

The Constitution of India: A Living Document in a Transformative Democracy

Legal Upanishad Journal (LUJournal.com)

Vol 1 Issue 4 / March 2025 / pp- 74-88

Sanjay Kumar Bharti Advocate, Supreme Court of India, India

I. Introduction

1. The Constitution as a Socio-Legal Covenant

The Constitution of India is not merely a legal manuscript but a profound socio-legal covenant that enshrines the aspirations and ideals of a diverse nation. Described aptly as a "living document," it adapts and evolves with the changing contours of society, ensuring its relevance across generations. This dynamic nature allows it to address contemporary challenges while maintaining its foundational principles.

Comparatively, while the United States Constitution is revered for its brevity and endurance, it often relies on amendments and judicial interpretations for adaptability. India's Constitution, in contrast, was designed with inherent flexibility, encompassing detailed provisions that anticipate the nation's complexities. This adaptability is crucial for a country characterized by vast cultural, linguistic, and religious diversity, enabling the Constitution to function as a unifying force amid plurality.

2. Historical Context

India's constitutional ethos is deeply rooted in its historical journey. From the sophisticated governance systems of the Indus Valley Civilization to the administrative acumen of the Mauryan and Gupta empires, indigenous principles of governance have long thrived on the subcontinent. However, colonial subjugation disrupted traditional systems, imposing foreign legal frameworks that often clashed with local customs.

The freedom struggle was not just a fight against political domination but also a quest to reclaim India's socio-cultural identity. Leaders like Mahatma Gandhi emphasized concepts like *Swaraj* (self-rule) and *Sarvodaya* (universal upliftment), advocating for a governance system imbued with ethical and moral values. Texts like Gandhi's *Hind Swaraj* highlighted the need for a civilization grounded in indigenous values rather than Western materialism, influencing the moral foundations of the Constitution.

3. Global Recognition

India's Constitution has garnered global recognition as a model for newly independent nations navigating the challenges of post-colonial state-building. Its comprehensive nature, addressing fundamental rights, directive principles, and federal structures, offers a blueprint for balancing unity and diversity. Countries like South Africa drew inspiration from India's experience when drafting their own constitutions during their transitions to democracy. Nepal, too, looked towards the Indian Constitution when restructuring its governance framework after the abolition of monarchy. This international admiration underscores the Constitution's robustness and adaptability in accommodating diverse societal needs.

II. Historical Foundations

1. Colonial Legacy

The British colonial era introduced legislative acts that significantly impacted India's governance. The Regulating Act of 1773 marked the beginning of centralized British administration but exposed flaws like corruption and inefficiency due to lack of oversight. The Charter Act of 1833 was pivotal, introducing a "Law Member"—most notably Thomas

Babington Macaulay—who played a crucial role in codifying laws, including the Indian Penal Code. The Government of India Act of 1935 attempted to establish a federal structure and provincial autonomy but was criticized for maintaining British control over critical areas. These colonial laws left an indelible mark, with statutes like the Sedition Act of 1870 influencing post-independence legal frameworks. The struggle has been to dismantle repressive colonial legacies while retaining administrative systems beneficial for governance.

2. Freedom Struggle and Constitutional Vision

The freedom movement was as much about envisioning a free India's constitutional future as it was about ending British rule. Early constitutional efforts like the Nehru Report of 1928 proposed dominion status and fundamental rights, reflecting a desire for self-governance. Contrasting visions within the leadership highlighted the complexity of creating a unified national strategy. Dr. B.R. Ambedkar and Mahatma Gandhi had divergent views on addressing caste inequalities, exemplified by the Poona Pact of 1932, where they negotiated separate electorates versus joint electorates with reserved seats. International movements also influenced Indian thinkers; the ideals of "liberty, equality, fraternity" from the French Revolution found their way into the Preamble, symbolizing universal aspirations and India's commitment to democratic principles.

3. Constituent Assembly Debates

The Constituent Assembly was a microcosm of India's diversity, engaging in rigorous debates to finalize the Constitution. Language emerged as a contentious issue, with leaders like Rajendra Prasad advocating for Hindi as the national language, while representatives from southern states feared marginalization. The compromise was adopting both Hindi and English for official purposes. Minority rights were another significant concern. The Muslim League's demands led to heated discussions on secularism and representation. The drafting process was meticulous, with Constitutional Advisor B.N. Rau studying global constitutions to incorporate best practices. Notably, women members like Hansa Mehta and Rajkumari Amrit Kaur made substantial

contributions, advocating for gender equality and social reform. Their inputs ensured that the Constitution addressed not just political rights but also social justice.

III. Architectural Framework

1. Preamble: Ideological Battleground

The Preamble sets the philosophical tone of the Constitution, encapsulating ideals like justice, liberty, equality, and fraternity. The 42nd Amendment in 1976, during Prime Minister Indira Gandhi's tenure, added the words "socialist" and "secular," reflecting a shift towards more state intervention in the economy and an emphasis on religious neutrality. This amendment was politically charged, criticized by some as an overreach during the Emergency period. Judicial interpretation of the Preamble has evolved. In the *Berubari Union Case* (1960), the Supreme Court viewed the Preamble as a guiding principle but not enforceable. However, in the landmark *Kesavananda Bharati* case (1973), the Court recognized the Preamble as part of the Constitution's basic structure, thereby unamendable and central to its identity.

2. Fundamental Rights

Fundamental Rights are the cornerstone of the Constitution, safeguarding individual liberties against state infringement.

- **Article 19** guarantees freedoms such as speech and expression. In *Romesh Thappar v. State of Madras* (1950), the Supreme Court struck down a ban on a publication, asserting the importance of free speech. Decades later, in *Shreya Singhal v. Union of India* (2015), the Court struck down Section 66A of the Information Technology Act, deeming it unconstitutional for being vague and a threat to free expression online.
- **Article 21** protects the right to life and personal liberty. The *Maneka Gandhi v. Union of India* (1978) case expanded its scope by interpreting "life" to include the right to live with dignity. *Francis Coralie Mullin v. The Administrator* (1981) further reinforced this by emphasizing humane conditions for detainees. The landmark *Justice K.S. Puttaswamy*

(*Retd.*) v. *Union of India* (2017) case recognized the right to privacy as intrinsic to Article 21, influencing global discourses on data protection and individual privacy.

3. Directive Principles of State Policy (DPSP)

The DPSPs, outlined in Part IV, are guidelines for the state to promote social welfare and economic democracy. Although non-justiciable, they aim to ensure equitable distribution of resources.

Conflicts have arisen between DPSPs and Fundamental Rights. In *State of Madras v. Champakam Dorairajan* (1951), educational reservations were struck down for violating rights, prompting the First Amendment to strengthen DPSPs. In *M.C. Mehta v. Union of India* (2020), the Supreme Court invoked Article 48A to address environmental concerns, demonstrating the growing importance of DPSPs in judicial reasoning. Cases like the *Right to Food* (2001) linked DPSPs to enforceable rights, compelling the state to act against starvation and malnutrition.

4. Federalism

India's federal structure balances power between the Union and the states, accommodating diversity while maintaining unity. Asymmetric federalism grants special provisions to certain regions. Article 370 provided autonomy to Jammu & Kashmir until its abrogation in 2019, a move that sparked debates on federalism and state rights. Inter-state disputes, like the Cauvery water issue between Tamil Nadu and Karnataka, highlight challenges in resource sharing. Mechanisms like the Inter-State Council aim to address such conflicts, but regional interests often complicate resolutions.

IV. Amendment Process and Judicial Review

1. Key Amendments

The Indian Constitution is designed to be dynamic, allowing for amendments to address emerging needs and challenges. This flexibility ensures that the Constitution remains relevant over time.

- **First Amendment (1951):** Shortly after independence, the government introduced the First Amendment to address land reform issues and uphold laws placed in the Ninth Schedule from judicial review. This amendment was crucial for implementing agrarian reforms aimed at reducing inequalities.
- **Forty-second Amendment (1976):** Enacted during the Emergency period under Prime Minister Indira Gandhi, this amendment is one of the most extensive. It attempted to reduce the power of the judiciary and strengthen the central government's authority. Critics argued that it disrupted the balance of power and threatened democratic principles.
- **Forty-fourth Amendment (1978):** In response to the excesses of the Emergency, the subsequent government passed this amendment to restore civil liberties and strengthen judicial review. It revoked many provisions of the Forty-second Amendment, reinforcing the protection of fundamental rights.
- **One Hundred and Third Amendment (2019):** This amendment introduced a 10% reservation for the Economically Weaker Sections (EWS) in education and public employment. It sparked debates on the criteria for economic backwardness and was challenged in the Supreme Court in the case of *Janhit Abhiyan v. Union of India*, questioning its impact on the equality code of the Constitution.

2. Basic Structure Doctrine

The Basic Structure Doctrine is a judicial principle that certain fundamental features of the Constitution cannot be altered by parliamentary amendments, ensuring the preservation of its core values.

- **Evolution of the Doctrine:**
 - *Shankari Prasad v. Union of India* (1951): The Supreme Court upheld the power of Parliament to amend any part of the Constitution, including Fundamental Rights.

- *Golaknath v. State of Punjab* (1967): The Court reversed its stance, ruling that Fundamental Rights are immutable and beyond the scope of amendment, limiting Parliament's power.
- *Kesavananda Bharati v. State of Kerala* (1973): This landmark case struck a balance by stating that while Parliament can amend the Constitution, it cannot alter its "basic structure." Elements like the supremacy of the Constitution, secularism, and separation of powers were deemed inviolable.
- **Expansions of the Doctrine:**
 - *Indira Nehru Gandhi v. Raj Narain* (1975): The Supreme Court applied the basic structure doctrine to invalidate clauses that sought to immunize the election of the Prime Minister from judicial review, emphasizing free and fair elections as a fundamental feature.
 - *Minerva Mills v. Union of India* (1980): The Court reaffirmed that a limited amending power itself is part of the basic structure, ensuring that the balance between Fundamental Rights and Directive Principles is maintained.

The Basic Structure Doctrine has served as a guardian of constitutional integrity, preventing the erosion of foundational principles regardless of parliamentary majority. It underscores the judiciary's role in upholding the Constitution's spirit against potential excesses by the legislature.

V. Judicial Activism and Public Interest Litigation (PIL)

1. Evolution of PIL

Public Interest Litigation emerged as a judicial innovation to make justice more accessible, especially for the marginalized.

- **Origins:** In the late 1970s, justices like P.N. Bhagwati and V.R. Krishna Iyer recognized that conventional legal procedures were inadequate for addressing the grievances of the disadvantaged. In *Hussainara Khatoon v. State of Bihar* (1979), the Court took cognizance of the plight of undertrial prisoners, leading to their release and highlighting the right to a speedy trial.

- **Landmark Cases:**

- *Vishaka v. State of Rajasthan* (1997): Triggered by the brutal gang rape of a social worker, this case led the Supreme Court to lay down guidelines against sexual harassment at the workplace, in the absence of specific legislation.
- *Olga Tellis v. Bombay Municipal Corporation* (1985): The Court acknowledged the right to livelihood as an integral part of the right to life, preventing the eviction of pavement dwellers without due process.

PIL became a tool for social transformation, allowing the judiciary to address violations of fundamental rights by relaxing traditional standing rules.

2. Contemporary Trends

In recent years, the scope of PIL has expanded to encompass a variety of issues.

- **Environmental Jurisprudence:**

- *M.C. Mehta v. Union of India* cases have been instrumental in advancing environmental protection. The Court ordered measures to control pollution in the Ganges River and vehicular emissions in Delhi.
- In the *Vellore Citizens' Welfare Forum v. Union of India* (1996), the Court introduced the "Precautionary Principle" and "Polluter Pays Principle" into Indian environmental law.

- **Digital Rights and Freedoms:**

- *Anuradha Bhasin v. Union of India* (2020): Challenging the internet shutdown in Jammu and Kashmir, the Supreme Court held that freedom of speech and expression through the internet is protected under Article 19(1)(a), emphasizing that restrictions must be reasonable and subjected to judicial scrutiny.

- **Criticism and Challenges:**

- Concerns have been raised about judicial overreach, where courts are perceived to encroach upon the domain of the executive or legislature. Instances like the ban

on the sale of firecrackers have sparked debates on the limits of judicial intervention.

Despite criticisms, PIL continues to be a vital mechanism for upholding constitutional rights and addressing societal issues that might otherwise remain neglected.

VI. Emergency Provisions

1. 1975 Emergency

The Emergency declared in 1975 remains a critical episode in India's constitutional history.

- **Political Context:** Triggered by internal disturbances, following the Allahabad High Court's judgment invalidating Prime Minister Indira Gandhi's election in *Indira Nehru Gandhi v. Raj Narain* (1975), the Emergency lasted from 1975 to 1977.
- **Impact on Institutions:**
 - **Suspension of Rights:** Fundamental Rights, including freedom of speech and personal liberties, were curtailed. The government's actions led to widespread arrests and censorship.
 - **Judicial Independence Undermined:** The supersession of Justice H.R. Khanna, who dissented in the *ADM Jabalpur v. Shivkant Shukla* (1976) case by upholding habeas corpus rights, highlighted attempts to compromise the judiciary.

2. Judicial Reforms Post-Emergency

The aftermath prompted significant reforms to prevent future abuses.

- **Restoration of Rights:** The Forty-fourth Amendment (1978) sought to safeguard civil liberties by making it harder to suspend Fundamental Rights.
- **Judicial Safeguards:**
 - *S.R. Bommai v. Union of India* (1994): The Supreme Court curtailed the misuse of Article 356 (President's Rule), stipulating that the floor test is the only valid method to ascertain a government's majority.

- In 2017, the Supreme Court overruled the *ADM Jabalpur* decision, affirming that the right to life and personal liberty cannot be suspended even during an Emergency.

These reforms reinforced the checks and balances integral to India's constitutional framework, ensuring the protection of democratic institutions.

VII. Administrative Law and Governance

1. Rule of Law

The principle of the Rule of Law is foundational to administrative actions in India, ensuring that every action by the state is governed by law and not by arbitrary authority. The Rule of Law is vital for maintaining order, fairness, and justice within society.

- **Ensuring Fairness:** In *Maneka Gandhi v. Union of India* (1978), the Supreme Court significantly expanded the interpretation of Article 21, which protects the right to life and personal liberty. The case arose when the petitioner, Maneka Gandhi, was denied a passport without being given a reason. The Court asserted that the phrase "procedure established by law" under Article 21 must be just, fair, and reasonable, thus incorporating the principles of natural justice. This landmark judgment set a precedent for procedural safeguards against arbitrary state action, emphasizing that any law depriving a person of life or liberty must meet the standards of fairness and reasonableness.
- **Accountability:** The Supreme Court reinforced the principle of accountability in administrative actions through the case of *Ajay Hasia v. Khalid Mujib Sehravardi* (1981). This case involved the admission process of a regional engineering college, which was challenged for arbitrariness and discrimination. The Court ruled that any action by an instrumentality of the state is subject to judicial review to ensure it conforms to constitutional mandates. This decision prevented arbitrariness in administrative decisions by asserting that all state actions must be transparent, accountable, and justifiable.

2. Tribunalization

To expedite justice and reduce the burden on regular courts, India has established specialized tribunals that handle specific types of cases. These tribunals are designed to provide expertise, efficiency, and swift resolution in their respective domains.

- **Role of Tribunals:** Specialized tribunals such as the National Green Tribunal (NGT) focus on environmental cases, providing a forum for addressing environmental disputes with expert knowledge and expeditious processes. The NGT has played a crucial role in enforcing environmental laws and regulations, thereby contributing to sustainable development and environmental justice.
- **Judicial Review:** In *L. Chandra Kumar v. Union of India* (1997), the Supreme Court held that the decisions of tribunals are subject to scrutiny by High Courts under Articles 226 and 227 of the Constitution. This landmark judgment ensured that tribunals operate within constitutional bounds and reaffirmed the role of the judiciary in overseeing administrative justice. By maintaining judicial review, the Supreme Court emphasized the need for tribunals to adhere to principles of fairness, transparency, and accountability.

Tribunals have become integral to the administrative justice system in India, balancing specialization with oversight to enhance the effectiveness and efficiency of judicial processes.

VIII. Law of Torts

1. Constitutional Torts

The judiciary in India has recognized the state's liability for violations of fundamental rights through the doctrine of constitutional torts, establishing the precedent that the state can be held accountable for breaches of constitutionally guaranteed rights. This recognition is significant in ensuring that individuals have a remedy against state excesses and arbitrariness.

- **State Accountability:** In *Rudal Shah v. State of Bihar* (1983), the Supreme Court awarded compensation to the petitioner for wrongful imprisonment. Rudal Shah had been unlawfully detained for over fourteen years despite his acquittal. The Court held that the state must compensate for the violation of Rudal Shah's fundamental rights, setting a

precedent for awarding monetary compensation in cases of unlawful detention and other state excesses. This case underscored the judiciary's role in protecting individual liberties and holding the state accountable for violations of fundamental rights.

- **Custodial Justice:** The case of *Nilabati Behera v. State of Orissa* (1993) further reinforced the state's liability for custodial deaths. Nilabati Behera filed a petition after her son died in police custody due to alleged torture. The Supreme Court awarded compensation to Nilabati Behera, emphasizing that the state must protect individuals against abuse of power and ensure that custodial deaths do not go unpunished. This judgment highlighted the importance of upholding the dignity and rights of individuals in state custody and ensuring that the state is held accountable for any violation of these rights.

2. Privacy Torts

The concept of privacy has gained prominence as a fundamental right, especially in the context of evolving technological landscapes and increased data collection by the state and private entities.

- **Right to Privacy:** The landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) elevated the right to privacy to a fundamental right under Article 21 of the Constitution. The case arose from challenges to the Aadhaar scheme, which involved the collection and use of biometric data. The Supreme Court's judgment recognized privacy as intrinsic to the right to life and personal liberty, significantly impacting areas like data protection, surveillance, and personal autonomy. The judgment stressed that any infringement of privacy must meet the tests of legality, necessity, and proportionality, thereby establishing a robust framework for protecting individual privacy in the digital age.
- **Implications:** The recognition of privacy as a fundamental right has far-reaching implications. It has prompted the need for comprehensive legislation to safeguard citizens' privacy, leading to the drafting of the Personal Data Protection Bill. This bill aims to regulate data collection, storage, and usage, balancing the need for innovation

with individual rights protection. The Puttaswamy judgment also influences judicial scrutiny of state actions involving surveillance, ensuring that privacy invasions are justified and proportionate to the legitimate aims pursued.

IX. Contemporary Challenges

1. Technological Governance

The digital revolution has brought about significant advancements, but it also poses new constitutional questions regarding identity, privacy, and data protection.

- **Aadhaar and Identity:** The deployment of Aadhaar, a biometric identification system, aimed to streamline welfare delivery and curb corruption. However, it raised concerns over exclusion and privacy. Instances were reported where technological failures led to the denial of essential services to beneficiaries, highlighting the challenges of implementing such a system on a large scale. The Supreme Court, in the Aadhaar judgment, addressed these concerns by upholding the constitutionality of Aadhaar but imposing restrictions on its mandatory use, especially in areas where it could lead to exclusion.
- **Data Protection:** The absence of robust data protection laws in India leaves citizens vulnerable to data breaches and misuse. The Puttaswamy judgment spurred the drafting of the Personal Data Protection Bill, which seeks to create a framework for the protection of personal data, ensuring that data processing practices are transparent and accountable. This bill is expected to play a crucial role in safeguarding individual rights in the digital era, balancing the need for technological innovation with privacy protection.

2. Caste and Gender

Social stratification based on caste and gender continues to present challenges in achieving true equality and justice.

- **Reservation Debates:** The demand for quotas by various communities, such as the Marathas, has led to legislative measures that are often challenged in courts. In *Jaishri Laxmanrao Patil v. Chief Minister* (2021), the Supreme Court struck down the Maharashtra law granting reservations to the Maratha community, reaffirming the 50% ceiling on reservations established in *Indra Sawhney v. Union of India* (1992). The Court's decision highlighted the need to balance affirmative action with the principles of equality and merit.
- **Gender Justice:** Movements like #MeToo have pressured institutions to enforce stricter policies against sexual harassment and gender discrimination. The entry of women into the Sabarimala Temple, enabled by the Supreme Court's 2018 verdict, sparked nationwide debates on tradition versus equality. The Court held that the exclusion of women based on age violated their fundamental rights, emphasizing the need to reconcile religious practices with constitutional principles of gender equality.

3. Federalism

Balancing central and state powers remains an ongoing challenge in India's federal structure.

- **Delhi's Autonomy:** In *Government of NCT of Delhi v. Union of India* (2023), the Supreme Court ruled on the distribution of powers between the Delhi government and the Lieutenant Governor. The judgment clarified that the Lieutenant Governor must act on the aid and advice of the elected government in matters within its legislative competence, enhancing Delhi's autonomy and reducing central overreach.
- **Role of Governors:** Allegations of partisan conduct by Governors in states like Tamil Nadu have raised questions about the neutrality of constitutional functionaries. Instances where Governors have been accused of overstepping their constitutional mandates have led to calls for clearer guidelines to ensure that the Governor's role remains impartial and supportive of cooperative federalism.

X. Conclusion

The Constitution of India stands as a testament to the nation's resilience and capacity for transformation. Its ability to adapt through amendments and judicial interpretations has allowed it to meet the challenges of a rapidly evolving society. From addressing the remnants of colonial legacies to embracing the complexities of the digital era, the Constitution serves as a living framework guiding India toward equitable governance.

Looking ahead, India faces the task of balancing economic development with social justice, managing diversity while fostering unity, and regulating emerging technologies like artificial intelligence without stifling innovation. The constitutional commitment to liberty, equality, and fraternity will be instrumental in navigating these complexities. Upholding these principles requires continuous engagement from all pillars of democracy—legislature, executive, judiciary, and the citizenry.

The journey so far reaffirms that while laws and policies may change, the core values enshrined in the Constitution remain a steadfast beacon for the nation. Embracing its spirit will ensure that India's democracy not only endures but thrives in the face of future challenges.