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IMPACT OF THE WORLD CONSTITUTIONS ON THE FRAMING OF INDIAN CONSTITUTION

Ashish Shrivastava

Assistant Professor of Law , M.B. Khalsa Law College, Indore.

Abstract:

The constitution of the Indian Republic is written. It contains 395 articles and 10 Schedules, According to the proposals of the Cabinet Mission Plan; Constituent Assembly was set up for framing a constitution for the Union of India. The Assembly consisted of the representatives of the provinces and the nominees of the states, it met in New Delhi in December 1946. After nearly three years of deliberations it finally adopted the constitution on November 26, 1949. The Indian Republic was inaugurated on January 26, 1950. The constitution is rigid in the sense that most of its parts cannot be amended by the ordinary law-making process. There are three methods of amending the constitution. Some of its parts can be amended by the ordinary law-making process by Parliament. Certain provisions can be amended provided that a Bill for that purpose is passed in each House of Parliament by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting; the Bill then is presented to the President who has to give his assent. Then there are certain other provisions which can be amended if a Bill for that purpose is passed by the second method described above and ratified by the Legislatures of not less than one-half of the states before being presented to the President. Thus the constitution is rigid as well as flexible.

A distinguishing feature of the Indian constitution is that it was prepared after transacting all the known constitutions of the world. So it is a borrowed constitution, it is a patch work. For example, the Parliamentary System has been borrowed from England, the concept of independent judiciary and judicial review and fundamental rights from the U.S. Constitution, the federal features from Canada and the Directive Principles from Ireland. However, the Government of India Act of 1935 has the greatest impact on our constitution. As Prof. Jennings observes, "the constitution derives directly from the Government of India Act of 1935 from which, in fact, many of its provisions are copied almost textually. In the words of Dr. Punjab Rao Deshmukh, the constitution of India is "essentially the Government of India Act with only adult franchise added."

But it is also true that whatever the framers of the constitution borrowed from different sources, they modified it with a view to avoiding the faults that have been disclosed in its working and adopted it to the existing conditions and needs of the country.

KEY WORDS:

World Constitutions , Indian Constitution , Indian Republic , Fundamental and Supreme law .

INTRODUCTION

The constitution of India is the Fundamental and Supreme law of the country which lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It has been adopted and adapted from various constitutions framed before its formation to suit the needs of the country, rectifying the mistakes committed by the earlier versions. The nations acting as main source of adoption are England and USA, main principles of government being derived from these nations. The main principles and concepts derived from various countries are:

The Preamble: The Preamble is a brief introductory statement that sets out the guiding purpose and principles of the document. The language and the structural format of the Preamble of India has been derived from United States of America. In India In USA

Written Constitution:

The concept of a written constitution has been taken from America, which was the first written constitution in the world. This allows ease of access and revision, as and when required, and also renders all the laws immune to any interference by government at its free will.

Nominal Head:

President In England In India The Queen is Head of State The President of India is: in the United Kingdom. As a The head of state and first constitutional monarch, she citizen of India. does not rule the country, The Supreme but fulfills important Commander of the ceremonial and "formal" Indian Armed Forces. roles with respect to S/He is also the "formal Government. head" of all the three branches of Indian Democracy - Legislature, Executive and Judiciary.

Cabinet System of Ministers Both in India and in England:

The Cabinet is the collective decision-making body of the government consisting of Prime Minister and his Council of Ministers. PM chooses the Cabinet of Ministers appointed by the head of the state (President in India and Sovereign in England.) Cabinet ministers are at disposal of PM and can be dismissed at any time on advice of PM by the Head of State.

Parliamentary form of Government A parliamentary system is led by representatives of the people. Each is chosen as a member of a political party and remains in power as long as his/her party does. This system is followed in England and is adopted in India too. It is very useful in a diverse nation like India where legislation and passing of bills can be slowed down because of difference in opinions. Parliamentarianism helps in quicker decision making.

Bicameral system of Parliament A bicameral parliament or bicameral legislature is a legislature which consists of two chambers or houses. England India There is the House of There is Lok Sabha (House of Commons and the House of people) and Rajya Lords. Sabha (Council of states).

Lower House more powerful:

The Lok Sabha or the house of people is the lower house. In England In India House of Lords or Upper Money bills can only be house is restrained from any introduced in the Lok financial bills. Sabha. It can only delay the bills Rajya Sabha cannot reject passed in lower house, not any bills passed in Lok reject it, for a maximum of Sabha, only delay it by two parliamentary terms. maximum of 14 days. PM loses his post if he loses PM loses his post if he loses majority support in lower majority support in lower house. house, and motion of no confidence can only be introduced in Lok Sabha.

Speaker in the Lower house In England In India The Speaker of the House of Commons The Speaker of the Lok Sabha conducts chairs debates in the Commons the business in the house. chamber and the holder of this office is He/she decides whether a bill is an MP who has been elected by other a money bill or a non money bill. Members of Parliament. He/she maintains discipline and The Speaker is the chief officer and decorum in the house and can punish a highest authority of the House of member for their unruly behaviour by Commons and must remain politically suspending them. impartial at all times. During debates He/she permits the moving of various they keep order and call MPs to speak. kinds of motions and resolutions like The Speaker also represents the the motion of no confidence, motion of Commons to the monarch, the Lords adjournment, motion of censure and and other authorities and chairs the calling

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attention notice as per the rules. House of Commons Commission. The Speaker decides on the agenda to be taken up for discussion during the meeting.

Welfare:.

Education, and Health Communications Transportation Agriculture Consumer goods (e.g. chairs, carpets, and irons) Capital goods (those used to produce other goods, like coal, iron, and machinery)¹¹. Five year plans The whole concept of a five year plan has been derived from the constitution of the Soviet Union. Each five-year plan dealt with all aspects of development:

JUDICIARY ADAPTATIONS:

Concept of Supreme Court- It was adapted from the United States of America. US was the first country to introduce the highest court of justice, called the Supreme court. It is essential for federal form of government, for various reasons like solving disputes between centre and states, amongst states, etc.

Law on which supreme court functions:

This has been adopted from the constitution of Japan, as: In Japan In India The Chief Justice is appointed The chief Justice is appointed by head of the state-Emperor. by head of state-President. The Supreme Court is the The Supreme Court is the highest judicial authority of highest judicial authority of the nation. the nation. Other judges in the supreme Other judges in the supreme court form smaller benches for court form smaller benches for hearing of cases. hearing of cases. Supreme court mainly acts as Supreme court mainly acts as an appellate court, most an appellate court, most hearings being appeals and hearings being appeals and petitions against petitions against unsatisfactory decisions of unsatisfactory decisions of lower courts. lower courts.

Independence of Judiciary and judicial review:

Independence of the judiciary is the principle that the judiciary should be politically shielded from the legislative and the executive power. That is, courts should not be subjected to reprehensible influence from the other branches of government, or from personal or adherent interests. Judicial review is the doctrine under which legislative and executive actions are subject to review (and possible invalidation) by the judiciary. Specific courts with judicial review power must annul the acts of the state when it finds them incompatible with a higher authority such as the constitution. Both of these principles are adopted from the constitution of USA. They are very important to keep a check on the other two branches of government.

Method of removal of Supreme/High court judges:

This has been adopted from the constitution of United States. In USA In India Impeachment requires an It varies from state to order of the President passed state, where sometimes after an address in each House recommendation of enquiry of Parliament, supported by a committee is enough, while majority of the total in some majority support by membership of that House of not less than two-thirds of more than two-third members present and voting, members of both houses is and presented to the required for impeachment President in the same Session of the judge. for such removal on the ground of proved misbehaviour or incapacity.

Right to constitutional constitution. remedies(32-35) Cultural and educational adoption from the french rights(29-30) Right to freedom of religion(25- The right to freedom and 28) equality before law are a Right against exploitation(23-24) Right to freedom (19) from USSR. Right to equality (14-18) religion have been adopted 16. Fundamental Rights The Purpose of the Fundamental Rights are to act as limitations not only upon the powers of the Executive but also upon the power of the Legislature. In Other countries In India The concept of fundamental Fundamental rights in the constitution of india have the rights comes from USA. longest description in the whole world. The right to freedom of They include: speech, assembly and

Suspension of Fundamental Rights during Emergency:

This concept of suspension of rights during emergency has been adopted from the Weimar constitution of Germany, i.e. at the time of Adolf Hitler. This is very important as it vests the supreme power

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in the head of the state-The President. During emergency only 3 rights of the citizens stand valid-Right to equality,Right to o freedom(in certain cases) and the Right to Life.

Fundamental Duties:

The fundamental duties of India, seem to be an adoption from the Constitutions of Japan, Yugoslavia, Republic of China as well as the Constitution of Soviet Union (USSR) These have been incorporated in the Indian Constitution to remind every citizen that they should not only be conscious of their rights, but also of their duties.

These include:

(a) To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem; (b) To cherish and follow the noble ideals which inspired our national struggle for freedom; (c) To uphold and protect the sovereignty, unity and integrity of India; (d) To defend the country and render national services, when called upon to do so; (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; (f) To value and preserve the rich heritage of our composite culture; (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; (h) To develop the scientific temper, humanism and the spirit of inquiry and reform; (i) To safeguard public property and to abjure violence; (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement; (k) Who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of sex to fourteen years.

Scheme of federation:

This refers to the Distribution of powers between the centre and the states. It is very significant in the case of a diverse country like india, to handle the local issues effectively. This has been done in case of both legislative and administrative powers.

Scheme of federation with a strong centre Both the Centre & the states are co-operating & coordinating institutions having independence & ought to exercise their respective powers with mutual-adjustment, respect, understanding & accommodation. Prevention as well as amelioration of conflicts is necessary. Thus, the Indian-federation was devised with a strong-centre.

Freedom of trade and commerce In Australia In India:

There is a free trade clause Article 301 containing the free under section 92 of Australian trade clause in Indian constitution has been taken constitution which provides almost verbatim from section that “on the imposition of 92 of Australian constitution uniform duties of The court considered that customs, trade, commerce and legislature should be given intercourse among the States more powers than judiciary and all trade and commerce whether by means of internal activities were subjected to carriage or ocean reasonable restrictions, navigation, shall be absolutely imposed by the State as free” mentioned in the constitution

Advantages of this adoption Free movement and exchange of goods throughout the territory of the country is essential for the economic unity of the nation Therefore in all federations, an attempt is made through constitutional provisions to prevent local barriers to economic activity, to remove the impediments in the way of inter-state trade and commerce and thus to make the country as one in economic resources Thus the base of freedom of trade and commerce was quite adopted from Australian constitution with amendments.

Directive Principles of State Policy:

These are principles laid down to create social and economic conditions under which citizens can live a good life. In India the Directive Principles of State policy have been adopted verbatim from the Constitution of Ireland. The DPSP of Ireland were in turn adopted from Spain. The state shall aim for securing equal rights to an adequate means of livelihood for all citizens.

Election of members by Nominal Head of Upper house:

The upper house in India consists of 250 members from which 12 are nominated by the Nominal head-the President of the country for their exemplary work in their respective fields. This system has been adopted from the constitution of Ireland. This saves these members from the turmoil of election.

Nominal Head – President (like Queen) Cabinet System of Ministers Post of PM Parliamentary Type of Govt. From U.K. Bicameral Parliament Lower House more powerful Council of Ministers responsible to Lower House Speaker in Lok Sabha Written Constitution Executive head of state known as President and his being the Supreme Commander of the Armed Forces Vice- President as the ex-officio Chairman of Rajya Sabha Fundamental Rights From U.S. Supreme Court Provision of States Independence of Judiciary and judicial review Preamble Removal of Supreme court and High court Judges Fundamental Duties From USSR Five year Plan Concurrent list From AUSTRALIA Language of the preamble Provision regarding trade, commerce and intercourse From JAPAN Law on which the Supreme Court function From WEIMAR CONSTITUTION OF GERMANY Suspension of Fundamental Rights during the emergency Scheme of federation with a strong centre From CANADA Distribution of powers between centre and the states and placing Residuary Powers with the centre Concept of Directive Principles of States Policy (Ireland borrowed it from SPAIN) From IRELAND Method of election of President Nomination of members in the Rajya Sabha by the President

CONCLUSION:

Mr. Justice H. R. Khanna in his 'Making of Constitution' said: "The framing of a Constitution calls for the highest statecraft. Those entrusted with it have to realize the practical needs of the government and have, at the same time, to keep in view the ideals, which have inspired the nation. They have to be men of vision, yet they cannot forget the grass roots". A Constitution at the same time has to be a living thing, living not for one or two generations but for succeeding generations of men and women. It is for that reason the provisions of the Constitution are couched in general terms, for the great generalities the Constitution have a content and significance that vary from age to age and have, at the same time transcendental continuity about them. ... A constitution states, or ought to state, not the rules of the passing hour, but the principles for an expanding future.

The Indian Constitution is based on the philosophy of evolving an egalitarian society free from fear and bias based on promoting individual freedom in shaping the government of their choice. The whole foundation of constitutional democracy is building a system of governance in systematic machinery functioning automatically on the wheels of norms and regulations but not on individual whims and fancies. It is easy to dream such a system of rule of law than framing a mechanism for it. The Indian Constitution is a marathon effort to translate philosophical rule of law into practical set up divided into three significant estates checking each other exercising parallel sovereignty and non-egoistic supremacy in their own way. Apart from excellent separation of powers to avoid the absolute concentration, the Constitution of India envisages a distinct distribution of powers between two major levels of Governments- central and provincial with a fair scope for a third tier – the local bodies. However, the operation of the system came in contrast with men and their manipulations leading to different opinions and indifferent options. Whatever may be the consequential aberrations, the system of rule of law is perfectly reflected in framing of the Constitutional norms codifying the best governing mechanisms tested and trusted in various democratic societies world over. The Indian government is thus federal in form (during normal times) but unitary in spirit during emergencies. Thus these various adoptions from the various countries thus helps making the supreme law of the country as flawless as it could be. All these rectifications render India one of the most successful democracies of all times.

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2. The Constitution was in 22 Parts originally. Part VII & IX (older) was repealed in 1956, whereas newly added Part IVA, IXA, IXB & XIVA by Amendments to the Constitution in different times (lastly added IXB by the 97th Amendment).
3. By 73rd & 74th Amendment, the lists of administrative subjects of Panchayat raj & Municipality included

- in the Constitution as Schedule 11 & 12 respectively in the year 1993.
4. On 2 January 2013, by 98th Amendment, the Article 371J has been inserted to the Constitution regarding to empower the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka Region.
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