

## INDIAN CONSTITUTION A REVIEW TO FIND THE RELEVANCE OF PROVISIONS & NEED OF MODIFICATION FOR GOOD GOVERNANCE IN PRESENT AGE

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Mr. Anchal Saxena\*

### ABSTRACT

*It is frequently heard that it is my constitutional right, you cannot ask me to do it. CAA bill or NRC Bill became the cause of several sittings, strikes, demonstrations, and picketing. It is also stated several times that India is a perfectly secular country. It never favours extraordinarily but treats equally and no religion can be a national creed. We should not be neglected. We should have equal treatment also alike to the majority religion. We also discuss that it is in the hand of the state to see a local issue and state government should take care of it. Many times people during any conflict, says, "I will see you in court." "The court is the supreme authority." Sometimes they also say our government should make such law or our parliament will surely make a law against Teen Talaq or pass a bill for one-third reservation for women in every legislative body and govt. services. All such statements and discussions compel us to think that what are the features of the constitution? Which type of rights and duties are given by the constitution to citizens of India? What are the center state relations as per the constitution? What is a federal state? Why the judiciary is called supreme power? What is a parliamentary procedure?*

**Keywords:** Strikes, Demonstrations, Picketing, CAA Bill, NRC Bill, Parliamentary Procedure.

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### Introduction

At first, our nation is sovereign, socialist, secular, democratic, republic and India ensures social, economic, and political justice to all. It provides the liberty of thought and expression. It ensures social, economic, and political justice. It also ensures liberty of thought, expression, belief, faith and worship, equality of status and opportunity. India is Socialist State means it is neither a communist state nor a nation of the capitalist. It always observes the welfare of all i.e. welfare of the rich as well as poor. Even it has to see the welfare of migrants during COVID-19.

- That's why our country deducts income tax as direct tax from the income of rich people and helps the poor by this money in several ways. It also imposes taxes on luxuries, commodities, and then from the collected funds in this way, it sends help poor in their accounts too. But tax-evading is a big problem in our country. A big department is working for ensuring proper Tax submission by all citizens. Yet the challenge continues the tax structure and slabs remained always in question. As per the recommendation of Tax experts and economists, A big reform and restructure is required in the Income Tax system as Govt. done in the case of GST.

India is a Secular country that never favours any of the religions extraordinarily, but it treats all the religions alike. But minority religions have some specific permission in articles 26, 27, and 28 for preserving their culture. Yet all the citizens of India can adopt and follow any creed. Our country never favours any of the religions extraordinarily, but it treats all religions alike.

- Yet there is a big challenge is in reforming society when usually creed becomes the biggest impediment. India is a Republic Country that has an elected government and an elected leader.

The primary positions of the power within a republic are attained, through democracy. That's why every citizen has the right to ask about every issue related to our country. But sometimes to ask a question becomes a challenge as the voice of asking a question is suppressed both in open fronts and in parliament also.

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\* Vice Principal, Kendriya Vidyalaya Kanpur Cantt, Kanpur, U.P., India.

India provides Single Citizenship to each citizen but anybody may be a citizen by birth, by descent (born outside and either of parents Indian citizen but, registration with consulate/embassy), by registration (to a person who married Indian Citizen), by naturalization (to any person with some conditions [the applicant isn't a citizen of a rustic that denies citizenship for Indians, renounce his/her citizenship, adequate knowledge of a language laid out in the Eighth Schedule of the Constitution] & distinguished person of science, philosophy, art, literature, world peace & human progress...Oath and by incorporation of territory.

- In this reference, we can discuss the case of Mrs. Sonia Gandhi. Mrs. Sonia was married to Rajiv Gandhi in 1968. Mrs. Sonia has surrendered her Italian passport in 1983. In this way, she has relinquished her citizenship in Italy. In 1983 she has taken Indian Citizenship by registration, so in this way, she qualified to be a citizen of India (under Section 6 of the Citizenship Act, 1955).

As Mrs. Sonia Gandhi had lived more than 14 years on the date of application, so she can get citizenship of India under Section 6 of the Citizenship Act, 1955.

Indian Constitution provides Fundamental Rights to its entire citizen. It ensures its continuance. The constitution of India provides assurances of Fundamental rights to all of its citizens. They are applied to all the citizens without discrimination of caste, creed, race or gender, etc.

Our country never favours any of the religions extraordinarily, but it treats all religions alike. But these rights protect the rights of religious, cultural, and linguistic minorities, by facilitating them to preserve their heritage and culture. These rights have some special features. If a Fundamental Right is snatched, the complainant cannot directly approach the SC bypassing the lower courts. Yet Fundamental rights are not absolute rights.

- Fundamental rights should be taken with the fundamental duties as citizens usually proclaim their rights but they never discuss their duties. They use to throw garbage on roads, don't obey traffic rules, try to encroach the public lands and claims government for the cleanliness of the country, regulation of controlled traffic on roads and public property. Such irresponsible behaviour can never result in a developed country.
- To run a country well is not only the responsibility of government, but citizens should also bear the responsibility to be a pillar of strength for our nation.
- Citizenship Bill was a big question to be solved by our parliament and judiciary but the Opposition of the Bill on roads by blocking the traffic is not justified, destroying national property cannot be justified.

#### **Fundamental Duties**

These duties were added later on in 1976 by 42nd Amendment and were not part of the constitution in 1948. These are incorporated under article 51A. The provision reminds the citizens that the citizens are to perform duties with enjoying rights. In these duties, all the citizens of India should abide by the Constitution and respect the national flag & National Anthem. They should follow equality, liberty, and fraternity. They should believe in the sovereignty & integrity of our country.

Citizens should preserve our Unique culture and biodiversity & natural environment. They should develop scientific temper. They should safeguard public property, strive for excellence. As per the Right to Education Act 2009, the parents/guardians are responsible to send their children (in the age group of 6-14 years) to school. The parents should fetch education for all of their wards.

- In this reference, it is relevant to state that during a strike, processions, agitation, and in Show against Government uses to destroy the national property. It is against our national duty but it is treason, disloyalty against our nation. Such citizens should be penalized and prohibited in National Security Act. One of the government's decision to seize, confiscate, demolish the property of such negative, riotous people appreciable. But still, we have to make a standard procedure and form an act for handling such matters.
- It has also seen that in such processions, opposition, and strikes, people forcibly close the shops, prohibit the way of vehicles sometimes they try to stop trains. Strict actions should be taken against such destructive citizens.

As per Encyclopedia Britannica, The Parliamentary System is a democratic form of government. In it which party wins the majority, forms the government and its leader becomes the prime minister. The parties in the minority serve the opposition.

India has a Parliamentary Form of Government. Indian Constitution has a provision of Bicameral Legislature with two houses named Lok Sabha and Rajya Sabha. The relevance and importance of parliamentary procedure are that for turning off a bill into an act, it has to be discussed into two houses at least by the elective representatives of the public, and then a member of the house decides the majority or minority of votes for a bill. The bill for amendment in the constitution, the bill concerning legislation has its procedure but these bills are to be passed by both the houses, i.e. by Lower & Upper House.

- But sometimes some important bills could neither be passed into both houses and so could nor became into the existence of an act like one-third reservation for women in all legislative bodies and government services.

In India, the Prime Minister is the real executive, while the President is head of the state. He is the nominal executive. He is the head of the government he is the head of the council of ministers and the ruling government as well. So in this way, the prime minister has to play a very important role in the working of the government.

The Constitution of India has to well-thought provisions for the division of rights & power between the Union and the State governments. So it can be called India has adopted the federal system. But, India has a Federal System with unitary bias and has a dual government that means a dual polity consisting of the union at the center and the states at the periphery. The Indian Constitution is not fully federal. It is also not completely integral. But It stands to be a harmonious mixture of both.

The Indian Constitution provided a provision of an independent judiciary headed by the Supreme Court for two purposes i.e. one, to protect the predominance of the Constitution by exercising the power of judiciary & two, to settle disputes between the center & the states or between the two states.

#### **Center- State Relation and Governance**

The rights and powers between center and state are categorized as below:-Legislative relations, Administrative relations, and Financial relations.

- **Center-State Legislative Relation:** The Parliament has the power to frame laws for the whole or any part of the territory of India. Whereas, the state legislature has the power to frame laws for the whole or any part of the state. All the legislative powers are divided by the Constitution into three lists- the Union List, the State List, and the Concurrent List.

The Union list is having 99 subjects. The Union Parliament has exclusive power to frame laws on these subjects.

The State list is having 61 subjects. Generally, a state can frame laws in these subjects.

The Concurrent list is also having 52 subjects. Both Parliament and the State legislature have the power to legislate on these subjects, but the Centre has a prior and supreme authority to legislate on these subjects. In case of conflict between the acts passed by the State and the union on the same subject in the Concurrent List, the law passed by the Parliament will be considered and predominant.

#### **Special legislative Powers of Center**

Parliament's Power to Legislate on State List: In ordinary circumstances, the Central Government does not possess the power to frame rules on the subjects which are kept in the State List. Yet in some certain special conditions, the center can frame laws even on the subjects kept in the state list.

- **Under the Proclamation of National Emergency (Article 250):** If an emergency is announced, Parliament can legislate on the subjects which are kept in the state list. However the all the laws made by the parliament under this provision will be null and void on the expiration of a period of six months after ceasing of the national emergency.
- **By Agreement between state (Article 252):** if the legislature of two or more states passes a resolution that it will be justified for the parliament to legislate concerning any matter kept in the state list relating to only such state. Only then the acts passed by the parliament will apply to such states.
- **Under Proclamation of President's Rule (Art.356):** During the declaration of the President rule, The president can also authorize the parliament to exercise the powers of the state legislature due to disturbances in constitutional machinery in a state but all such laws passed by the parliament cease to be in regulation only for 6 months since the end of president rules.

- **Administrative Powers of the Center and State:** Executive Power Of State is to be exercised only in compliance with Union Laws & Acts: Article 256 has a provision that the executive powers of every state will be exercised only to ensure compliance of acts and laws framed by the parliament.

Executive Power of State should never interfere with Executive Powers of Union (Art.257): This article states that the executive powers of a state shall be exercised in a manner that it should never impede the exercise of the executive power of the union.

The union government can provide directions to the state about the construction & maintenance of the means of communication which are declared to be of the national or military importance.

The union can issue State Government necessary directions about the steps which are to be taken for the protection of the railways.

- To ensure the welfare of the STs in the state
- To secure instruction in the mother tongue at the primary stage of the education
- To ensure development of Rajbhasha Hindi language
- The State Government should function in such a way that not to impede union govt. and should also following the provision of the constitution.
- The president of India can entrust to the officers of the state about certain functions of the Union Government.
- All India Services: The presence of All India Services: The Indian Administrative Services, Indian Police services make a dominant position of the Union Government before the state. IAS and IPS etc. are recruited by Union Public Service Commission.
- Administrative Powers during Emergencies:-
- Under President Rule:- Under President rule, the state has to follow the directions of the center. If state
- The State cannot ignore the direction of the Union Government otherwise the president can take action against the government of the state.
- **Under Proclamation of National Emergency:** During National Emergency, the power of union extends so much that it can give directions as to the manner in with the executive power of the state.
- **Under Proclamation of Financial Emergency:** During the proclamation of Financial Emergency, The union can provide directions to the state government to observe certain provisions of financial propriety. It can also give directions about salaries and allowances of the serving employees.

It is to be stated that the provision of emergency, the imposition of President Rule remained always a moot point of discussion.

- **Center State Financial Relations:** Indian constitution consists of all provisions relating to the distribution of the taxes as well as non –tax revenues. It has widely described the sources of funds for the state as well as the center.

In the pre-constitutional period in Constituent Assembly, after much discussion, it was decided the centers must be more powerful than states so that the Center may be organizing all states in one country and should not be segregated. The center may allocate funds to develop the whole country and all the states should be equally developed. But many times it is felt that center has accumulated money as misappropriation of funds.

- We can see that during the Lockdown period, Labourers were coming from their working city to their home as they were not having employment, money, and food. Factories were closed and the landowner of their rented house was demanding rent. So they were desirous of coming to their abode. In this process, the labourers were suffered a lot. But neither state nor center could reach help timely Both center and state were blaming each other and proclaiming the duty of others as local thana police usually do.
- During the curfew and riots of Delhi, the same conflict between state & center was shown. So here the duties of both center state should also be clarified in the draft so that the innocent public should not be victimized.

- **Local Government:** In India, three-tier governments are being constituted as Local government is also formed at the level of village i.e. Gram Panchayat or Panchayat Samiti. It was formed in 1992 by the 73rd amendment to the Indian Constitution. It is constituted to look into the local matters of the village and to solve the disputes, to drive solutions to their local problems.
  - Panchayati Raj or local government is constituted to look into the local matters for the welfare of the village and to listen & take care of the local problems.
  - Is this Panchayat is as effective as Jat Panchayat or Khap Panchayat in some village? Usually, such Khap panchayats issue illegal decisions on any dispute or for any event related to the whole village. Many times Khaps illegal decisions prove to be dominant over efforts constitutional body "Panchayat" constituted under the provision of local government. So it is the right time to enhance the strength of Gram Panchayat.

### Conclusion

The Constitution of India thus stands as a blend and personification of democracy, fundamental rights, and decentralization of power to the lowest level. To provide the highest degree of justice, equity to every citizen, it has set up the Supreme Court to function as the guardian of the Constitution with the power to invalidate any legislation or executive act if it violates the Constitution and thus affirms and enforces the dominance of the Constitution.

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