



“Constitutional Right And Democracy In India”

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1. DEMOCRACY IN INDIA

India is the largest democracy in the world. Political participation is mostly implemented through elections. Elections in India are the biggest experiment in democracy. For the successful functioning of the democratic system, the Constitution provides for the Election Commission under Article 324. Articles 324-329 of the Constitution in our country tell about the provision of elections. The Election Commission is an impartial and independent body.

Elections in India are taken as a festival. India's democracy also has a global reputation and our Election Commission also helps in conducting elections in many developing and underdeveloped countries.

Democracy means a way of life in which freedom, equality and fraternity are the basic principles of social life.' Baba Saheb Ambedkar

The English equivalent of the word 'democracy' is 'democracy', which is derived from the Greek root word 'demos'. Demos means 'common people' and the word 'cracy' has been added to this word which means 'rule' or 'government'. According to Abraham Lincoln, democracy is a system of governance 'established by the people and for the people'.

Sartori has written in his book 'Democratic Theory' that political democracy is a method or process by which power is attained through competitive struggle and some people provide leadership to this power. According to Sartori, democracy is a very difficult governance, so difficult that only expert people can save it from mobocracy, hence it is necessary to strengthen its process.

ANCIENT HISTORY OF DEMOCRACY IN INDIA

In different states of the world, systems of governance like monarchy, guild system, dictatorship and democracy have been prevalent. If observed from a historical point of view, the democratic system of governance in India started from the pre- Vedic period itself. In ancient times, a strong democratic system existed in India. We get evidence of this from ancient literature, coins and inscriptions. There is also evidence of this in the descriptions of foreign travellers and scholars. Like the present Parliament, councils were formed in ancient times, which were similar to the present parliamentary system. The policies of the republic or union were conducted by these councils. The number of its members was huge. The central council of the most famous republic of that time, Lichchhavi, had 7,707 members, while the central council of Yaudheya had 5,000 members. Like the present parliamentary session, the sessions of the councils were held regularly.

In the ancient republican system, just like today, there was an election system for the ruler and other government officials. The process of their election on the basis of qualification and qualities was definitely a little different from today. Not all citizens had the right to vote. The Rigveda and Kautilya literature have confirmed the election system, but they have not thrown light on the right to vote.

OBJECTIVES OF INDIAN DEMOCRACY

India is the largest democratic country in the world. Democracy came to India when the Constitution of India came into force on 26 January 1950. This constitution is the longest written constitution in the world. Democracy has been fully explained in the constitution. Some of the fundamental objectives and features of democracy are as follows. 1. Complete and supreme participation of the people, 2. Responsible government, 3. It is the duty of the government to protect the rights and freedom of the people, 4. Limited and constitutional government, 5. Making India a democratic republic, promise of equality, freedom and justice to all citizens, 6. Fair and periodic elections, 7. Adult suffrage, 8. Public participation in government decisions through advice, pressure and public opinion, 9. Representative government elected by the people, 10. Impartial courts, 11. Rule of law, 12. Presence of various political parties and pressure groups, 13. Political power in the hands of the government as a trust of the people.

CURRENT SITUATION?

The Economist Intelligence Unit, based in London, releases the Democracy Index for countries around the world every year. This index of 167 countries was released for 2019 and India has been ranked 51st in it, but in the 2020 Democracy Index, India's rank fell from 51st to 53rd. On the basis of this index, India has been placed in the category of flawed democracy countries.

The Economist Intelligence Unit (EIU) said the country slipped two places in 2020 compared to 2019 due to the authorities' "deviation from democratic values" and "crackdown" on civil liberties. As far as the score is concerned, India got the lowest score in both 2017 and 2018 in the last 11 years. The report has praised the improvement in Asia's position. But, the matter of concern is that most of the countries of Asia have been placed in the category of flawed democratic countries.

According to a recent report of the United Nations Development Program (UNDP), about 36 crore population of India is still deprived of health, nutrition, schooling and sanitation. On the other hand, there is a section of the country which has no shortage of anything.

According to the World Inequality Report, 22 percent of India's national income is owned by just 1 percent of people and this inequality is increasing rapidly. According to the international rights group, this 1 percent group of India has captured 73 percent of the country's wealth.

Gender discrimination is also emerging as a big problem. India is ranked 108th in the Gender Gap Index released by the World Economic Forum and India has been ranked 127th in the Gender Inequality Index-2017 released by UNDP.

The freedom of media, which is considered the fourth pillar of democracy, is also under question. In fact, in the World Press Freedom Index-2018 released by the Paris-based non-governmental organization 'Reporters Without Borders', India has fallen two places compared to earlier and got 138th rank.

In these 71 years, apart from other things, communalism, regionalism and fundamentalism also got encouragement. Due to this, the tendency of intolerance has also increased. The roots of casteism are continuously getting deeper.

Undoubtedly such situations become an obstacle in the way of success of democracy.

AREAS FOR IMPROVEMENT

For the success of democracy it is necessary that the government rises above its vested interests and takes the responsibility of the people.

Try to fulfill the aspirations of the people. Despite all the claims of development, poverty, hunger, unemployment etc. are very serious problems in the country. Even after 71 years of independence, crores of people are forced to live a miserable life.

Due to the lack of public participation, our democracy has become merely an 'electoral democracy'. Voting in elections is no longer used as a right, but as a duty.

The basic questions regarding the democratic system have been left behind somewhere and to develop public participation and democratic culture in democracy, it is necessary to solve the basic problems first so that the democratic system can be made successful.

The legislature, the executive and the judiciary are parts of the democratic system of governance, but all three are plagued by chaos and work under immense pressure.

Apart from this, there is a lot of scope for improvement in Indian democracy. These steps can be taken for its improvement.

Steps to be taken are:- poverty alleviation, promotion of literacy, encouraging people to vote, educating people to choose the right candidate, encouraging intelligent and educated people to take up leadership roles, eradicating communalism, ensuring unbiased and responsible media, monitoring the functioning of elected members, building a responsible opposition in Lok Sabha and Vidhan Sabha, etc.

CONCLUSION

Democracy is known as the best system of governance in the world, that is why the constitution makers and leaders of our country chose the democratic system as the system of governance. We need to strengthen the democracy of our country even more.

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2. CONSTITUTIONAL RIGHTS IN INDIA

In the constitutional system of any democratic country, some basic rights have been provided for the all-round development of citizens and individuals. The inhuman treatment meted out to the Indian people during the colonial rule before independence, the discrimination prevailing under the caste system in India and the religious riots during independence had shattered human dignity. Every person started looking at each other with suspicion. In such a situation, the constitution makers had the challenge of establishing the unity and integrity of the country, human dignity and restoring mutual trust among the people. Accepting this challenge, the constitution makers made a provision for universal rights. The rights available from Articles 12 to 35 in Part-3 of the Constitution were termed as fundamental rights.

Fundamental rights mean the advancement of the ideals of political democracy. These rights maintain order in the country as well as provide freedom to the citizens against the strict rules of the state. They limit dictatorship over the implementation of the law passed by the legislature. The purpose of their provisions is to establish the rule of law and not of individuals.

The Constitution guarantees fundamental rights to every individual without any discrimination. These include equality, respect, national interest and national unity for every individual. These are also the basic principles of law. These are also 'basic' because they are necessary for the all-round development of a person (physical, intellectual, moral and spiritual).

FUNDAMENTAL RIGHTS PROVIDED IN THE CONSTITUTION

RIGHT TO EQUALITY (ARTICLES 14-18)

- Equality before law and equal protection of laws.
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth: Equality of entry to shops, hotels, wells, tanks, bathing ghats, roads etc.
- Equality of opportunity in employment.
- End of untouchability.
- End of titles

RIGHT TO FREEDOM (ARTICLES 19-22)

- Right to personal liberty: Right to freedom of speech and expression, freedom to assemble peacefully, right to organise, freedom to travel anywhere in India, right to settle and reside in any part of the territory of India and freedom to practice any profession, or to carry on any trade or business.
- Protection in respect of conviction for offences.
- Right to protection of life and personal liberty.
- Right to education.

- Rights of the accused and convicted.

RIGHT AGAINST EXPLOITATION (ARTICLES 23-24)

- Prohibition of human trafficking and bonded labour.
- Prevention of child labour in hazardous jobs.

RIGHT TO FREEDOM OF RELIGION (ARTICLES 25-28)

- Freedom of faith and prayer.
- Management of religious affairs.
- Freedom from paying taxes for the promotion of any particular religion.
- Freedom to attend religious instruction or worship in certain educational institutions.

RIGHTS TO CULTURE AND EDUCATION (ARTICLES 29-30)

- Right to protection of language and culture of minorities.
- Right of minorities to establish educational institutions.

RIGHT TO CONSTITUTIONAL REMEDIES (ARTICLE 32)

- Right to move court to enforce fundamental rights.

FEATURES OF FUNDAMENTAL RIGHTS

- Fundamental rights are justiciable. The state can impose reasonable restrictions on them. However, the justification of the restrictions is determined by the court only.
- These are available against a unilateral decision of the government. However, some of them are also available against private individuals.
- Some of these have negative features, such as those relating to limits on the authority of the state, while some are positive, such as the provision of special privileges to individuals.
- These are not permanent. Parliament can cut or reduce them through constitutional amendment.
- These can be suspended during a national emergency (except Articles 20 and 21).
- These are provided guarantee and protection by the Supreme Court.

IMPORTANCE OF FUNDAMENTAL RIGHTS

They establish the democratic system in the country, protect individual freedom, ensure the rule of law in the country, lay the foundation of social equality and social justice, protect the interests of minorities and weaker sections of the society, etc.

CRITICISM

- Fundamental rights are subject to numerous exceptions, restrictions and interpretations.
- It mainly mentions political rights; there is lack of a system of socio-economic rights because provisions like right to social security, right to get work, right to rest and facilities are not included.
- Their interpretation is vague, uncertain and unclear. For example, the interpretation of words like public order, minority, reasonable restrictions and public interest etc. is unclear.
- Fundamental rights lack stability. Parliament can curtail or abridge them.
- Critics are of the opinion that the provision of preventive detention takes away from the main spirit of the fundamental rights. It gives arbitrary power to the state.
- In implementing the fundamental rights, the common citizen has to face costly judicial process.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy are the latest elements of democratic constitutional development. They were first implemented in the Constitution of Ireland. These are the elements that have evolved along with the development of the Constitution. The function of these elements is to establish a welfare state.

Directive Principles of State Policy are included in Articles 36 to 51 of the Indian Constitution. **Parts 3 and 4 of the Indian Constitution together are called the soul and philosophy of the Constitution.** These elements contain the real essence of the philosophy of the Constitution and social justice. Directive Principles are those elements of the executive and the legislature, according to which they have to exercise their rights. **Dr. Bhimrao Ambedkar** has described these elements as 'special'. Granville Austin has called the Directive Principles and Rights as the 'basic soul of the Constitution'.

According to Article 37, these principles cannot be enforced in any court. These principles are not legal but political in nature and are merely moral rights. They neither impose any legal obligation on the state nor any right or duty on the people. They are merely general instructions for the state to do some such work which is beneficial for the people of the state.

DIRECTIVE PRINCIPLES OF INDIAN CONSTITUTION

Article: 36 The definition of state is described.

Article: 37 The principles contained in this part must be implemented.

Article: 38 The State shall maintain a social order for the promotion of the public welfare.

Article: 39 Certain policy principles to be followed by the State.

Article: 39A Equal justice and free legal aid. Article: 40 Organisation of Village Panchayats.

Article: 41 Right to work, education and public assistance in certain cases.

Article: 42 Provision for just and humane conditions of work and maternity relief.

Article: 43 Living wages for workers, etc.

Article: 43A Participation of workers in the management of industries.

Article: 44 Uniform civil code for citizens.

Article: 45 Provision for free and compulsory education for children.

Article: 46 Promotion of educational and economic interests of the Scheduled Castes, the Scheduled Tribes and other weaker sections.

Article: 47 Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

Article: 48 Organisation of agriculture and animal husbandry.

Article: 48A Protection and improvement of environment and safeguarding of forests and wild life.

Article: 49 Protection of monuments, places and objects of national importance.

Article: 50 Separation of the judiciary from the executive.

Article: 51 Promotion of international peace and security.

IMPORTANCE OF DIRECTIVE PRINCIPLES OF POLICY

The importance of Part 4 was questioned in the Constituent Assembly and it was said that this part itself is useless because these elements do not have any legality. In fact, these are test balloons that test the ability of the government in power. The constitutionality of some laws can be tested by keeping in mind the Directive Principles of State Policy. These have educational importance.

RELATIONSHIP BETWEEN DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS:-

Fundamental rights and directive principles can be seen as complementary to each other. While fundamental rights put restrictions on some actions of the government, directive principles encourage it to do some actions. Fundamental rights specifically protect the rights of the individual, but directive principles talk about the interests of the entire society. But sometimes when the government tries to implement directive principles, they may clash with the fundamental rights of the citizens.

This problem arose when the government decided to enact the Zamindari Abolition Act. It was opposed on the ground that it violated the fundamental right to property. But thinking that social needs are above individual interest, the government amended the Constitution to implement the Directive Principles.

This led to a long legal battle. The executive and the judiciary took opposing views on this. The government believed that restrictions could be imposed on fundamental rights to implement the directive principles. The belief behind this was that Rights are restrictive in the way of public welfare. On the other hand, the court believed that fundamental rights are so important and sacred that they cannot be restricted even for the implementation of directive principles.

CONCLUSION

Rights mean that a person should have certain freedoms. Fundamental rights give us the freedom to live and settle freely anywhere in the country, while rights contain both freedom and equality. This idea became more clear during the national movement and started being presented in the form of constitutional rights. This long tradition can be seen in our Constitution in the form of a list of fundamental rights. Since 1950, the judiciary has played the role of an important protector of rights.

Judicial interpretations have expanded the scope of many rights. Our government and administration work within this context. Rights set limits on the actions of the government and ensure democratic governance in the country.

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