

A BRIEF STUDY OF INDIAN CONSTITUTION IN THE CONTEXT OF CITIZENSHIP

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ABSTRACT-

The Constitution is a living and organic document. It cannot remain static and must grow with the nation. The Constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity. India is a democratic country with a written Constitution. Rule of Law is the basis for governance of the country and all the administrative structures are expected to follow it in both letter and spirit. It is expected that Constitutionalism is a natural corollary to governance in India and a mechanism to enforce social justice. Social Justice as a concept is based on equal distribution of Justice. Social Justice as a concept in India is related most specifically with equal distribution of rights without discrimination of gender, caste, creed or economic status. The purpose of social justice is to maintain or to restore equilibrium in the society and to envisage equal treatment of equal persons in equal or essentially equal circumstances. The social solidarity was to be brought about by the concept of social justice. In Preamble, articles, amendments it finds place significantly in the Preamble, Fundamental Rights and Directive Principles of State Policy. The leaders of India's freedom movement visualized that in the new dispensation following political freedom, the people should have the fullest opportunity for advancement in the social and economic spheres and that the state should make suitable provisions for ensuring such process.

KEYWORDS- Describes How Constitution Can Be Changed, Preamble, Articles, Amendments, Fundamental Rights And Directive Principles Of State Policy ,Sovereignty An Rule By The People

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The sovereignty of scriptures of all religions must come to an end if we want to have a united integrated modern India.¹

A Constitution is the aggregate of laws and customs that forms the scheme for the arrangement of power-relationship inside a political community the State². The system of administration of a political community, the state is embodied in a document called the Constitution. No constitution can remain static it requires modifications in consistence with the changing socio-economic and political ideas. Justice is an attribute of human conduct. Law, as a social engineering, is to remedy existing imbalances as a vehicle to establish an egalitarian social order in a Socialist Secular Bharat Republic. All human rights are derived from the dignity of the person and his inherent worth. Fundamental Rights and Directive Principles of the Constitution have fused in them as fundamental human rights as indivisible and interdependent. The Constitution has charged the State to provide facilities and opportunities among the people and groups of people to remove social and economic inequality and to improve equality of status. So Woodrow Wilson ways³:

Living political constitutions must be Darwinian in structure and practice. Thus a constitution, instead of being static, is dynamic in nature.

Pandit Nehru also drew a distinction between a Welfare State and the Socialistic pattern of society⁴. It is true that a socialistic economy must provide for a Welfare State but it does not necessarily follow that a Welfare State must also be based on a socialistic pattern. We cannot have a Welfare State in India he added with all the socialism or even communism in the world unless our national income goes up substantially. Socialism or communism might help you

¹ B.R.Ambedkar, *available at*: <https://www.brainyquote.com/quotes/quotes/b/brambedk389763.html>(Visited on April 5, 2017)

² Gurnam Chand, The philosophy of the constitution is reflected in the Preamble which reads as follows: Dr Ambedkar: Architect of the Indian Constitution.

³ Ibid

⁴ Kagzi, M.C. Jain, The Constitutional of India Vol.1 & 2, India Law House, New Delhi, 2001

to divided. Your existing wealth, if you like but in India there is no existing wealth for you to divide there is only poverty to divide.

The Constitution of India, seems to be first to have expressly provided for affirmative action. In contrast to prohibition and restraint on the creation of handicaps or hindrances by the State in the development and progress of an individual affirmative action envisages positive steps on the part of the State to enable him to develop and progress. Constitution is the autobiography of power relationship. The organizational character of an institution is ascertained from its constitution. The constitution is a legal document which provides the administrative system and the nature of a state. The constitution may not be codified in writing. The British constitution for example is not a written one. So it is not codified. Constitution evolves and develops in consistence with the social, economic and political ideas and environment of the land and time⁵.

The Constitution of India is the modern sacred text of the contemporary India. It reflects the new aspirations and values of the people of India and testifies how the people of India are the supreme masters in all matters concerning the welfare of Indians. Our Constitution provides for a democratic form of government. It means that all the citizens of our country have the right to decide matters relating to the governing of the state. Indian constitution is the longest constitution in the world. It is the supreme law of India. The Government in the real sense is⁶ : Of the People, For the People and By the People.

Our society has been divided over various issues from the very early ages. The caste system for long divided the society. People belonging to the lower caste were not given the same privileges and opportunities as those of the upper caste. Then the British created a class of zamindars and feudal lords who were very harsh on the common people. The titles conferred by the British made them distinct from the others. Therefore, the right of equality given to us by our

⁵ Id,page 2

⁶ Id,page 2

Constitution is extremely important. This mean all people above the age of 18 years have a right to vote and elect government. The people of India elect their representatives who form Government. It is through these representatives who have the backing of the majority of the people decisions are taken in political matters. This is called political democracy. India has the world's largest democracy. In a democracy all people have certain equal rights and freedom. But political democracy only means the right to elect government . There is need for social democracy too.⁷

Framer of Indian Constitution

In a democratic form of government all the citizens are treated equally. Each one is given equal opportunity irrespective of his caste, creed, religion and sex. Political democracy without social democracy has no meaning. Unless we provide equal justice and equal opportunities to all. We must have political as well as social democracy. Dr Bhimrao Ambedkar is popularly known all over India as the chief architect of the Indian Constitution. His efforts to eradicate social evils were remarkable and that is why he is called the “messiah of the Dalits and downtrodden in India⁸. Dr Ambedkar was appointed the Chairman of the Constitution Drafting Committee. The text prepared by Dr. Ambedkar provided constitutional guarantees and protections for a wide range of civil liberties for individual citizens including freedom of religion the abolition of untouchability and outlawing all forms of discrimination. Dr. Ambedkar argued for extensive economic and social rights for women and also won the Constituent Assembly's support for introducing a system of reservations of jobs for members of the SC and ST. Dr. Ambedkar kept the clauses of the Constitution flexible so that amendments could be made as and when the situation demanded. He provided an inspiring Preamble to the Constitution ensuring justice, social, economic and political, liberty, equality and fraternity⁹.

⁷ Id,page 3

⁸ Id,page 3

⁹ D.R.Jatava, (2001), Dynamics of Ambedkar Ideology, Sublime Publication, Jaipur.

The creation of an egalitarian social order however, remains an unfulfilled wishful thinking to this day. On August 29, 1947 Dr. Ambedkar was appointed the Chairman of the Drafting Committee that was constituted by Constituent Assembly to draft a Constitution for independent India. The draft Constitution was the result of the collective efforts of a galaxy of great leaders and legal scholars in the Constituent Assembly such as Jawaharlal Nehru, Rajendra Prasad, B.R. Ambedkar, Sardar Patel, B.N. Rao, Alladi Krishnaswamy Ayyar etc. The purpose of this paper is to examine the contribution of Dr Ambedkar only to the Indian Constitution. Dr Ambedkar played a seminal role in the framing of the Indian Constitution. He used all his experience and knowledge in drafting the Constitution. In his capacity as the Chairman of the Drafting Committee, he hammered out a comprehensive workable Constitution into which he incorporated his valuable views. He gave free India its legal framework and the people, the basis of their freedom. To this end his contribution was significant, substantial, and spectacular.

Dr Ambedkar's contribution to the evolution of free India lies in his striving for ensuring justice, social, economic and political for one and all he was a champion of fundamental rights and Part III of the Indian Constitution guarantees the fundamental rights to the citizens against the state. Some of the fundamental rights contained in Articles 15(2), 17, 23, and 24 are also enforceable against individuals as they are very significant rights relating to the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth etc.¹⁰ The text prepared by Dr. Ambedkar provided constitutional guarantees and protections for a wide range of civil liberties for individual citizens including freedom of religion, the abolition of untouchability and outlawing all forms of discrimination. Dr. Ambedkar argued for extensive economic and social rights for women¹¹.

¹⁰ Id page 4

¹¹ Id,page 5

According to Dr. Ambedkar the most significant feature of the fundamental rights is that these rights are made justifiable. The right to move to the Supreme Court for enforcement of fundamental rights under Article 32 is itself a fundamental right. Article 32 authorises the Supreme Court to issue directions, orders or writs in the nature of habeas corpus, mandamus, certioraris etc. or any other appropriate remedy, as the case may be for the enforcement of fundamental rights guaranteed by the Constitution. The first President of India, Dr Rajendra Prasad, praised the services rendered by Dr Ambedkar in the making of the Constitution and said¹²:

I have carefully watched the day-to-day activities from the presidential seat. Therefore, I appreciate more than others with how much dedication and vitality this task has been carried out by the Drafting Committee and by its chairman Dr.Bhim Rao Ambedkar in particular. We never did a better thing than having Dr Ambedkar on the Drafting Committee and selecting him as its chairman.¹³

The Constitution of India begins with a Preamble which contains the basic ideals and principles of the Constitution. It lays down the objectives of the frames of the Constitution. The Constitution contains 395-Articles and 12 Schedules. A number of amendment passed have also become a part of this Constitution. The Constitution declares India to be a Sovereign, Secular, Socialist, and Democratic Republic. At the same time, India has federal features. The powers of the government are divided between the centred government and the state governments. The Constitution demarcates the powers of the central and estate governments into different lists of subjects. These lists are called the Union List, the State List and the Concurrent List. The constitution provides for an independent and impartial judiciary and the Supreme Court is the highest court of the country. It decides disputes between the people and the government. The Constitution provides for the establishment of parliamentary form of government in India. The President is the nominal head

¹² Id. page 5

¹³ Id,page 5

of the state. In actual practice the administration is run by the Prime Minister and the Council of Ministers. The council of Ministers is responsible to the Parliament¹⁴.

It was adopted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. With its adoption, the Union of India became the modern and contemporary Republic of India replacing the Government of India Act, 1935 as the country's fundamental governing document. To ensure constitutional autoch-thony the framers of the constitution repealed the prior Acts of the British Parliament via Article 395 of the constitution. India celebrates its coming into force on 26 January each year, as Republic Day. The Indian constitution is the world's longest. It is made up of almost 80,000 words. In its current form September 2012, it has a preamble, 25 parts with 448 articles, 12 schedules, 5 appendix and 101 amendments the latest of which came into force on 8 September 2016.¹⁵

Sovereignty is a key concept in traditional political theory. It constitutes one of the four elements of the state without which statehood remains incomplete. Derived from the Latin term *Superanu* which means supreme, sovereignty denotes the supreme power of the state to exact obedience from the people who inhabit it. It means that the power of the state is unquestionable and the state has a right to demand allegiance from its citizens. It also means that the violation of the command of the state would invite penalties or other punishment. This is also called 'internal sovereignty'. Internally, the state is supreme to any individual or organizations living or functioning within its boundaries and they have to function under the laws and command of the state. None can claim superiority over or immunity to the state. The fundamental rights are regarded as the soul of our Constitution. The Constitution guarantees equal rights and privileges to all the citizens. These fundamental rights are

¹⁴ Ambedkar, the Architect of the Indian Constitution, *available at* : [http:// www.sankalpindia.net](http://www.sankalpindia.net) (Visited on April 5, 2017)

¹⁵ Ibid

necessary because they not only provide the security and equality to all citizens but also ensure all-round development of individuals and the development of the nation. The Constitution of India bestows six fundamental rights upon the citizens. They put a check on the absoluteness and the despotic nature of the government. These rights are justifiable and cannot be denied to any citizen. The court ensures their observance by the State. They safeguard the rights of citizens from the excess of the Executive and the Legislature. i.e Right to Equality. It establishes equality before law. Article 14 of the Constitution¹⁶:

Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth¹⁷.

History Of The Constitution of India

The Constitution of India was not prepared in haste but the process of the evolution of the constitution began many decades before India became independent in 1947¹⁸. The process continued unabated since it originated in the freedom struggle till a new constitution was drafted after prolonged debates and discussions in the Constituent Assembly January 26th was purposefully chosen as the date on which the constitution became operative because since 1930, the day has been celebrated as the day of complete independence throughout India by millions of people. It is very befitting to declare such a historic day as the day of operation of the Constitution of Republic of India. A galaxy of learned wise men interested in the longevity of the emerging nation of India framed the constitution in its present form after a thorough debate and discussion of each proposal. The nationalists consciously popularized the concepts of parliamentary democracy, republicanism, civil liberties, social and economic justice

¹⁶ Id,page 7

¹⁷ Id,page 7

¹⁸ H.M.Seervi, Constitutional Law of India Vol. I & II, III -Bombay: N.M. Tripathi, 1991.

which happen to be the most basic tenets of the constitution.¹⁹ Bipan Chandra rightly remarks²⁰:

When the constitution in 1950 adopted a parliamentary form of government with a cabinet led by a prime minister it was not as is commonly supposed, the British parliament that it was emulating. It was formalizing nationalist practices which the people were already familiar with²¹.

Even the spirit of democracy was familiarized by the national movement. Bipan Chandra correctly points out²²:

This found expression in widespread mass participation. It ensured a place for adult franchise after independence.

It visualized a parliamentary system with full responsible government and joint electorates with time bound reservation of seats for minorities. The Nehru's report laid special emphasis on securing fundamental human rights for the people of India. Of the nineteen rights listed in the Nehru report ten were incorporated into the constitution. The Nehru report has recommended that the redistribution of provinces should take place on a linguistic basis. This was followed by the declaration of complete independence as their objective and followed with the launching of mass civil disobedience movement in April 1930. In 1934, the Congress Working Committee rejected the white paper presented by the British government on further constitutional reforms and resolved that the only satisfactory alternative to the white paper is a constitution drawn by a Constituent Assembly elected on the basis of Adult Suffrage or as near it as possible²³.

¹⁹ Id.page 8

²⁰ Id.page 8

²¹ Id.page 8

²² D.D.Basu, *Commentary on the Constitution of India*, Calcutta, Debidas Basu, 1989

²³ Id.page 9

The words We the people signifies that it was a document given by the people, to the people and for the people. India has two sets of people as²⁴ :

- (i) Citizens
- (ii) Aliens.

Citizens are full members of Indian state. They enjoy all civil and political rights. Aliens do not enjoy all the civil and political rights Constitution deals with the citizenship Act of 1955 prescribes five ways of acquiring citizenship viz. birth, descent, registration, naturalization and incorporation of territory. It has been held in many decisions of the Supreme Court that when a constitutional provision is interpreted the cardinal rule is to look to the Preamble as the guiding star and the directive Principles of State policy as the book of interpretation. The preamble embodies the hopes and aspiration of the Hon'ble Supreme Court of India has in a large number of cases held that a beneficial piece of legislation or welfare statues should receive a liberal and wider interpretation and not a narrow and technical one. Social, political, and economic justice has two facets, non-discrimination and affirmative action in favour of downtrodden²⁵.

The framers of the Indian Constitution were very much conscious and aware of wide spread inequalities and disparity in the social fabric of the country as also of the gulf of the rich and poor. The reason why the goal of justice social, political and economical was given the place of pre-eminence in the preamble and the concept of equality enshrined in Part III and Part IV of the Constitution. The principal of equality cannot be completely taken away so as to leave citizen in the state of lawlessness. But the facet of the principal of equality can always be altered especially to carry out the directive Principles of State policy. Legislative and affirmative measures taken by the State for providing reservation of seats and posts in the field of education and employment are

²⁴ Id,page 9
²⁵ Id,page 9

reflection of affirmative action taken for achieving the goal of real equality. However implementation and execution of such action have continuously faced road blocks at several stages. Those who have been benefited in the existing system cried foul and created a bogey of violation of their legal and constitutional rights. Almost all the action taken by the State and its agencies for ameliorating conditions of have-nots of the society by providing reservation were subject to periodical judicial scrutiny. By and large the Courts approved the affirmative action of the State but on some occasion the policy of reservation or implementation thereof was found to be faulty and action taken by the government have been nullified or sliced by judicial intervention²⁶.

The right to freedom under Articles 19 has been long recognized as a natural and inalienable right that belong to all citizens. Indeed Independence would mean little without it. Article 14, 19 and 21 can be called as the “Golden Triangle” and are the three fundamental rights that stand above the rest. Without the Golden Triangle, democracy is impossible²⁷. The functioning of a modern democratic society would ensure freedom to pursue varied opportunities and options without discrimination on the basis of sex, race, caste or any other like. In fine, there should be a reasonable relationship of proportionality between the means used and the aim pursued. It is to be borne in mind that legislation with pronounced “protective discrimination” aims potentially serves as double edged swords. Strict scrutiny test should be employed while assessing the implications of the variety of legislation. Legislation should not be only assessed on its proposed aim but rather on the implications and the effect²⁸.

Ordinarily the legislature represents the will of the people and works for their welfare but there can be an exceptional situation where the legislature though elected by the people may violate the civil liberties and rights of the people. It is the solemn duty of courts to uphold the civil rights and liberties of the

²⁶ Id,page 10

²⁷ Id,page 10

²⁸ Id,page 10

citizens against executive or legislative invasion and the court cannot sit quite in this situation but must play an activists role in upholding civil liberties and the fundamental rights in Part III. Courts are the guardian of the rights and liberties of the citizens and they will be failing in their responsibility if they abdicate this solemn duty towards citizens people and directive Principles set out the proximate grounds in the governance of the country²⁹.

Landmark Judgements passed by the Supreme Court

In *Shankari Prasad v. Union of India* in 1951³⁰ and In *Sajjan Singh v. State of Rajasthan*, 1965³¹. The amendments which have been enacted to override judicial decision have also restricted the authority of the courts to safeguard property. But in *I.R. Coelho v. State of Tamil Nadu*³² Supreme Court has expanded its power of Judicial Review and Agrarian law are no more immune from judicial scrutiny. In *Golakhnath case 1967*³³ Supreme Court curb the power of Parliament in relation to Part III of the Constitution on fundamental rights. In *Keshav Nanda Bharti*³⁴ case the Supreme Court held that Parliament cannot amend the Basic Structure of Constitution. Besides basic structure doctrine the Supreme Court in *Maneka Gandhi case 1978*³⁵ declared that all fundamental rights were inter-related. Law for taking away the life and personal liberty of an individual under Art. 21 Procedure establish by law to be valid must also satisfy the requirement of Art. 19 equality before law, that procedure establish by law must be reasonable, fair and just.³⁶

Citizenship Of India Enshrined in Part-II (Article 5 To Article 11)

Citizenship constitutes the indispensable foundational principle of democratic polity.³⁷ According to Merriam-Webster Dictionary a citizen means a person owing allegiance to and entitled to the protection of a sovereign state

²⁹ Id,page 11

³⁰ AIR 1951,SC 455.

³¹ AIR 1965 SC 845.

³² AIR 2007,SC 861.

³³ AIR 1967,SC 1643.

³⁴ AIR 1973,SC 225.

³⁵ AIR 1978 SC 597.

³⁶ Ibid

³⁷ D.D.Basu, Introduction to the Constitution of India, New Delhi, Wadhwa and Company Law Publisher, 2002.

Citizenship provides rights such as right to vote and are also subjected to duties or obligation such as paying taxes. Citizenship is covered in Part II of the constitution within Articles 5-11. It took an enormous amounts of drafts and took two years to be finalized. Thus Citizenship at the commencement of the constitution included provisions for Citizenship-by domicile of migrants from Pakistan and of Indians residing in foreign countries³⁸.

Indian Citizenship Act 1955.

- The Citizenship Act, 1955 that came into force with effect from 30th December 1955 deals with matters relating to the acquisition, determination and termination of Indian citizenship. It provides for the acquisition of Indian citizenship by birth, by descent, by registration and by naturalization . The act has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, and the Citizenship (Amendment) Act, 2005.
- A person born in India after 26 January 1950 would, subject to certain exceptions be a citizen of India by Birth.³⁹
- Anyone born outside India after 26 January 1950, subject to certain requirements would be a citizen of India if his/her father was an Indian citizen at the time of his/her birth.
- Under certain conditions certain category of persons could acquire Indian citizenship by registration in prescribed manner.⁴⁰
- Foreigners could acquire Indian citizenship on application for naturalization on certain conditions.⁴¹
- If any territory became part of India, the Government of India could by order specify the persons who would become citizens of India as a result thereof.

³⁸ Ibid

³⁹ Id,page 12

⁴⁰ Id,page 12

⁴¹ Id,page 13

- Citizenship could be lost by termination, renunciation or deprivation on certain grounds.
- A citizen of commonwealth country would have the status of commonwealth citizen of India.⁴²

As per the Constitutional law of India the country recognizes the following kinds of citizenship over and above Overseas Citizenship of India and Person of Indian Origin mentioned earlier⁴³:

- Citizenship by birth
- Citizenship by descent
- Citizenship by naturalization⁴⁴

Article 5-8 conferred citizenship on each person who met the criteria below at the commencement of the Constitution:

- Domiciled in India and born in India
- Domiciled not born in India but either of whose parents was born in India
- Domiciled, not born in India but ordinarily resident for more than five years
- Resident in India but migrated to Pakistan after 1 March 1947 and later returned to India on resettlement permit
- Resident in Pakistan but who migrated to India after 19 July 1948 or who came after that date but had resided for more than six months and got registered in prescribed manner.
- Resident outside India but who or either of whose parents or grand parents were born in India.⁴⁵

Modes of Acquisition, Termination, Loss Of Indian Citizenship.

i) By Birth: The act amended in 1986 provides that a person is a citizen of India by birth (a) if he is born in India on or after 26, Jan, 1950 but before 1st July, 1987 (or) (b) if he is born in India on or after 1 July, 1987 but before 3rd

⁴² Id,page 13

⁴³ Id,page 13

⁴⁴ Id,page 13

⁴⁵ Id,page 13

December, 2004 is considered citizen of India by birth if either of his parents was a citizen of India. The second provision, added in 1986, makes the acquisition of Indian citizenship by the persons coming to India as refugees from Srilanka, Bangladesh and some African countries more difficult.⁴⁶

ii) By Descent: Citizen of India by descent if at the time of his birth either of his parents was an Indian citizen. But before 1992, a person born outside India was entitled to Indian citizenship only if his father was an Indian citizen.

iii) By Registration: Persons of Indian origin who are ordinarily resident in India for five years immediately before making an application for registration.

iv) By naturalization: He has either resided in India or has been in Indian government service for 12 months before making an application for naturalization⁴⁷.

v) By incorporation of Territory: If any foreign territory becomes a part of India, the government of India specifies the persons who among the people of territory shall be citizens of India.

vi) Loss of Citizenship: The citizenship Act 1955, prescribes three ways of losing citizenship whether acquired under the act or prior to it under the constitution, viz. renunciation, termination and deprivation.

vii) Commonwealth Citizen-ship : The Citizenship Act 1955, recognizes formally the concept of Commonwealth Citizen-ship. Every person who is citizen of a Commonwealth country has the status of a Commonwealth Citizen in India⁴⁸.

viii) Single Citizenship:

Indian constitution is federal and envisages of dual polity (centre & state). It provides for only single citizenship that is the Indian citizenship.⁴⁹ The citizens

⁴⁶ P.M.Bakshi, The Constitution of India, Universal Law Publishing, Delhi, 2002.

⁴⁷ Ibid

⁴⁸ Id.page 15

⁴⁹ R.Coupland, The Constitutional Problems in India, Oxford University Press, London, 1945.

in India owe allegiance only to the union. There is no separate state citizenship. The Constitution of India has established a single and uniform citizenship for the whole of the country. In a federal State like the United States of America there is dual citizenship. A citizen in a federal State owes firstly allegiance to the Unit and secondly to the union there are two sets of Government in a federal polity and thus it follow dual citizenship. But in case of India though it is a Federal State there is single citizenship. It implies that all Indian citizens owe allegiance to the Indian Union. Any citizen, irrespective of his birth or residence, is entitled to enjoy civil and political rights throughout India in all States and Union Territories. The Indian Constitution does not recognize State citizenship and as such there is no distinction between the citizens of two or more States. Further, there is an exception to this rule when applied to Kashmir. No one other than a permanent resident of Kashmir can acquire landed property in Kashmir but it is a purely temporary provision to be abolished when Kashmir is fully integrated to the Indian Union⁵⁰.

The claim of Fundamental Rights is common to all citizen Article 15 of the Constitution provides that the State should not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Single citizenship is a great step forward in the creation of a united and integrated India. According to M. V. Pylee⁵¹ :

The provision of single citizenship is a great step forward in the creation of an integrated Indian society. . As a result, the citizens of India are clothed with common civil and political rights all over the country. A single citizenship for the entire country removes much of the artificial State barriers that prevailed in pre- independence days and facilitates the freedom of trade, commerce and intercourse throughout the territory of India⁵².

⁵⁰ Id,page 16

⁵¹ M.V.Pylee, Constitutional Amendments in India, Universal Law, Delhi, 2003.

⁵² Id.page 16

ix) Dual citizenships in India:

People in India, very often confuse between holding dual citizenships with Overseas Citizens of India (OCI) introduced by the Govt of India.⁵³ The Indian constitution does not allow dual citizenship or simultaneously holding two passports of different countries. Overseas Citizens of India (OCI).The Overseas Citizens of India (OCI) scheme was introduced by Indian Govt in 2005, encourage Indians who have gained citizenships abroad in terms of easing travel restrictions and aid the economic development of India. This scheme is just like **Permanent Residence or Green Card** given in India. If you are already a Person of Indian origin (POI) and have taken up citizenship abroad, you can take up benefits of OCI scheme, which gives you same travel and residence privileges like other Indians, but you are not allowed to vote and take up jobs in Government sector. You will also be free from reporting requirements to police regarding the length of your stay⁵⁴.

With that being said, you are eligible to apply for Indian citizenship if you have acquired Overseas Citizen for 5 years and you have legally resided in India at least for a year. Dual Citizenship, a unique form of Multiple Citizenship may be defined as enjoying dual nationality, where a person can have voting rights of two nations simultaneously in case the law of those countries allow one to do so. The nationality and citizenship law of India along with the country's Constitution does not allow Dual Citizenship. Hence, no Indian citizen can hold the citizenship of any other country. However, the country's permission on POI (Person of Indian Origin) and OCI (Overseas Citizenship of India) are mistakenly referred as India Dual Citizenship. Someone is recognized as Person of Indian Origin by the nationality law of India if that person, in spite of holding a passport of any foreign country, can prove his or her origin in India up to three earlier generations. The same criterion is considered for the spouses of the Indian nationals. However, the country does not recognize citizens of

⁵³ Biswaranjan Mohanthy Constitution, Government and Politics in India, New Century Publication, New Delhi, 2009.

⁵⁴ Id,page 17

Bangladesh, Pakistan and some other specified countries as Person of Indian Original⁵⁵.

A national, recognized as Person of Indian Origin, is provided with a Person of Indian Origin Card. Besides being valid for 15 years, the card offers the below mentioned benefits/Advantages to its holder. The advantages of holding POI Card:⁵⁶

- While their stay in India for less than one hundred and eighty days, registration at FRRO (Foreigners' Regional Registration Office) is exempted.
- Except for properties related to agriculture, a PIO card holder can acquire, transfer, dispose of or hold immovable possessions in India
- Enjoy equality with non-residential Indians in educational, economic and financial aspects.⁵⁷
- Able to invest in Indian investment companies, provide rupees to residents of India.
- Children of a PIO card holder are eligible to get admission in any Indian educational institution in the quota of general group.
- Such a card holder automatically becomes eligible for the different housing schemes offered by the state or central governments or Life Insurance Corporation of India⁵⁸.

(x) Disadvantages of holding a Person of Indian Origin Card :

Though as compared to the advantages, disadvantages are very less but still there are some shortcomings of holding a Person of Indian Origin Card. Those drawbacks include⁵⁹:

- Not being able to exercise political rights of India.

⁵⁵ Id,page 17

⁵⁶ Id,page 17

⁵⁷ Id,page 18

⁵⁸ Id,page 18

⁵⁹ Subhash C. Kashyap, D.D. Khanna, Gert W. Kueck, Reviewing The Constitution, Shipra Publication

- Not being able to research or indulge him or her in any missionary work or mountaineering without prior permission.
- Cannot visit protected or restricted areas without proper permission.
- Children of a PIO card holder are eligible to get admission in any Indian educational institution in the quota of general group.
- Such a card holder automatically becomes eligible for the different housing schemes offered by the state or central governments or Life Insurance Corporation of India.⁶⁰

(xi) Term Overseas Citizenship of India

People belonging to some categories of Person of Indian Origin, who obtained citizenship of foreign countries other than Bangladesh and Pakistan post their migration from the country of India, are eligible to apply for Overseas Citizenship of India.⁶¹ This can, however be granted if the local laws of their residing countries allow any form of dual citizenship. Overseas Citizenship of India cannot be regarded as a form of dual citizenship since; it does not grant full citizenship of the nation. include: ⁶²

- Not being able to exercise political rights of India.
- Not being able to research or indulge him or her in any missionary work or mountaineering without prior permission.
- Cannot visit protected or restricted areas without proper permission.

Eligibility criteria to obtain Overseas Citizenship of India.

The main criterion of acquiring Overseas Citizenship of India is that a person, besides being a Person of Indian Origin has to be a national of another foreign country which allows double nationality. The Central Government of India

⁶⁰ Id.page 19

⁶¹ Id.page 19

⁶² Id.page 19

grants Overseas Citizenship of India to a person post fulfilling the following criteria⁶³:

- Belonged to an area that got included in India post Indian Independence on 15th August, 1947.
- Was an Indian citizen on or after 26th January, 1950.
- Is the grandchild or child of a person fulfilling the above criteria.
- Was never a national of Bangladesh or Pakistan.

Advantages of gaining Overseas Citizenship of India.

A person granted India's Overseas Citizenship is provided with a registration certificate, which offers the following benefits to that certificate holder⁶⁴:

- Multi-purpose visa for visiting India with the facilities of multiple entry and life long validity.

Except acquiring plantation or agricultural properties, enjoying equal status with NRIs in terms of education, finance and economy.

The Police authority of India exempts an OCI certificate holder from informing them for staying in.⁶⁵

Shortcomings of overseas citizenship:⁶⁶

- The OCI certificate holder is not eligible for getting Indian passport.
- They cannot take active participation in Rajya Sabha, Lok Sabha, Legislative Council or Assembly or in the offices of President, Vice-President, High Court Judge and Supreme Court's Judge.
- An Indian Overseas Citizen does not enjoy any voting rights.
- Such a certificate holder is not eligible for Public or Government services.
- This certificate does not allow a person to visit protected areas of India without prior permission⁶⁷.

⁶³ Id,page 19

⁶⁴ Id,page 20

⁶⁵ Id,page 20

⁶⁶ Id,page 20

Which one is better - Person of Indian Origin or Overseas Citizenship of India.

- The comparison between the above mentioned benefits of the so called India Dual Citizenship like Person of Indian Origin and Overseas Citizenship of India makes it clear that Overseas Citizenship of India is much better than a Person of Indian Origin. Though to be an Overseas Citizenship of India, one has to be a Person of Indian Origin, still a Person of Indian Origin card remains valid for 15 years, whereas, an Overseas Citizenship certificate holder can enjoy a life long visa for travelling to the country of India. A PCI card holder needs to report to Police for more than 180 days' stay in India at a stretch whereas, an OCI certificate holder is exempted from doing so for any duration of his or her stay in India. However, both of these cards are proposed to be merged and named as Overseas Indian Card as declared by Mr. Manmohan Singh, the Prime Minister of India during the starting of the year 2011.⁶⁸

In the wake of the changing times in the Indian society a constitutional review is highly required. The constitution, though a very impressive piece, has failed in some respects. The preamble says that we are a Democratic Republic⁶⁹:

What does democracy mean to all of us?⁷⁰

To define it in a layman's language Democracy means that the power is in the hands of the people to decide how and by whom the country is run. But today does the real power lie in the hands of the people as it was believed when the constitution was applied?⁷¹

It is no more by and for the people. Now it is more or less a board game and the players are the politicians with personal profits as the winning amount.⁷²

⁶⁷ Id,page 20

⁶⁸ Kagzi , M.C. Jain, The Constitutional of India Vol.1 & 2, India Law House, New Delhi, 2001

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

That our constitution is a borrowed constitution. When the drafting committee drafted it, they adopted a major part of it from the Government of India Act 1935 with few modifications here and there. Besides this, we have borrowed many provisions from various other constitutions of the world. The Parliamentary System has been taken from the British Constitution and Judicial Review & federalism from the US Constitution. We cannot say it's a piece of novelty or originality. Many provisions need to be amended as they were adopted from the 1935 Act and maybe worked for that period; however in today's time they have become obsolete. One of the biggest flaws of our constitution is the never-ending length due to the tough language in which it has been drafted. Being the sovereign document of our country it should have been drafted in a language easily comprehensible by the citizens. But unfortunately the legal jargon used can hardly be deciphered by the common man. With that length, the parliament today will never get the time to modify and simplify it but I feel this is something which should have been kept in mind at the time of its commencement.⁷³

Securing Equal Justice to all

Social, economical and political, is one of the chief aims of our constitution. But this has hardly been actually put into action. Our judicial system which is responsible to provide justice to each and every individual is one of our slowest systems.⁷⁴ Today we have at least 10,000 cases per day pending for each judge of Tis Hazari court which is at least ten times higher than the prescribed number. Even the fast track courts take 3-4 years to solve cases the term fast track court thus fails the purpose⁷⁵. As we all know it took 63 years for the judiciary to come out with the historical judgment of Ayodhya Babri case. Criminal cases like that of Jessica Lal, Priyadarshini Mattoo, Nitish Katara case are among the many examples of delayed justice. Besides the procedure to approach the courts is so tedious that a poor farmer ends up selling his land, the

⁷³ Id. page 22

⁷⁴ Shibankinkar Chaube, Constituent Assembly of India, Manohar Publishers & Distributors, New Delhi, 2000

⁷⁵ Ibid

only source of his livelihood, to pay so that he can get his rights back. The guidelines issued in the landmark judgment of *D K Basu v. State of West Bengal*⁷⁶ in order to bring about prison reforms are rarely followed. Thousands of under-trial prisoners are still in jail, living in inhuman conditions and are being denied basic rights of living.⁷⁷

The Fundamental Rights enshrined in Part III of our Constitution (Article 12 to 35).

The Fundamental Rights Under Part III Of Our Constitution too need to include many of those rights that have developed over a history of various judicial pronouncements. These rights though not really stated in part III have been recognized as fundamental in nature and are better known as implied fundamental rights. Right to food, right to privacy, right to livelihood, right to clean potable drinking water, right to fresh and clean environment, right to be silent, right to speedy justice etc. These rights need to be added in chapter III as they are equally important in today's time for every Indian. At the same time the framers of our constitution has given more importance to fundamental rights than to the fundamental duties. Rights and duties are the two sides of the same coin. A right given to one person prevents another person from violating it thereby imposing a duty on him. Today everyone only wants to enjoy the benefits of the rights and no one lays importance on fulfilling their duties towards the society, country, environment and other human beings.⁷⁸

The Directive Principles Of The State Policy enshrined in Part IV (Article 36 to 51).

As far as the directive principles of the state policy are concerned, they too are not satisfactory since no strict implementation is practiced. These are those principles which the state has to keep in mind while making any policies or laws. For example, the equal distribution of material resources is to prevent

⁷⁶ AIR 1997,SCC 416 SC (610)

⁷⁷ Ibid.

⁷⁸ Id.page 23

resources from being concentrated in one or fewer hands. ⁷⁹But in reality we have at least 60% of the population still living below the poverty line. A special provision out to be made regarding population control. In a developing nation like India it is very important to have population control. In the current situation the supply of everything is too low in comparison to the steep increase in demand. Landmass remains the same but the inhabitants are increasing at a very fast pace.⁸⁰

Right to education needs to be given maximum importance. Even though compulsory education has been enforced till the age of 14, majority of Indians remain uneducated. Private schools are too expensive for a poor man to educate his child, and the government schools' standards are deteriorating year by year. Government schools, the only source of almost-free education to all the children, need to be renovated to provide a healthier environment and teachers with better qualifications so that even a family belonging to the middle class or upper class does not hesitate in sending their children to a government school. Kelson, a famous jurist said that ⁸¹:

Every piece of legislation derives its validity from the Grundnorm. According to him the Grundnorm is that sovereign document from which all other legislations derive their validity. Likewise is the situation in India where our Grundnorm is the constitution of India where all legislation country too derives validity from the constitution. Anything going against a provision can be challenged in the court. But when our Grundnorm itself is flawed then how will any legislation be fit for the needs of the present society.⁸²

⁷⁹ Id,page 23

⁸⁰ Id,page 24

⁸¹ D.D.Basu, Introduction to the Constitution of India -New Delhi: Wadhwa and Company Law Publishers, 2002

⁸² Id,page 24

CONCLUSION

A constitution is the fundamental law of the state, containing the principles upon which government is founded, regulating the divisions of powers and the manner in which it is to be exercised. But no definition of constitution can be regarded as exhaustive. The framers of Indian Constitution adopted the British model of parliamentary government because Independent India is a product of the most massive freedom movement. Hence it could be a mass democracy, based on universal adult franchise. However they did not make it a sovereign law making body like its English counterparts. They placed supremacy in the hand of legislature, but it had to be restricted because unlike Great Britain, India has a lengthy written Constitution, a federal distribution of powers and a list of fundamental rights. Therefore parliamentary law to be valid must confirm in all respects. Indian Constitution makers adopted parliamentary democratic system with the conviction that it best suited our ethos and culture and realized that a representative democracy working with the elected representative working in harmony with the executive and the judiciary is best suited to address the challenges of diversity multicultural identity democratic ethos and the development needs of the people. Indian democratic system presents a peculiar paradox of the fusion of parliamentary and federal features of the governmental functioning.

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