, rule, sacred or pious action or custom, divine law, divine truth." Nevertheless, numerous academic studies pertaining to the concept of rta have determined that the term closely reflects the concepts of truth, law, and order. According to the ancient texts, when rta is embraced as a way of life, one can obtain justice, freedom and liberty, security, and righteousness. The outcome, known as anrta, is recognized as a sinful conduct when one disregards the same. But in the end, the ideas of rta and anrta fulfilled a much greater function by giving the old sociopolitical structures the capacity to distinguish between right and wrong.²

² McCrudden, C., 2017. Legal research and the social sciences. In *Legal Theory and the Social Sciences* (pp. 149-167). Routledge.

However, the entire vedic era addressed much more than just basic ideas of right and wrong. Beyond this fundamental idea of fairness, there is more to the concept of justice inherent in the same. In fact, it may be deduced that the ancient sociopolitical organizations aimed to produce a just moral order by motivating each individual to comply with the rules. However, the Rig Veda did not place much emphasis on the idea of creating formalized political organizations with the express purpose of producing a just social order. Rig Veda, on the other hand, placed a strong focus on people adhering to moral and ethical notions of justice, which ultimately ensures social order through the preservation of appropriate interpersonal connections.³

The six mahapuranas, which were assembled by the renowned writer, poet, and sage Vyasa, are revealed to us much later than the Rig Veda. Here, Yama, the Lord of Justice, sits in judgment of the deceased to decide their fate in the hereafter, introducing us to organized justice. The Garuda Purana presents a straightforward but somewhat straightforward kind of justice that is understandable to the average person. But securing judicial enforcement after death was not the only ultimate goal of this divine justice. It did, in fact, apply more to the living people because they were the ones who committed to this idea of justice and were concerned about any consequences beyond death, which contributed to the establishment of a stable social order.⁴

The sutras and dharmashastras have a more intricate and nuanced exposition of the idea of justice. These famous treatises go into greater detail about the administration of justice. According to the dharmashastras, dharma is an extremely important concept. Through these works, the antiquated idea of Rta-based justice is transformed into a dharma-based system of justice administration. Subsequent generations of authors of the numerous dharmashastras and sutras that emphasize the position of this new notion of dharma as the "King of Kings" declared that dharma was "a common law for all Hindus". Additionally, all of these ancient texts by the great many succeeding authors maintain a clear consistency in that they never placed the king above the law. A coronation oath, in which the prospective monarch declared that he would always rule in accordance with the law and not otherwise, was one of the procedures associated with the ritualistic ascension of the monarch to the throne in line with ancient customs¹⁴. In contrast to the early Vedic kings, who were chosen by an assembly of the populace known as the samiti, this custom was rigorously upheld even after the process of becoming a king became a hereditary norm. The paurajana and the councils served as further safeguards against the use of kingly power.⁵

All dharmashastras were based on the idea of "dharma," which saw law as a duty and assumed that society was governed by it. This divinely mandated law was intended to rule the monarch, who was also intended to be subject to the same law. The dharmashastras required the King to be led in the administration of justice by a vast array of ministers and knowledgeable brahmanas (versed in the vedas and the dharmashastras), purohitas (literally, well-wishers of the country), and sabhyas (members of the sabha) forming cooperative administration of justice, attempting to manage the relationship between the King and his administrative counselors in order to strike a balance between authority and responsibility.⁶

Through the four-fold path of dharma (law and justice), artha (material goods), kama (all desire), and moksha (ultimate redemption), Kautilya presents us with the idea of "purushartha," which defines the purpose of existence. The final part of the Arthashastra, however, receives little attention. On the other hand, dharma is given due consideration, albeit in the form of Raja Dharma. The essay highlights the necessity for the state to guarantee the "common good" of all citizens and acknowledges the King as a suitable tool for doing so. Therefore, according to the Arthashastra, the welfare and long-term contentment of the populace should be the main considerations in all policy decisions. Because of the existence of Danda (Sanction), which stands for the coercive force of authority, this aspect of dharma frequently comes to pass. As a result, Kautilya has taught that a King should never hesitate to utilize Danda, even if it is against his own father.⁷

Despite its popularity in the pre-Kautilyan age, Kautilya consolidated and thoroughly addressed the Saptanga system of governance in the Arthashastra. Kautilya begins by defining a state, or Rajya, as a location where all authority is concentrated in the government, which has complete control over a region inhabited by people. This rajya is made up of

Swamin, amatya, janpada, durga, kosa, danda, and mitra/shatru, or King, Ministers, people, fortifications, treasury, power, and allies/enemies, are the seven fundamental components.

The Arthashastra held that all matters pertaining to governance depended on appropriate post-deliberative decision making and that sovereign power could only be freely exercised with the collaboration of all state components.

³ Bintliff, B., 2007. Context and legal research. Law Libr. J., 99, p.249.

⁴ Monier-Williams, M. 1960. A Sanskrit-English Dictionary, Oxford.

⁵ Das, B.C., 2018. Vedic Concept of Rta. The Journal of East West Thought, 8(1), pp.5-11.

⁶ Singh, S.P., 2009. Ethics in the Vedas. A Historical-Developmental Study of Classical Indian Philosophy of Morals, pp.46-70.

⁷ Mirakhor, A. and Askari, H., 2019. Conception of Justice: Pre-Axial India. In Conceptions of Justice from Earliest History to Islam (pp. 49-62). Palgrave Macmillan, New York.

According to Arthashastra, proper control systems over the King and his government are necessary for good governance.⁸

Constitutional Developments during the early Medieval age.

The persons and events that took place between the seventh and seventeenth centuries are examined in the historical period known as the medieval ages. Most historians agree that the 1000-year period mentioned is appropriate. With several rulers in various parts of the Indian nation, developments throughout this time were varied and diverse. Harshavardhana replaced the Mauryas and Guptas in the north, followed by the Palas and Pratiharas. These kings were largely Hindu and adhered to the political and social structures of the previous Hindu kingdoms. The Rashtrakutas also rose to prominence during this time. The Pallavas Chalukyas, and the With the Arthashastra's teachings and the idea of Rajadharma playing a significant role in politics and governance, Cholas were well-known.⁹

South India's Local Self-Government

The creation of a sophisticated local self-government structure under the Cholas was an intriguing deviation from the usual. According to the system, the village served as both the fundamental unit of governance and the lowest territorial entity. The village headman and the village accountant's office handled administration. A council of local elders known as the Grama Mahasabha helped them with this. A similar structure was in place in the Rashtrakuta provinces, where different subcommittees of the village council were established to govern different facets of local administration, including as roads, schools, and temples³⁵. The trade guilds were connected to similar committees in towns. The Kotwal or Kostha pala, who was in charge of upholding law and order, is a well-known figure from these times³⁶.

The Impact of the Bhakti Movement on Constitution, Justice, and Administration in India.

The deeply ingrained concepts of tyranny and rigidity in Hinduism gave rise to the Bhakti movement, a religious and social reform that occurred in medieval India. Reformers and poets performed songs in the local language that demonstrated devotion to God in order to reach the average person. This literary movement surpasses the boundaries of its literary subject matter and takes significance as a socio-political and ideological phenomenon, emerging from a culture in change that is not just religious but also social, economic, and political. By promoting a version of the religion that eschewed ritualism and casteism in favor of social equality and individual devotion, the movement aimed to win people back to the faith. By opposing the caste system and advancing equality among believers, the movement had a significant impact on social justice. Saints like Kabir and Ravidas promoted a new way of practicing Hinduism that was open to everyone, advocating for overcoming socioeconomic divides. Later movements aiming to reducing social inequities were made possible by the movement.¹⁰

CONCLUSION

In order to defend minority identities, the Constitution also has particular provisions that protect religious, cultural, and educational rights. Dynamic judicial interpretations of the Constitution balance individual rights with communal obligations. The judiciary's proactive participation has been essential in upholding constitutional provisions and strengthening people's rights. Additionally, the Constitution has been seen as a post-colonial style to governance that combines indigenous beliefs with Euro-American influences. Although there is value in this analysis, it must¹¹ It should be noted that the Indian Constitution has evolved to reflect shifting socioeconomic circumstances.

By incorporating core values like limited government, federalism, democracy, the rule of law, and the preservation of fundamental rights while also taking into account India's distinct historical and social context, the Indian Constitution is a prime example of contemporary democratic constitutionalism. This flexibility is essential for dealing with India's changing political environment. In order to avoid the misuse of power and guarantee that governmental authority is used within predetermined bounds, the Constitution creates checks and balances. It advocates for a federal framework that upholds national unity while accommodating India's diversity and enabling local government. The rule of law is upheld by the Constitution, guaranteeing that all people and organizations are subject to the law. Fundamental rights are guaranteed by the Constitution, but they must be interpreted in light of community demands and constitutional morality. In interpreting these rights and striking a balance between individual liberties and state authority, the judiciary is essential. The Constitution's responsiveness to past injustices and dedication to human rights are demonstrated by the shift from colonial rule to a democratic republic. Federalism, judicial activism, and minority rights are examples of current situations that emphasize the necessity of continuously adapting constitutional concepts to modern challenges.

⁸ Rajkumar, N., 2014. Justice Equals Dharma: A Comparative Study of Justice in the Inferno and the Garuda Purana. Plaza: Dialogues in Language and Literature, 5(1), pp.48 -58.

⁹ See Generally, Wood, E. and Subrahmanyam, S.V., 2020. The Garuda Purana (Vol. 1). Library of Alexandria.

¹⁰ Ja yaswal, K.P., 1924. Hindu policy: A constitutional history of India in Hindu times. Butterworth and Company, Calcutta.

¹¹ Tripura, B., Gupta, J.K., Kharbithai, M. and Shameera, T., 2023. constitutional rights and social justice in India: an analysis. Journal of Namibian Studies: History Politics Culture, 35, pp.3128 - 3158.

The Indian Constitution balances the ideas of democracy, federalism, and the rule of law in an effort to preserve a harmonious balance among its many constitutional precepts.

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