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RESEARCH ARTICLE

INDIA'S CONSTITUTIONALISM: AN EXAMINATION OF ITS HISTORICAL DEVELOPMENT AND CURRENT ISSUES

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Abstract

This paper explores the idea of constitutionalism in India, charting its development over time and evaluating current threats to the country's constitutional system. The transition of India from colonial oppression to a democratic republic with a strong constitution is an impressive case study in the evolution of constitutions. The paper examines constitutionalism's tenets in the context of India, highlighting its importance in preserving the rule of law, democracy, and human rights. It also draws attention to some of the major issues that Indian constitutionalism is facing in the twenty-first century, including federalism, judicial activism, and minority rights protection. This essay sheds light on the distinct history of constitutionalism in India and its applicability in the modern world.

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Introduction:-

Constitutionalism which stands for a dedication to the rule of law, the defence of individual rights, and the creation of democratic institutions, is a basic idea in the governing of any country. Constitutionalism is a major factor in determining the political, social, and legal climate of India. This essay aims to investigate the problems that modern Indian constitutionalism is facing as well as its historical development. Over the ages, there have been substantial changes to the intricate and multidimensional process of constitutionalism's emergence in India. An outline of the significant turning points and advancements in India's constitutional growth is provided below:

Historical Evolution:

The origins of constitutionalism in India can be found in ancient writings such as the Manusmriti and Arthashastra, which outlined moral, ethical, and legal guidelines. The significance of Dharma (righteousness) and the duty of rulers to maintain justice and the well-being of their subjects were stressed in these writings. Early examples of self-governance and constitutional ideas can be found in the councils and assemblies of the Lichchhavis and Vajjis, two early Indian republics. In the mediaeval era, India saw a number of empires and dynasties during the Middle Ages, each with its own legal systems and forms of government. For instance, the Mughal Empire possessed a sophisticated legal and administrative structure that impacted subsequent advancements in Indian constitutionalism. Rule of the British Colony: An important stage in the development of India's constitution was marked by the entrance of the British East India Company in the 17th century. The Regulating Act of 1773, the Charter Acts, and the Government of India Act, 1935, among other legislative and administrative frameworks imposed by the British, established the groundwork for contemporary governance. By exposing Indians to constitutional principles and practices, these acts aided in the formation of constitutional awareness.

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National Movement in India:

The Indian National Movement, which was spearheaded by leaders like Dr. B.R. Ambedkar, Jawaharlal Nehru, and Mahatma Gandhi, was essential in pushing for self-governance and constitutional changes. The Government of India Act, 1935, which gave Indians limited self-government and prepared the way for the Constituent Assembly, was the result of the demand for representation and constitutional concessions. The Indian Constitution and the Constituent Assembly: The job of writing the Indian Constitution fell to the Constituent Assembly of India, which met in 1946. The American, British, and Irish constitutions as well as the Preamble's tenets of justice, liberty, equality, and fraternity were among the many resources the Assembly, presided over by Dr. B.R. Ambedkar, consulted. The Republic of India was established on January 26, 1950, with the adoption of the Indian Constitution.

Independence Era:

India's constitutionalism developed further after independence. The goals of the Indian people were realised in the Constitution, which established a federal government, fundamental rights, and directive principles for state policy. The Constitution has undergone numerous amendments to address new issues and shifts in society. Modern Difficulties: Modern problems for India's constitutionalism include those with federalism, minority rights, judicial activism, and social justice. The Supreme Court of India, in particular, has been instrumental in interpreting and defending the Constitution. The creation of the Constitution by the Constituent Assembly of India the Indian Constitution was drafted and adopted by the Constituent Assembly of India, which was instrumental in its enactment on January 26, 1950.

The Indian Constitution was drafted and enacted by the Constituent Assembly of India, which was founded in 1946. It was established by an indirect election method, with representatives from British India's princely states and provinces. The Constituent Assembly elected Dr. Rajendra Prasad as its president, and B.R. Ambedkar led the committee that drafted the first draft of the Constitution in his capacity as chairman. Members of the Constituent Assembly came from a wide range of communities, regions, and ideological perspectives. It featured prominent figures from the Indian National Movement, such as Jawaharlal Nehru, Sardar Patel, Maulana Abul Kalam Azad, and numerous others. The Assembly was composed of people from various language and religious backgrounds as well as professionals in the fields of administration, politics, and law.

The Process of Drafting:

The Constituent Assembly held lengthy debates, discussions, and deliberations as part of an exhaustive and thorough writing process. The Assembly debated and amended the first draft, which Ambedkar and the Drafting Committee had written. The Assembly also looked to other sources for inspiration, such as international legal papers and other national constitutions. Principal Elements of the Constitution of India: The comprehensive and forward-thinking approach to governance included in the Indian Constitution is well-known. Among its main characteristics a preamble that describes the Constitution's principles and goals. Fundamental rights ensure people's freedoms and legal equality. The government is guided by the Directive Principles of State Policy in its efforts to advance social and economic fairness. a powerful central administration inside a federal framework that strikes a balance between regional autonomy and the need for national unity. a strong, independent judiciary with the ability to conduct judicial reviews. a dedication to social justice, democracy, and secularism.

On January 26, 1950, the Indian Constitution was ratified and India was proclaimed a republic. Dr. Rajendra Prasad was sworn in as the country's first president. Years of struggle to create a legal framework to govern India as an independent nation came to an end with the adoption of the Constitution. The Indian Constitution has been amended multiple times over the years to address new problems and difficulties. The Constitution continues to be a living, breathing constitution that changes as social, political, and economic conditions evolve. The dedication of the Indian Constitution to democracy, the rule of law, and the defence of fundamental rights is widely acknowledged. It has been essential in forming India's democratic institutions and guaranteeing the defence of personal freedoms. India's constitutionalism is based on the values of democracy and popular sovereignty, which are important to the country's government and are established in the Indian Constitution. These values express the will of the people and lay the groundwork for India's democratic system.

Fundamental ideas of constitutionalism:

The Indian Constitution guarantees the right to vote to all citizens who are older than eighteen years. The democratic ideal that each citizen's voice is equal and important during the election process is reflected in this inclusive strategy. Multi-Party System: The dynamic multi-party system in India enables a wide range of political parties to run for

office and represent a range of viewpoints and interests. The electorate benefits from competition and choice in this heterogeneous political environment. Regular free and fair elections at the local, state, and federal levels are a hallmark of Indian democracy. Independent election commissioners oversee the conduct of elections to guarantee their impartiality and openness.

Accountability and responsiveness:

In India, elected officials answer to their voters. One of the main tenets of democratic governance is its responsiveness to the interests and concerns of the people it represents. The rule of law is the foundation of democracy in India. A system of checks and balances is provided by the Constitution and the legal system to guard against the misuse of power and preserve citizens' rights. The legislative, executive, and judicial departments of government are established to have distinct powers under the Indian Constitution. This division prevents any one organisation from growing too strong and permits each branch to carry out its own duties on its own.

Preamble:

The opening phrase of the Indian Constitution's Preamble, "We, the people of India," emphasises that the country's citizens hold final say and sovereignty. The Indian people have approved the Constitution in their name. The popular sovereignty principle is emphasised by the electoral process, which chooses representatives at all levels, from local councillors to the president. The assent of the electorate bestows legitimacy and authority on elected officials. Changes to the Indian Constitution may be made, but they need broad support. The need for amendments to be approved by a two-thirds majority in both chambers of Parliament emphasises how crucial it is to honour popular consent when making changes to the Constitution.

Participatory democracy:

In addition to allowing voting, the Indian political system promotes citizen involvement in the political process. Local democracy and decision-making are encouraged by programmes like urban local bodies and Panchayati Raj, which are local self-government organisations. In maintaining the concept of popular sovereignty, the Indian judiciary, in particular the Supreme Court, is essential. It serves as the Constitution's defender, making sure that legislation and government activities follow its fundamental values. By representing the interests of the people, elected officials make sure that popular sovereignty is not merely a theoretical idea but also a working reality in national governance,

Constitutionalism is fundamentally based on the protection of fundamental rights. A thorough framework for defending the fundamental rights of Indian citizens is included in the Constitution. These rights, which are the cornerstone of individual liberties and freedoms, are codified in Part III of the Constitution (Articles 12 to 35). The Indian judiciary, namely the High Courts and the Supreme Court, is essential to defending fundamental rights. When their basic rights are violated, citizens have the option to file a direct case with the courts. The judiciary can assess whether legislation and government activities are constitutional. The Supreme Court and High Courts possess writ jurisdiction, which allows them to grant writs (habeas corpus, mandamus, prohibition, certiorari, and quo warranto) in order to safeguard basic rights.

In India, citizens can pursue legal recourse in the event that their fundamental rights are violated, a process known as justiciability. The judiciary is authorised under the Constitution to issue writs, instructions, or directives for the purpose of upholding these rights. One of the fundamental rights that permits people to approach the courts directly is the right to constitutional remedies (Article 32 for the Supreme Court and Article 226 for the High Courts). By shielding citizens from the state's capricious actions, fundamental rights make sure that the government upholds the values of the constitution. These rights include the freedom of speech and expression, the right to equality, the freedom of religion, and immunity from discrimination, among many other areas. Discrimination on the basis of religion, ethnicity, caste, sex, or place of birth is expressly forbidden under the Constitution (Article 15). In order to safeguard the weaker and more marginalised segments of society, the state must work to advance equality and end prejudice.

Restraints and Reasonable Limitations:

Although fundamental rights are unalienable, the Constitution permits reasonable limitations on some rights when doing so serves the interests of morality, public order, security, and India's sovereignty and integrity. These limitations must adhere to the standards of fairness and reasonableness and be mandated by law. A constitutional amendment procedure may be used to change certain fundamental rights, but the Supreme Court will decide what

constitutes the core framework of the document for any such change. Certain essential rights, commonly known as "eternal values," are immune to change. Fundamental Rights and Directive Principles: The government is given directives under the Directive Principles of State Policy (Part IV of the Constitution) to advance social and economic fairness. These ideas serve as a moral and political duty for the state and are taken into account when interpreting and implementing fundamental rights, even if they are not legally enforceable like fundamental rights.

The fundamental tenets of the Indian Constitution—

The separation of powers and the rule of law—have a significant influence on the nation's constitutionalism. These tenets guarantee that the power of the government is used lawfully and within specified bounds, protecting people's rights and averting the misuse of authority.

The rule of law:

The Indian Constitution holds the highest legal authority in the country. The Constitution's provisions must be followed by all laws and government initiative. The courts deem any law that violates the Constitution to be invalid. Article 14's equality before the law principle guarantees that all people are subject to the same laws and court processes, regardless of their status or position. This idea encourages equity and forbids discrimination. The rule of law forbids the use of arbitrary authority. Laws bind government employees and authorities, so anything they do must be justified by the law. If citizens think that government acts are unfair or arbitrary, they have the right to contest those actions in the competent court of law.

Legal Certainty and Predictability:

The predictability and uniformity of the Indian legal system are noteworthy. Courts give citizens and other entities legal certainty by impartially interpreting and applying the law. The rule of law ensures that citizens can obtain justice. It guarantees that everyone has access to legal remedies and that anyone whose rights are violated can file a complaint with the appropriate court. The rule of law greatly enhances individual freedoms and rights. Fundamental rights are protected by the rule of law and guaranteed by the Constitution.

Division of Powers:

Three Branches of Government: The Legislature, the Executive, and the Judicial are the three distinct branches of government established under the Indian Constitution. Every branch is responsible for and performs particular tasks. Legislative authority in India is divided between the state legislatures and the parliament at the federal level. The division of powers guarantees the independence of legislators from those in charge of carrying out and interpreting laws.

The president, the prime minister, and ministers are in charge of the executive branch, which is responsible for enforcing and administering the law. The Prime Minister and the Council of Ministers are the heads of government, and the President is the head of state. The legislature is the body to which the executive answers. The Supreme Court and High Courts comprise the judiciary, which has the authority to interpret and apply laws, including the Constitution. It guarantees the protection of individual rights and makes sure that legislation is in line with constitutional precepts. Through judicial review, the judiciary can invalidate unconstitutional acts and legislation.

Checks and balances:

The government's branches are subject to checks and balances, which are included within the separation of powers. For example, legislation established by Parliament requires the President's consent, and the judiciary has the authority to review and overturn laws that are determined to be unconstitutional. To uphold impartiality and the rule of law, the Indian court is remarkably independent. Judges are chosen for their positions based on their credentials and expertise, and in order to prevent undue influence, the procedure of removing them is difficult.

Modern Difficulties in India, judicial activism has drawn praise and criticism and presents new difficulties for the nation's constitutionalism. Judicial activism creates questions regarding the separation of powers and the judiciary's role in governance, even though it might be viewed as a means of defending fundamental rights and maintaining constitutional ideals.

The following are some of the current issues that Indian judicial activism is facing: parity of authority and judicial overreach. Judicial activism's detractors contend that it occasionally results in judicial overreach, in which the judiciary—especially the Supreme Court—encroaches on the legislative and executive branches of government. The delicate balance of powers established by the Constitution may be disrupted by this.

Formulation of Policy: Judicial

activism may lead to the court essentially deciding on matters of policy, which are normally the province of the legislature's elected representatives. This can help with urgent problems, but it can also work against the democratic mandate.

Decision-Making Delays:

Regular court involvement may cause the legislative and executive branches to take longer to make decisions. This may have an impact on governance and the government's capacity to act quickly to resolve complicated problems. Uncertainty: Because judgements are frequently subject to change based on court judgements, judicial activism can lead to uncertainty in policymaking and commercial contexts. This would discourage economic expansion and investment. The judiciary's interpretation of the Constitution and the statutes is susceptible to interpretation and can vary widely. Legal ambiguity and conflicting decisions may result from this. Opponents contend that there are instances when the judiciary takes up well-known cases while dismissing or postponing others. This is known as selective activism. This may give rise to concerns regarding the impartiality and consistency of judicial activism. The Indian judiciary is already overworked due to a backlog of cases, and overzealous judicial activism may take funds away from clearing this backlog. In other circumstances, it may also cause a delay in the administration of justice. More clarification is required regarding the guiding principles of judicial activism. Some of the difficulties can be lessened by defining precise standards and directives regarding the appropriate instances and methods of judicial activism. The general public's opinion on judicial activism can differ. Some could see it as an overreach, while others might see it as a check on government authority. A strong democracy depends on the public's continued confidence in the courts. Although a fundamental component of India's constitutional structure, federalism can present difficulties for the nation's constitutionalism.

In India, federalism refers to the separation of powers and authority between the federal government and the state governments. Although it encourages flexibility and autonomy at the regional level, it can also result in disputes and problems that go against the fundamentals of constitutionalism.

Obstacles to Indian constitutionalism:

Conflict over the division of power, there are frequently disagreements between the federal government and state governments on the allocation of authority and funds. These disputes may result in court cases, which would threaten cooperative federalism and postpone the execution of policies. Financial Dependency: The central government provides financial support to a large number of Indian states. This reliance on money puts the Constitution's concept of federalism in jeopardy and may result in a loss of budgetary sovereignty. Disparities across States: When it comes to resources and development, India has considerable regional differences. Federalism may sometimes make these differences worse since wealthier states may have greater resources and autonomy than ones with weaker economies. Conflict between Autonomy and Efficiency: It might be difficult to strike a balance between local autonomy and administrative efficiency. Even though a unified national strategy might be more effective, it might not take local requirements and sensitivities into account, which could undermine the concept of decentralised governance. Combined Jurisdictions: The Indian Constitution's concurrent list grants the federal and state governments the authority to enact legislation on particular topics. Conflicts over legislative authority and conflicting jurisdictions may result from this. Political rivalry and elections: India has numerous elections at various governmental levels, which may cause administrative difficulties and voter fatigue. Regular election cycles can divert attention from crucial matters of policy. Politics of Identity: Regional political parties that put local interests ahead of national unity can occasionally arise as a result of federalism. This may lead to politics based on identity that cast doubt on the concept of a single country. Arrangement and Execution: It can be difficult for the federal government and state governments to work together effectively, especially when it comes to cross-border matters, law enforcement, and disaster relief. Coordination delays may have unfavourable effects. Effects on Interests in the Nation: Security and Defence: A coordinated national approach is necessary for some security and defence issues. Federalism can make it more difficult to react quickly and forcefully to threats to national security. Judicial Role: When it comes to settling federalism-related disputes, the Indian judiciary frequently has a big say. This may be required, but it can also give rise to worries about judicial activism and the possibility of going too far. Defence of Rights for Minorities One of the most important aspects of India's constitutionalism is the defence of minority rights. The Indian Constitution acknowledges the significance of protecting the rights and interests of minority groups, be they cultural, linguistic, or religious. An outline of India's policies protecting minority rights is provided below:

The Indian Constitution's Article 29 protects any minority group's right to maintain their unique language, writing, and culture. It offers defence against prejudice based on any combination of caste, religion, race, and language.

Article 30: This article protects minority groups' rights to create and run the educational institutions of their choice. It guarantees minority educational institutions the ability to protect and encourage their language and culture. Inclusionary Practices: An affirmative action programme, are used in India to give historically underrepresented groups—including some minority communities—opportunities in public employment and education. For instance, reservation advantages are available to Muslims and Christians who belong to Scheduled Castes or Tribes. Preserving Cultural and Religious Traditions: Minority communities' religious and cultural customs are safeguarded by the Constitution. Interference with these practices is prohibited unless they compromise public health, morality, or order. Participation in Governance: Minority communities are guaranteed political representation and involvement through representation in a number of elected entities, such as state legislative assemblies and the Lok Sabha (House of the People).

The National Minorities Commission:

The National Commission for Minorities, an independent statutory organisation in India, keeps an eye on the protection of minority communities' rights and interests. The commission is able to look into the matter and suggest actions to allay their worries. Defend yourself from discrimination: The Indian Constitution forbids discrimination on the basis of religion, race, caste, sex, or place of birth through a number of clauses. Minority communities are shielded from prejudice and unfair treatment because of this ban. Minority communities are entitled to the establishment and management of cultural and educational institutions that support their identity, language, and culture. Language Privilege:

The Indian Constitution acknowledges the variety of languages spoken there and makes provisions for minority language advancement. By interpreting and applying constitutional requirements, the court contributes significantly to the protection of minority communities' rights. When the rights of minorities are violated, courts have frequently stepped in to preserve them. Worldwide Assignments: India is required to uphold the international agreements and conventions that it has ratified, which prioritise the preservation of the rights of minorities.

Conclusion:-

From its colonial beginnings, Indian constitutionalism has developed into a modern-day symbol of democracy and human rights. Despite the many obstacles it has encountered, the idea is nevertheless dynamic and ever-changing, allowing it to adjust to the shifting demands of the country. The success of Indian constitutionalism depends on addressing modern issues while upholding the fundamental values of democracy, the rule of law, and individual rights.

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