

## **A B S T R A C T**

### **THEORY AND PRACTICE OF CONSTITUTIONALISM AND CONSTITUTIONAL DYNAMICS – A STUDY IN THE CONTEXT OF INDIA’S FEDERAL GOVERNANCE SINCE 1967**

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Studies on constitution and its functioning have been central theme since the time of Aristotle. It is true that constitutions vary in content and structure from country to country, depending upon the nature of historical setting, social structure, economic foundations and political processes of each country. It may be stated that studies on constitutions in earlier period have been mostly formal, legal and structural in nature. In this frame of analysis constitutions are looked upon simply as structural mechanism which provides for foundations for administering the country.

That constitutions are not merely a legal document but reflects the ideas, aspirations, attitudes and goals of the nations – have been realized in contemporary analysis. Constitution is considered to be the supreme law of the land and contains within itself the basic philosophy of the nation concerned. It may not be out of place here to mention that in every written constitution, the Preamble embodies the basic philosophy and ideals of the nation. At the sametime it is important to note that from a strict legal point of view a Preamble is not a part of the constitution. But that does not minimize the importance of Preamble and in many recent cases, judiciary, while deciding upon a case, refers to the ideals contained in the Preamble. This has added new importance to this section of the constitution.

The notion of constitutionalism can be viewed from this perspective. A constitution contains the basic ideas and philosophy of

the nation. These ideals and philosophies are more or less eternal in nature and each nation tries to achieve those goals.

Closely following this, comes another concept of equal importance and implications – constitutional dynamics. A constitution is considered to be a ‘living organism’ and it should have the capacities to respond to the out world changes that take place because of interactions between environment and political process. Karl Lowsteins’, Ontological classification of constitution into normative, nominal and semantic appears to be appropriate. To him most of the constitutions fall into the category of ‘nominal’ nature because in this type of constitution here may be gaps between the declared objectives and the achievements made through the constitution. Again it is said that a constitution should have three basic features or capabilities as extractive capability, regulative capability and symbolic capability. All these taken together suggest that a constitution should have dynamism of its own and should be oriented towards the achievements of goals.

The present study, with this theoretical and conceptual framework, has sought to examine both constitutionalism as the basic foundation of the Indian constitution against the overall background political process in the country with in a federal setup.

A look into the history of constitutional framing and its practice since independence, or more specifically since the framing of the constitution by the Constituent Assembly shows that the Founding Fathers, right from the beginning, paid adequate attention to these aspects. The constitution has made elaborate arrangements not only for the formal structures of the constitution but also added mechanism for changing the constitution to make it adaptable to changing circumstances. Art.368 which provides for amending mechanism is so wide as to ensure participation not only of the two Houses of the Parliament but also of the state legislatures in specific cases. This was

done to include the state administration in this process in order to strengthen the federal governance.

The history of constitutional amendments reveals that since inception the constitution has been subjected to changes many times. But not all the formal amendments are significant because many changes have affected minor issues in the governing process. But there are two major areas that is nature and extent of fundamental rights and the issues of federal governance have been subjected to several amendments with far reaching implications.

Of all these amendments, the first, fourth, seventeenth, twenty-fourth, twenty-fifth, twenty-sixth and the forty-second amendment acts have far reaching impact not only on the Constitutional arrangements but also on the wider perspective of Indian polity. It is equally interesting to note that all these amendments are directly related with the power of the Parliament in amending the Constitution vis-à-vis the enjoyment of liberty by the individuals. In this connection, one may recall the verdict given by the Supreme Court in the Golaknath case way back in 1967. It not only declared the earlier verdicts of the Court in Shankari Prasad and Sajjan Singh case as wrong but also put a formal check on the power of the parliament to amend the chapter on Fundamental Rights on the place that the word "Law" used in Art.13(2) only refers to ordinary law and the constituent law which is amendment.

This judgement once again brought the Parliament and the judiciary face to face on a warpath. It affected not only the constitutional arrangement but exerted tremendous influence on the political process of the country. The history of 1971 mid-term poll and the return of the Congress Party with a very comfortable majority and subsequent constitutional amendments will suggest the mutual interactions between constitutional practice and the nature and course of the political process. It may not be an exaggeration to say that this process reached the culmination with the passing of the Forty-second Amendment Act. It

was called a “mini Constitution” as it sought to bring about major changes in the vital parts of the Constitutional structure and arrangements. A part of these changes were corrected by the Forty-Fourth Amendment Act.

The present work while making an analysis of the political aspect of constitutional governance has sought to examine their impact on the federal nature of the country. India’s federal arrangement as detailed in the Constitution itself has a close link with the party-structure and constitutional dynamics. The study has shown that the number of amendments went high when there had been political dominance by a party. It is easy to understand that the support base as reflected in the Parliament was responsible for easy passage for a constitutional amendment. Since a Constitutional amendment needs to be passed by both the Houses of Parliament, no government with poor support in the parliament can push on amendment through both the Houses. The emergence of coalition politics further complicated this position. Even after a landslide victory of the NDA and with absolute majority of the BJP in the Lok Sabha, the present government is facing the same problem as it does not majority in the Rajya Sabha.

In the present study, all these aspects have been analysed in details. Looking the problem from a theoretical perspective, attempts have been made to integrate the theme with the nature of federal dynamics of the country. As such, the present study has taken into consideration many other related forces and factors which have their direct bearing on both the constitutional practices and the nature and direction of federal dynamics in contemporary India.

## P R E F A C E

*Studies on Constitutional structure, setting and functions have alternated the attention of the scholars over a long period. It may not be an exaggeration to say that it was Aristotle who paid great attention on the study of Constitution and that too, in a comparative perspective. Since then, many studies have been done but it is interesting to note that most of these studies remained confined within the analysis of the structural aspect of the constitution. These were mainly institutional in nature highlighting the formal structure and content of the Constitution. Such studies have their limitations – these cannot go beyond the formal and legal interpretation of the Constitution.*

*The state of such studies in India has been the same. One may notice the nature of earlier works on Constitution which were essentially legal, formal and in some cases, institutional. But a radical change in perception on constitutional studies has taken place since it was admitted that mere formal/institutional studies cannot reveal the real nature of the functioning of the constitution of a country. It is equally believed that the nature and direction of the functions of a constitution largely depend on the nature and course of the political process at a particular point of time. It is always changing and has its own dynamism.*

*This realization has led to the opening up a series of constitutional studies in a different way. Instead of emphasizing only the formal nature of the constitution, emphasis has been placed on two vital elements – constitutionalism and constitutional dynamics. While the former deals with the philosophical/ideological foundations of the constitution, the latter explains the nature of interactions between the constitutional structure and constitutional dynamics, against the general backdrop of the socio-political environment of the country.*

*The present study, while following this course of analysis, seeks to understand, on the one hand, the formal structure of the Indian Constitution, the history of the making of the Constitution, the nature of constitutional provisions with their scope of coverage and on the other hand, the issues and forces which have been influencing the nature and extent of constitutional dynamics in India. One way, for the purpose of general understanding of the problem, seek to correlate it with the nature of political process in post-independent India which shows many ups and downs, challenges, conflicts and contradictions. But the nature of the Indian Constitution, as designed by the makers of the Constitution has been so wide and flexible that it has been able to withstand all such challenges with a remarkable degree of success.*

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*The limitations, however if any are of mine.*

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