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Supremacy of Constitution In India

Adv Swapnil Waware
(Research Scholar)

Dr. Rohini Waware
(Dr. PDCL, Amravati)

Abstract

A Constitution is the basic law relating to the governance of the country. It defines various organs of the State, enumerates their functions and demarcates their fields of operation. But a Constitution is much more than that. It is the vehicle of Nation's progress. It reflects the traditions of the past. It has to provide response to the needs of the present and to cope with the demand of the future. A Constitution is different from ordinary statute which is designed to meet the fugitive exigencies, but these statutes may be repealed when the purpose is met. Constitution provides structure of our politics. It lays down the framework defining the fundamental rights, directive principles and duties of the citizens. Therefore constitution segregate the functions like parliament is endowed with the law making function, whereas the judiciary is endowed with the function of interpretation of law and the executives are entrusted with the task of execution of the law. In this paper the authors will focus upon the aspect which makes the Constitution of India as the supreme law of the land.

Key words: Constitution, statute, supreme, segregate, fundamental rights.

Introduction

India, also known as *Bharat*, is a Union of States. It is a sovereign, socialist, secular, democratic republic with a parliamentary system of government. The Republic is governed in terms of the Constitution of India which was adopted by the Constituent Assembly on 26th November, 1949 and came into force on 26th January, 1950. The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. It is the lengthiest constitution of the world having 395 Articles and 12 Schedules. It is rigid as well as flexible in nature which makes it a living document to cater the needs and aspiration of the changing society.

The Constitution of India was honestly adapted through a middle path between Judicial supremacy (USA) and Parliamentary supremacy (UK). In fact, both parliament and the judiciary should not exceed their limits as defined by the constitution, so that harmony can be maintained between the legislature and judiciary. At the same time, Judiciary was given the power of declaring a law unconstitutional if it is perceived to be going beyond the competence of the legislature as per distribution of powers enshrined in the constitution.

Though Indian Constitution does not have express provision of separation of judicial and parliamentary supremacy but it's not quite unclear also. While it is the prerogative of the parliament to amend the constitution¹ and make the laws; it is the duty of the judiciary to decide if basic ideals and structure of the constitution are transgressed by such laws. One the parliament has done its job, its Supreme Court which decides its constitutionality through judicial review.

¹ Article 368 of the Constitution of India.

Need of Constitution?

Almost every aspect of our lives is governed by a set of rules. Think of games, almost each one has its own specific regulations; your schools have certain rules that you have to follow. Adults are not exempted from rules, workplaces have them. Some are imposed by custom and tradition. Similarly society also needs certain rules so that people can live together in a safe manner. These are called laws and are made by legislatures like our Parliament. The constitution is the supreme law of the country and it contains laws concerning the government and its relationships with the people.

This quote by Patrick Henry, an American lawyer and politician, sums up the power of a Constitution best: *“The Constitution is not an instrument for the government to restrain the people; it is an instrument for the people to restrain the government.”*

System of checks and balances

Constitution has provided with certain independence to all the three organs, viz. constitution has entrusted different powers with its organs. President can promulgate an Ordinance to meet the emergency situation when the Parliament is not in session², but simultaneously there is check provided by the Constitution to put the check upon executives so the they should not use the ordinance making power of the President as a tool to satisfy their ulterior motives, there Constitution itself provides that law made through Ordinance cease to operate at the expiration of six weeks from the reassembly of Parliament unless it is passed by the Parliament. It shows how the Constitution balances the executive action through Parliament.

Judicial Interpretation of Constitutional Supremacy

In India, the constitutional supremacy was explicitly echoed in the *Minerva Mills case*³ where the Supreme Court held that the legislature, executive and judiciary are all bound by the Constitution, and nobody is above or beyond the Constitution. Every law made by the parliament is subject to interpretation by Supreme Court in the light of ideals and objectives of the constitution and if they go beyond or above that, they can be held null and void.

Most importantly seven of the thirteen judges in the *Kesavananda Bharati case*,⁴ including Hon'ble Chief Justice Sikri who signed the summary statement, declared that Parliament's constituent power was subject to inherent limitations. Parliament could not use its amending powers under Article 368 to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the Constitution.

Constitution as a Supreme law

Unlike the British Parliament which is a sovereign body (in the absence of a written constitution), the powers and functions of the Indian Parliament and State legislatures are subject to limitations laid down in the Constitution. The Constitution does not contain all the laws that govern the country. Parliament and the state legislatures make laws from time to time on various subjects, within their respective jurisdictions. The general framework for making these laws is provided by the Constitution. Parliament alone is given the power to make changes to this

² Article 123 of the Constitution of India.

³ *Minerva Mills Ltd. and Ors. v. Union of India and Ors* AIR 1980 SC 1789

⁴ *Kesavanand Bharati v. State of Kerala*, AIR 1978 SC 1461.

framework under Article 368.⁵ Unlike ordinary laws, amendments to constitutional provisions require a special majority vote in Parliament.

Another illustration is useful to demonstrate the difference between Parliament's constituent power and law making powers. According to Article 21 of the Constitution, no person in the country maybe deprived of his life or personal liberty except according to procedure established by law. The Constitution does not lay down the details of the procedure as that responsibility is vested with the legislatures and the executive. Parliament and the state legislatures make the necessary laws entifying offensive activities for which a person may be imprisoned or sentenced to death. The executive lays down the procedure of implementing these laws and the accused person is tried in a court of law. Changes to these laws may be incorporated by a simple majority vote in the concerned state legislature. There is no need to amend the Constitution in order to incorporate changes to these laws. However, if there is a demand to convert Article 21 into the fundamental right to life by abolishing death penalty, the Constitution may have to be suitably amended by Parliament using its constituent power.

Conclusion

The Constitution draws its authority from the people and has been promulgated in the name of the people. This is evident from the Preamble which states "*We the people of India...do hereby adopt, enact and give to ourselves this Constitution.*" This implies that the direct authority of the people cannot be claimed or usurped by the legislature. Under the constitution, legislature is a representative body but people constitute the ultimate sovereign. The constitution is the source of authority of all organs of the state including legislature. This implies that they cannot exercise any power which is not conferred upon them by the Constitution. The constitutional supremacy has further strengthened by the Basic Structure Doctrine. The constitutional has provided the weapon of judicial review to the Supreme Court to upheld Constitutional Supremacy. India's constitution is supreme and not a handmade document of any organ, if for any reason the court of law tries to transgress the provisions of the constitution, the court of law ensures that the dignity of constitution is upheld at any costs.

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⁵ However certain constitutional amendments must be ratified by at least half of the State legislatures before they can come into force. Matters such as the election of the President of the republic, the executive and legislative powers of the Union and the States, the High Courts in the States and Union Territories, representation of States in Parliament and the Constitution amending provisions themselves, contained in Article 368, must be amended by following this procedure.

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