



Impact Factor: 4.081

Constitutionalism & Indian Constitution

Dr. M. M. JAGANI

Assistant Professor in Political Science

M. N. College, VISNAGAR

Dist : Mehsana, Gujarat, India

RAJESHKUMAR J. PATEL

Associate Professor in History

M. N. College, VISNAGAR

Dist : Mehsana, Gujarat, India

ABSTRACT :

26th November, 1949 was the day on which the Indian Constitution was born. But its seeds were sown during the time of the british. Here we shall discuss the story of the development of the Indian Constitution for without it any study of Indian Constitution would be in complete. ²This for instance during the sixth century B. C. there were in India two corresponding forms of state. Territorial kingdoms ruled over by the territorial sovereigns and such autonomous clan with republican or oligarchy governments such as the sakya state of the kapilvastu.

The revolt of 1857 brought an end to the company's rule by the british crown with Queen Victoria's declaration of 1858 some basic changes came about in which the Governor general now came to be known as viceroy and a new post of minister for India was created in England for the purpose of super vising control over the administration in India.

Dr. Ambedkar while addressing the constituent assembly had said" no matter him good a constitution is everything depends individuals. I believe that the Constitution is workable. It is flexible and strong enough to keep the counting united during war time and in times of peace. Let us say that if any things goes wrong it would not be because we do not have the right constitutions but because of the failure of the men in charge of Implementing it."

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Aristotle has rightly described man is a political animal. ⁺¹The evolusntion of man clearly shows that be can not as a General rule live in isolation : his nature and disposition his temperament his needs and necessities and the natural urge Within him lead him to associate with other fellow individuals. This is what modern psychology describes as the herd- complex to this must also be added the ego-complex particularly the instinct of self-preservation. Hence from the very dawn of history we find mankind living not in isolation but in association.

This process of human development is clearly to be seem in the earliest periods of Indian history. As vino grad off points out, the most ancient human institutions was marital relation which was the foundation of the primordial formally of Husband, wife and children. This is the germ from which there gradually grew up the hindu joint family comprising all descendants from a common male ancestor the

expansion of the patriarchal house hold in its turned to the establishment of the system of clans “all the members of the clan traced their pedigree from one original house hold and all regarded themselves as having a share by right in the territory held by the collective body of the clan” the principle of agnation was not however the only factor in this process of development. According to Vinegar-doff around a kernel of agentive relationship supplementary cognitive alliances were formed for the purposes of self – defense and material necessity similar motivated some of the clans to combine with other clans in tribal federations. It is from the two forms of association founded upon blood relationship and strengthen by the factor of common residence that there has emerged the organization which we know today as the state.

⁺²This for instance during the sixth century B. C. there were in India two corresponding forms of state. Territorial kingdoms ruled over by the territorial sovereigns and such autonomous clan with republican or oligarchy governments such as the Sakya state of the Kapilvastu.

Our Indian Constitutional development can be divided into five stage.

- (1) **1600 -1772** : The British rule in India began in 1600 A. D. after the East India Company got the license from Queen Elizabeth-I of ⁺³England to do business in India. That was also the beginning of British power in India this company had come for business in India. But the local municipalities in India were involved in political intrigues. The company took full advantage of it as started taking political power into its own hands.

In 1765 the company acquired civil power in Bengal Bihar and Orissa making the beginning of increasing control over India.

- (2) **1773 – 1857** : The British Parliament passed a regulatory act in 1773 with a view to exerting greater control over company administration. Accordingly the Governor General and a Council consisting of four members were also created. The Governor of Mumbai & Madras were placed under him and the British Crown decided in favor of autonomy of High Court in Bengal.

In 1784 Diarchy in the administration of India began with Pitt's India Act this witnessed a greater control by British Governor over the company. Through the Charter of 1833.

- (3) **1858 – 1934** : ⁺⁴The revolt of 1857 brought an end to the company's rule by the British Crown with Queen Victoria's declaration of 1858 some basic changes came about in which the Governor General now came to be known as Viceroy and a new post of Minister for India was created in England for the purpose of supervising control over the administration in India.

He was also a member of the Government of England. A body called India Council consist of fifteen members with two deputy ministers was also created. This appointment was made by the British Crown and this post continued till 1947 when India became independent.

In 1905 Bengal came to be divided into two under the pretext of administrative convenience. In reality it was the policy of divide and rule. In 1906 Muslim League came to be established that incited Communalism. In 1907 Congress itself came to be divided into moderate and radical groups.

The Indian leaders intensified their demands for a constituent assembly for India. ⁺⁵Anniebesent insisted that the Indian Constitution should be framed by Indians only on 5th January 1922.

In 1928 the Motilal Nehru committee articulated the future aspirations of the people of India in the form of a Report on framing the Constitution which epitomized India's blue-print for future. In 1928 demand for poorna-swaraj at Lahore convention the Dandi march of 1930 and the round convention 1930 to 1932 for Constitutional reforms for India's future were the hall manes of this period.

- (4) **1935 – 1940** : 1935 India act made the various provisions but in 1939 the second world war broke out India without its consent was made a party to in on the side of the British. The congress ministers in provinces resigned. Once again an offer was made to frame the Constitution for India in order to win over the sentiments of its people.
- (5) **1942 – 1950** : Cripps proposals (1942) : the british prime minister Churchill announced Cripps proposals on 11th March 1942 when Britain was steadily ground during the second world war. These proposals essentially included creation of a constituent assembly for framing the Constitution freedom to frame a new constitution for provinces and the union freedom to create a separate unicnerc. Howe ever both congress and muslim league refuged to accept this. The strong reaction of the people shower itself in 1942 when quit India movement was launched.

Cabinet mission (1946) the second world ⁺⁶war came to an end in 1945 and Britain emerged victorious from it. Election were held in Britain in which churchil lost and Mr. Atli of the labour party become the british prime minister. His attitude was one of the giving independence to India and the plan he presented for this purpose came to be known as cabinet mission plan which had two major aspects – (1) interim plan (b) future Constitution arrangements.

- (1) A Union was to be former Consisting of british India and the native States and Important Departments were to be given to Them.
- (2) Three groups were to be formed in provinces.
- (3) Members to the constituent assembly were to be Elected by the Elected provincial Legislature.
- (4) An interim government was to be formed before full Independence was granted on 2nd September 1946 a Ministry was constituted under Nehru's leadership.

Mound batten plan : on 3rd june. 1947 lord mount batten. The victory of India presented a plan which provided for a division of the country go into union of Pakistan. Union of India and the native states each one of them to really Independent.

⁺⁷India Independence act 1947 : under the mount batten pay the British Parliament passed an act which save India political independence but this independence was going to be a fracture one because it provide for.

Two separate sovereign independent states of Pakistan and India became.

Creation of the Constituent assembly: for the process of framing a constituent assembly got under way as per the cabinet mission plan. But the county could not affected to waste time by ordering fresh elections the basis of adult franchise. It was therefore decided that the elected members of the provincial legislature should elect the members of the constituent assembly. This is bow the constituent assembly which

was in charge of framing India's Constitution came to be indirectly elected in all there were 389 members out of which 292 were from the British princes. 4 Bengal to the provinces under the British high commissioner and the 13 came from native states.

⁺⁸The process of drafting the Constitution on began on 9th December 1946 in constituent assembly. Dr. Rajendra prashad as the senior most member was Elected as the chairman of the constituent assembly and on 13thDecember Pandit Jawaharlal Nehru presented a proposal which spectator the highest possible ideals of a Constitution and aspirations of the people which k. m. munshi called the key to democracy. The Constitution has been drafted in accordance with these principles only on 29th august. 1947 a Constitution draft committee consisting of seven members with Dr. Ambedkar as its chairmain was constituted.

There were other sub-committees also apart from the Draft Committee Mentioned above Under chairmain ship of leading personalities these includes of

- (1) Special committee
- (2) Process committee
- (3) Management committee
- (4) Advising committee
- (5) Committee for central power
- (6) Union Constitutional committee
- (7) Committee for fundamental rights.
- (8) Committee for minority rights
- (9) Committee for supreme count
- (10) Committee for financial relation s. between Center and the state etc.

⁺⁹According to Austin the provision for idealist, practical, administrative and technical process reflected the pre-eminent influence of these personalities. The major contributors to the process of Constitution making were krishna swami Iyer n Gopalswamy Iyenger. k. m. munshi t. t. krishnamachari. sir b. n. rao k. t. shah, mahavir tyagi H. N. kunjru, jaipalsingh and mrs. Durga bai. The working of the Constituent assembly was spread over a period of 165 days and 12 conventions and the actual draft of the Constitution took 114 days to complete. The working of the constituent assembly was characterized by democratic ambience and there was no taboo on lengthy discussion or criticism sixty four lakh rupees were spent on this in all and a period of two years eleven Months and eighteen days was spent for this process.

The constituent assembly adopted the Constitution by passing Through three Readings on 26th November 1949 an 24th January 1950 Dr. Rajendra Prasad became first acting president and he signed the Constitution bill with this one of the lenghthiest constituting's in the world was born.

The Constitution was off officially Promulgated on 26th January 1950 this day is known as the "republic day all over India. Dr. Rajendra Prasad words are significant in this context" there is no king and there are no subjects in India now all are kings and all are people.

Dr. Ambedkar while addressing the constituent assembly had said" no matter him good a constitution is everything depends individuals. I believe that the Constitution

is workable. It is flexible and strong enough to keep the counting united during war time and in times of peace. Let us say that if any things goes wrong it would not be because we do not have the right constitutions but because of the failure of the men in charge of Implementing it.”

Key Words :

Isolation, Constitution, Pedigree, Agnation, Kingdome, territorial, Autonomous, Oligarchy, Administration diarchy, Governor General Viceroy Communalism aspirations epitomized, blue-print, flexible, criticism, franchise, province, Revolt, radial, moderato, Parliament, Sovereign.

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