

Understanding Democratic Constitutionalism and Culture in the Context of India

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Introduction

An often acknowledged characteristic of the late 20th century has been the expansion of democracy as an ideology which has been accepted by various countries. Democracy can only be realised globally through accommodating the specificities of diverse culture. In this article, the author directs its efforts towards studying the idea of democratic constitutionalism by keeping in mind the cultural context. This theme has been studied by undertaking the case study of India.

The present article consists of two main sections- the paragraph “*Insight to the Idea of Democratic Constitutionalism*” which provides an insight to the idea of democratic constitutionalism and also incorporates the views of scholars who emphasis the significance of culture while studying the idea of democratic constitutionalism in the context of post-colonial societies. In the paragraph “*Democratic Constitutionalism in India*” the theme of democratic constitutionalism is studied by undertaking the case study of India. The details of each Section are-

Insight to the Idea of Democratic Constitutionalism

While understanding the idea of democratic constitutionalism it is pertinent to focus on two concepts –a) democracy and b) constitutionalism.

a) The word democracy is coined from the Greek word Demos (people) and Kratos meaning power. It is a government founded on the principle of rule of law: is against arbitrariness, highhandedness and dictatorship/autocracy.

b) Constitutionalism is linked up to the idea of limited government through mechanism such as separation of power, checks and balances, human rights etc Without constitutionalism democracy is incomplete for it is constitutionalism that provides guidance to democracy in terms of individual rights, limited welfare rights and checks and balances.

The enterprise of democratic constitutionalism therefore rests upon the premise of collective agency. The collective agency of the people constitutes a ‘demos’ capable of bestowing...democratic authority on a polity’ (Post, 2000, p.185). Pitkin’s point is that a constitution can succeed in establishing durable and stable structures of democratic legitimacy only if it draws upon the foundation of a ‘fundamental ethos’ that reflects ‘the national character

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of a people' (Post,2000,p.186).The essence of democracy is government by the people and this creates a problem as today there is hardly any country that can make a public statement that it is not government based on the consent of the people. The cultural environment of each is also so different from its neighbors that it has to define the term to suit its own environment.

Some writers like Cusack(1991), Linz and Lijphart(1996) therefore construct democracy as a culturally bound concept that accommodates the specificities of diverse cultures. In direct contrast however others promote liberal democratic theory as being universally applicable across all societies and cultures (Ibid, p. 149).

Thus in the case of countries like India the challenge of democratic constitutionalism is to maintain a balance between democratic state and the cultural ethos of a country.

Democratic Constitutionalism in India

In India, except for a short duration for 21 months i.e; from June 26,1975 to March 1977,when there was an emergency that democratic institutions were weakened. But the elections of March 1977 brought about the defeat of Mrs. Gandhi and her governing party, Congress and the restoration of democratic institutions. Overall the country has been successful in retaining democracy inspite of numerous challenges. Culturally and linguistically Indian people differed quite significantly. There were many linguistic regions and languages with a feeling of independent identity and culture. India also had a population of groups and communities who spoke different dialectics and were classified as Scheduled Tribes by the British.

Caste was yet another factor that made Indian society complex. Diversity also prevailed on the basis of religion. Though a large number of Muslims migrated to the new state of Pakistan, but still a substantial number of them stayed back in India. India had other religious communities like the Christians, Sikhs, Jews, Jains and the Buddhists..

It was in this context of the existence of numerous diversities that India chose to follow the path of parliamentary system of democracy. The Constituent Assembly under the leadership of Dr. B.R. Ambedkar framed a constitution for independent India which accommodated most of these diversities, gave limited rights to various communities to lead their" personal" lives as per their cultural traditions. It also adopted various means for dealing with disabilities that were historically inherited by certain underprivileged groups that is the Scheduled Castes and Scheduled Tribes.

Review of the idea of Democracy in the Indian Constitution

The preamble to the Indian Constitution asserts that India is to be a sovereign, socialist, secular, democratic republic based on "justice, liberty, equality and fraternity. It goes further than most constitutions in projecting populist orientation. Thus Article 38 in the Directive Principles of State Policy (part IV of the constitution)promises to "promote the welfare of the people" through

establishing a social order in which” justice, social, economic and political shall inform all the institutions of national life” Other articles commit the state to uphold the principles of equal pay for equal work for men and women(Art.39)equal justice and free legal aid(Art.39A),the right to work, education and public assistance in certain cases (Art.41),just and humane conditions of work with a living wage for workers(Art.42 and 43), free and compulsory education for children(Art.45).These were lofty intentions, but they were not made justifiable that is “not enforceable in any court of law” and remain ideals to be pursued.

However Part III of the constitution, which deals with “fundamental rights”, was made legally binding. Articles 14, 15. 16. 17 and 18 refer to “equality before the law”, prohibition of discrimination on grounds of religion, race, caste sex or place of birth, “equality of opportunity in matters of public employment””abolition of untouchability” and “ abolition of titles”, Article 19 specifies civil liberties that invest citizens with the rights to” freedom of speech and expression, to assemble peacefully and without arms, to form associations and unions, to move freely...”. The next three articles delineates some procedural protections in criminal cases such as that “no person shall be prosecuted or punished for the same offences more than once” or be compelled to stand witness against himself(Art.20), that” no person shall be deprived of his life or personal liberty except according to procedure established by law”(Art.21) and that a person who is arrested must be informed of the grounds with “the right to consult and be defended by a legal practitioner of his choice”(Art.22). The next four articles deal explicitly with guarantees associated with religious freedom and the separation of temple and state. The Indian Courts have been very protective of many of those essential freedoms without which a democratic system becomes inconceivable.

The power of judicial review is essential to the idea of constitutionalism The Indian judiciary has tried to exercise the same kind of authority over the executive and legislative branches as is practiced in the U.S. juridical tradition. Indian Constitution in Article 226 gives the power to the courts to examine the legality and constitutional validity of any order given by the government or by any officer or authority of the government and to declare any decision that is not consistent with the constitutional provisions and guarantees as null and void.

The Constitution thus was the work of several enlightened minds and an informed public debate. The attempt of the new leadership was to bring everyone within the ambit of the free republic and see to it that the free spirit of the newly independent nation touched everyone. Through a representative democracy, through individual and group rights, through equality to the oppressed, the Constitution attempted to make everyone equally a part of new India.

Conclusion and Future Expectations

Indian democracy for the longest time ever was proof of how institutions could survive even in most difficult of times. All that seems to gradually withering away. Nehru, Gandhi and Ambedkar have not just been rendered irrelevant but are frequently and relentlessly vilified

publicly today. There is a conscious effort today by the political elite to erase and rewrite history in this country. In December 2019, India's legal regime departed from secularism and equal rights by linking membership in the political community to religious identity. An amendment to the 1955 Citizenship Act challenged the doctrine of equality before the law and equal protection by law to any person including the foreigners. The idea of secularism is also violated owing to Bhartiya Janata Party's vision of Hindu nation and with government's decision to build a Hindu temple in the place where a mosque has existed for centuries in Ayodya.

Further Indian Constitution establishes a parliamentary system with its feature of the executive responsibility to the legislature. But this too is changing with India exhibiting features resembling Presidential system in present times. This institutional change has undermined the mechanism of accountability not just in the Parliament of India but also in the State assemblies.

The weakening of the legislature has also affected the functioning of the Judiciary. The highest courts are known now for avoiding controversial cases. In the Babri Masjid case, the court has acquitted all those charged with the demolition of the mosque. It has further given judicial ruling that facilitate the plan to build a Hindu temple.

Like the principle of separation of powers that has been affected in present times even the powers of the state governments have also been diminished by passing of Constitutional Amendment in 2016. This amendment changed the taxation powers through indirect tax collection known as Goods and Services Tax(GST). This has affected Indian federalism as the States have ceded their tax powers to a new body that is the GST Council. The spirit of federalism is further affected by introducing in 2019 the law relating to reorganization of the States, redrawing State's boundaries or changing a State's constitutional status without consulting the affected States. Besides this, the central government's tendency to involve itself in domains where State's enjoy exclusive legal powers as was seen with the passing of law that liberalized agriculture and gave centre more powers.

Democracy might still exist but only nominally on paper and in popular media. Democracy will slowly cease to exist for millions of Indians who are marginalized, struck by extreme poverty and have been historically oppressed. When young people are kept out of politics, students, farmers, women and children are beaten up and arrested for exercising their democratic right to protest, cases of sedition are methodically filed against citizens and political opponents are extra-judicially locked up. The withering away of democracy is reflected with emphasis on one voice, elevation of citizen duties over citizen rights, privileges obedience over freedom, fear to instill ideological uniformity and weakening of checks on executive power. They are a long way away from the promise of the constitution and the vision of the Constituent Assembly.

The future of Indian democracy however is at a constant inflection point and we are at a crossroads. It is we who decide where it takes off from here. The least we can do is rise up to the occasion and define the goals for an India that will be truly democratic in letter and in spirit..

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