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An Analytical study of Importance of Historical factors in shaping the Constitutions: Special refers to Indian Constitution.

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Abstract: The study of historical background of several constitutions testifies that all Constitutions are the heirs of the past as well as the testators of the future. If anyone seeks to study the constitutional law, of a country, knowledge of the historical events which led to its present form is essential for correct insight and understanding of the spirit of the constitution. Similarly, various provisions and features of the Constitution of the India are rooted in the history of India under British rule and administration. The first sight into the constitution of India will reveal that the history of its development which gave it the present form is also important. Every living constitution ordinarily has its roots in the past and same is the case with the constitution of India.

Key Words: Constitution, Historical events, Reports, Commissions, Conferences, Acts.

I. Introduction

Constitution is the supreme law of the Land and all other laws rules or principles are subservient to it. It defines and limits the powers of Government and its various branches, and provides a strong foundation for a state based on the rule of Law. Constitution lays down the basic structure of the political system under which its people are to be governed. It demarcates the jurisdictions of the three organs of the state- the legislature, the executive, the judiciary, defines their relationships with each other and with the people. The Indian constitution as framed by the constituent assembly in 1949, was not something absolutely new. It was influenced by the Government of India Act of 1935 that was passed by the British Parliament. The foundation of British authority in India was laid in down through the establishment of East India Company in England under a Charter of the British Queen Elizabeth under the charter the company was given an exclusive right of trading with India. In the beginning the company was purely a trading organization, but later on due to political circumstances, it acquired territorial power. During this period certain measures of constitutional reforms were introduced by them which deeply influenced making our modern constitution.¹ Some of the landmarks in the constitutional development during the company rule till 1858 are regulating act of 1773, the act of settlement, 1781, Pitt's India Act, 1784, charter act of 1813, charter act of 1833, charter act of 1853.

II. Methodology

In order to accomplish the task analytical and historical methods has been used. For the completion of this work, primary as well as secondary sources of information were collected.

III.Objectives

- 1) To identify the factors responsible for evolution of the constitution of India.
- 2) To indentify the importance of historical factors in shaping the constitution.

IV. Discussion

Freedom Struggle and Constitution of India:

The seeds for the Indian Constitution were sown when the freedom struggle had started. People of India were fed up with the British rule due to atrocities perpetrated on innocent Indians. Thousands of freedom lovers and patriots were shot dead or hanged by them and first war of independence took place in the name of 'mutiny of 1857'. Although the mutiny could not achieve the desired goals but it paved the way for strong struggle in the times to come. Indian muslims launched Khilafa who going to be dethroned by British government. The movement was by Ali brother duly supported by Hindus. Rowlatt Act called black act was passed by Britishers in March 1919. Then Jallianwala Bagh massacre was ordered by Gen. Dyer on 13 April, 1919 on Baisakhi day in which 379 people were killed and 1137 wounded. Then came the non-cooperation movement launched by Gandhi on 1st Aug, 1920 again British government. Indian situation was aggravated by chauri-chaura incident of 1922 in which crowd killed 22 policemen. Leaders like Motilal Nehru and Chitranjan Dass opted out of congress and formed Swaraj Party on 1st January 1923. It was also for self rule. Simon Commission came to India in nov 1927 against which Lala Lajpat Rai protest and he was beaten by police on 30.10.1928 and died after one month. Civil disobedience movement was launched in 1930 by Gandhi violating Salt law during Dandi march in Gujrat. Gandhi and Nehru were arrested but they have released as a result of Gandhi-Irwin pact. Rule by the Britishers was not suiting to Indians and they wanted self rule. Poona pact was signed on 24-9-1932 for joint electorate between Dalits and Hindus. Individual Satyagraha was started by Gandhi in 1940 which continued for 15 months. Indians considered that time was ripe for Britishers to go and start self rule. So Quit India movement was launched on 8th Aug 1942 in protest against the return of Sir Stafford Cripps. Gandhi gave slogan of "Do or Die" and all congress leaders were put in jail. They were released in 1944. Bal Gangadhar Tilak was released in 1916 from Mandalay Jail in Burma after 6 years and he along with Mrs. Annie Besant gave a call for "Home Rule Movement" against Morley Minto reforms. Finally a three members 'Cabinet Mission' came to India on 15-3-1946 to make historic announcement in which the right to self-determination and framing of Indian Constitution for India were announced. A constitution Assembly was formed in 1st Nov 1946 which gave its report after 3 years and the constitution was implemented from 26th jan 1950.²

Constitutional Development during the British Rule:

There are some constitutional development which took place during the British rule like the act of 1858, the Indian councils Act, 1909, the government of India Act, 1919, The Government of India Act, 1935.

Morley Minto reforms and the Indian Councils Act, 1909

The first attempt at introducing a representative and popular element was made by Morley-Minto reforms known by the names of then Secretary of State for India Lord Morley and the viceroy Lord Minto, which were implemented by the Indian Councils Act, 1909. The changes relating to provincial legislative councils were of course more advanced. the positive vice of the system of election introduced by the Act of 1909 was that it provided, for the first time, for separate representation to the Muslim community and thus sowed the seeds of separatism that eventually led to the lamentable partition of the country. It can hardly be overlooked that this Idea of separate electorates for the Muslims was synchronous with the formation of the Muslim League as a political party (1906). Subsequent to this, the Government of India Act, 1915 was passed merely to consolidate all the preceding government of India Acts so that the existing provisions relating to the Government of India in its executive, legislative and judicial branches could be had from one enactment.³

Montagu-Chelmsford Report- The Government of India Act, 1919

The next landmark in the constitutional development of India was the Montague- Chelmsford report which led to the enactment of the Government of India act, 1919. The Morley-Minto reforms failed to satisfy the aspirations of the Indians. Indian National Congress pressed for reforms and demand became very active during the time of the 1st world war declaration on August 20, 1917 made by Mr. Montagu for establishment of 'Responsible Governmnet' in India. It is also Montford report. The declaration promised a responsible government to Indians.

(a) It introduced system of diarchy in the provinces, means double rule. The matter of Legislation subjects were divided into central and provincial. The provincial subjects were divided into 2 parts 'transfer' and 'reserved'. Jail, Police, Justice, Finance and Irrigation, more important subjects were the reserved subject and they were to be governed by the Governor and his executive council without any responsibility to the Legislature. Education, agriculture, local self government etc subjects of lesser important were transferred to the Indian ministers and the governors. The governor could override both the ministers and the executive council.⁴

Act of 1919 had many shortcomings. It was not able to fulfill the demand for responsible government. It failed to convert India into a federal government and became highly centralized. The system of dyarchy in the provinces was failure. In the absence of the power of the purse, the ministers could not work effectively. It may be mentioned here that these acts of 1909, 1919 and 1935 founded the basis for drafting of Indian Constitution.

Constitutional Developments from 1919-935

The reforms of 1919 were considered inadequate by the Indians as certain events spoiled the political atmosphere in the country. Two bills were introduced in the imperial legislature in February 1919 on the basis of the report of committee presided over by Justice Rowlatt, it passed the law by official majority in spite of the opposition of people. Disturbances took place at various places, *hartals* were held all over the country. Martial law was declared in Punjab and on 13th April, 1919, on the *baisakhi day*, there occurred the *Jallianwala Bagh* tragedy, opening of fire on a peaceful crowd at Amritsar on the order of General Dyerr. All these events brought congress and muslims together, and they started non-co-operation movements and the movements were very strong for two years. The event of *Chauri-Chaura* in the U.P where twenty two policemen were burnt to death by a mob, it made Gandhi suspend the movement. Many leaders of congress due to their dissatisfaction and resentment formed a Swaraj Party under the joint leadership of C.R Das and Pt Motilal Nehru.

Simon Commission 1927

The statutory commission was appointed in 1927 to inquire in to the political situation in British India. It consisted of seven members and Sir John Simon as a president. It was boycotted by the Indians because it had no Indian members. The commission was greeted everywhere in British India with black flags and slogan 'Simon go back'. The report was published in 1930. The Simon commission in its report recommended that the Dyarchy system should be abolished in the provinces and provincial autonomy should be established. It proposed the enlargement of the provincial legislature. It was not in favor of introducing Dyrachy at the centre. It recommended the reconstitution of central legislature on federal basis. The legislative assembly was to be called 'Federal Assembly'. It recommended that the council of state should represent the federal principle and it should have a senatorial character. The commission recommended for the establishment of provinces in addition to the existing public service commission. However, some of the recommendations were embodied in the Government of India Act, 1935. Lala Lajpat Rai was also badly injured in the agitation against the Simon Commission and later on died.⁵

Nehru Report 1928

At the time of the appointment of an all-white Simon Commission, in the course of his speech. Lord Birkenhead trying to justify the exclusion of Indians from the commission had thrown a challenge to the Indians to present an agreed constitution and submit it to the parliament for discussion. He was expecting that Indians would not be agreeable among themselves. The challenge was accepted by the Indians and, in pursuance of this mission to meet the challenge of Lord Birkenhead an all party conference was organized at Delhi in Feb, 1928. At that time, the Simon Commission was also present in India. The committee prepared a memorable report which was known in the history as Nehru Report. It suggested following changes in the administration. Majority of the committee favored the dominion status to India; it also demanded a full responsible government at centre. The provinces should get full autonomy and the residuary powers should be exercised by the centre. The subjects should be divided between centre and provinces. It rejected the principal of communal electorate and said that India would be a secular state and there would be no state religion. It mentioned 19 fundamental rights. It also suggested for setting up of a Supreme Court in India charged with the duty of interpreting the constitution and deciding the questions of conflict between the provinces. The congress was gradually accepting complete independence as its goals. After the rejection of the demand for a dominion status, in 1929 Lahore session of the Congress adopted a resolution on *Purna swaraj* or complete independence.

First round table conference

The report of the Simon commission was published on May 27, 1930. It was rejected by all political parties in India. The British Govt. had no alternative but to convene a RTC and thereby, admit the right to Indians to participate in the constitution making. First round table conference was inaugurated on 12th Nov, 1930 by the king and was presided over by Mr. Ramsay Macdonald. The conference had 89 delegates from India and out of which 57 represented British India and 16 Members of British parliament from all the three parties. The representatives from British India were nominated by Viceroy and 16 princes were also selected by him. The delegates from British India represented Hindus, Muslims, Christians, Sikhs, Landlords, commercial interests, Schedule Caste etc. There was, however no representative of Congress. Prime minister suggested some constitutional proposals, on the basis of which discussion was to proceed in the conference. But at the end no

agreement completed between the Indian delegates over the communal question. The Muslims as a body stood for separate electorate. Mr. M.A. Jinnah continued to press for his 14 points. Dr. Ambedkar, on the behalf of Schedule Caste, also insisted on separate electorate.⁶

Second round table conference and communal award

The second round table conference was opened on 7th Sep, 1931. Gandhi attended it as the sole representative of the Congress. The main work of the conference was done by two sub-committees on federal structure and minorities. Many problems were considered, but the members could not come to any definite conclusion. In spite of all efforts, the communal tangle could not be solved. The work was referred to various committees which were required to submit detailed report. As regards the communal representation, Ramsay Macdonald made it clear that if the various committees in India did not come to any definite settlement, The British Govt. will be forced to give its own award regarding the same and Ramsay Macdonald gave his famous award known as “communal award” on 16th Aug 1932.⁷ Terms of the Award: The awarded retained separate electorate for special interest and minorities and for Muslims in Bengal and the Punjab although they were in numerical majority in those provinces. The award had two novelties. In every provincial legislature except that of the N.W.F.P it reserved nearly 3% seats for women which were divided among the various communities. Weightage was also there though it was very unevenly distributed. But the most atrocious feature of the scheme was that depressed classes were recognized as distinct minority and given the right to choose their representatives through separate electorate with an additional vote in the General constituencies. The communal award was in keeping with the traditional British policy of accentuating communal and class divisions in India in order to neutralize the forces of Indian Nationalism.⁸

Poona Pact and Third Round Table Conference

Gandhi was very much shocked at the communal award of Ramsay Macdonald. He opposed it and started fast unto death. Indian leaders like Madan Mohan Malvia, Dr. Rajinder Prasad etc talked with Dr. Ambedkar and a common formula was prepared and signed by both the sides and then Gandhi broke his fast. This settlement was known as Poona pact. According to it 8% seats would be reserved for depressed classes in central legislature, 148 seats would be reserved for depressed class in provincial legislature and representation would be given to depressed classes in local bodies and public services. Representation of the depressed class in the central legislature would be on the principal of joint electorate.⁹ All these are such important events which did not leave the British Govt. in India without changing the constitution of Indian Govt. The most fruitful event was ‘Civil Disobedience movement’ which demonstrated that the time was over when British Govt. could be doing as they pleased.

The last and the truncated session of the third round table conference opened in Nov 1932, and concluded a few days before the year closed. The labour party had withdrawn its co-operation to the conference. As a result, its last session was held under the complete domination of reactionary elements and India was represented by ultra loyalists only. The conference was concerned mainly with reaffirming the decision already arrived at in regard to the outlines of the new constitution and filling in some of the details.¹⁰ These round table conference also contributed in bringing proximity between the Britishers and the Indian National Congress.

Government of India Act, 1935

Government of India Act 1935 was so valuable and important that most provisions of this Act were taken by the framers of Indian constitution. It regarded as the second milestone after the Government of India Act of 1919, leading to a full responsible Government. It was a lengthy document, having 321 sections with 10 Schedules. It was a very lengthy written document; (a) It provide for the establishment of an *All-India Federation* consisting of provinces and princely states as units. The act separated the powers between the Centre and units in terms of three lists- Federal List (for centre, with 59 items), Provincial List (for provinces, with 54 items) and the Concurrent List (for both with 36 items). Residuary powers were given to the Viceroy. (b) it abolished dyarchy in the provinces and introduced ‘*provincial autonomy*’ in its place. Units were allowed to act as autonomous units of administration in their defined sphere. The governor was obligatory to act with the advice of ministers responsible to the provincial legislature. This came into force in 1937 and was discontinued in 1939. (c) it provided for the adoption of *diarchy at the Centre*. The federal subjects were divided into reserved and transferred subjects. (d) it introduced *bicameralism* in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the united provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house) (e) it extended communal representation by providing separate electorates for depressed classes, women and labour. It extended franchise to about 10% of the population got the voting right. (f) it provide for establishment of a Reserve Bank of India to control currency and credit of the country. (g) It provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces. (h) it provided for the establishment of a Federal Court, which was set up in 1937.¹¹ The Court was to have one Chief Judge and six other Judges. The retiring age of judges was 65 years. They were appointed by Crown. It had three kinds of jurisdiction i.e original, appellate and advisory.

The Act came into force in regard to the provinces in April, 1937. The elections took place and popular ministries came into office but they lasted only for 2 years. All the congress ministries resigned in 1939 in protest to India being made a party to the Second World War without consulting the legislatures in India. Meanwhile the communal divide in India became virulent. The Muslim League on March 23, 1940 in its session at Lahore, passed a resolution for the creation of Pakistan, a separate state for Muslims.

Cripps Mission (1942)

During March 1942, Sir Stafford Cripps a member of the British cabinet came with a draft declaration on the proposals of the British government. These proposals adopted at the end of the Second World War provided congress and the Muslim League could accept them. However these proposals were unaccepted to all the political parties on different grounds. Muslim League rejected them because its demand for partition was not conceded, Congress rejected them because they opened up possibilities of dividing India and it wanted a full responsible government. Cripps came to India with proposals for the future Government of India. The main proposals were: after the war dominion status would be granted to India, an elected body would be set up in India for the framing of a new constitution of India. Indian states would also participate in the constitution making body.

The congress working committee passed a resolution at Wardha in July, 1942 demanding the withdrawal of the British from India. It was adopted by the All India Congress committee at Bombay on 8 August, 1942. 'Quit India Resolution' called for the immediate recognition of India's independence and the end of British rule. In his speech before the committee, Gandhi declared that it was a decision "to do or die" arrest of congress leaders was followed by a county-wide agitation.

Wavell Plan and Shimla Conference, 1945:

Lord Wavell replaced Lord Linlithgow as viceroy of India and he presented a new plan know as 'Wavell plan' to solve the Indian problems. The main features were as follows:- the executive council of the viceroy to be reconstituted and all council was to be Indianized except the viceroy and commander-in-chief was to be Indian. The provision was made for the inclusion of equal number of Hindu and Muslim representatives in the council. The viceroy was to be president of the council with the power of overriding the council, but he would use them only reasonably. The new executive council would carry on until a new constitution was framed and put in force. To remove the embarrassment likely to be caused by the Governor General's 'dual position' as the head of the government of India and at the same time representing the specific material interests of this country, a British High Commissioner would be appointed in India as in other dominions to look after British commercial and other interests. A conference was called by Lord Wavell at Simla in June, 1945. The leaders of all parties attended the conference, but it failed to reach at any agreed conclusion about the formation of the new executive council of the viceroy.¹²

Elections and Cabinet Mission (1946)

After the World War Second, at the general election in England, the Labour Party under Clement Attlee came to power by replacing Churchill's Cabinet in Britain, which appeared to be sympathetic to Indian aspirations. Elections to the Central Legislative Assembly in India were held in 1945 and elections to the Provincial Assemblies were completed by April 1946. The Congress contested the elections on the issue of the Quiet India resolution and the Muslim League on the issue of Pakistan. The Congress had carried away almost all the Hindu seats in the centre and provinces. Similarly, Muslim League had won 446 out of a total of 495 Muslim seats. At that time Prime Minister Atlee announced his Government's decision to send a delegation of Cabinet Ministers to India with a view to finding out a solution for the Indian problems. The Cabinet Mission, consisting of Lord Pethick Lawrence, Secretary of State for India, Sir Stafford Cripps, president of the Board of Trade and Mr. A.V. Alexander, first Lord of Admiralty arrived in India on 23rd March, 1946. Almost immediately, they started negotiations in India. On May 5, the Mission began a conference with four representatives each of the Congress and the Muslim League. But the conference failed to devise an agreed formula and finally broke down on May 13. There upon, the Cabinet Mission published their own proposals in the State Paper of 16th May, 1946.¹³

It proposed that Constituent Assembly to be elected by the Provincial Legislative Assemblies. For this each province should be allotted a number of seats proportionate to its population. Seats were further divided among the principal communities in proportion to their population. It also proposed the setting up of an Interim Government including the members from all major political parties. It rejected the demand for partition and recommended for union of India embracing British India provinces and Indian States. The union of India would be free to go out of the British Commonwealth. All Subjects other than the union subjects and all residuary powers should rest with provinces.

Interim Government

After the rejection of proposal of Cabinet Mission Plan by Muslim league, on 6th August, 1946, Viceroy invited the congress to help him in forming the Interim Government at the Centre. The congress accepted the invitation and made another appeal to the League for co-operation which remained unsuccessful.

The first Interim National Government was announced on August 24, 1946. It included Pandit Jawaharlal Nehru, Sardar Vallabhbai Patel, Dr.Rajendra Prasad, Asaf Ali,Sarat Chandra Bose, Dr. C.H Bhabha. Technically, they were all members of the Viceroy's Executive Council. However, Pandit Nehru was designated as the Vice-President of the Council and he and eleven of his colleagues took the oath of office on September 2, 1946. The group included three Muslims. The door was kept open for the entry of the Muslim League even at a later date. By the end of October, the viceroy somehow succeeded in bringing in the League. The Government was reconstituted on October 26. Three of the original member- Syed Ali Zaheer, Sarat Chandra Bose and Sir Shafat Ahmed- were dropped and five representatives of the Muslim League were included. Thus the League became a partner in the Government.¹⁴

Mountbatten Plan

On February 20 1947, the British Government announced its intention to transfer power of British India to the people of India by June 1948. Mountbatten issued a statement on June 3, 1947 and contemplated the establishment of two separate Dominions of India and Pakistan, and provided for the division of Bengal and the Punjab. It also fixed the date of British withdrawal from India to 15th August, 1947 and also for transfer of power. Under this the representatives of the Muslim and non- Muslim majority districts in the Legislative Assembly of Bengal and the Punjab would vote separately for Joining India or Pakistan. The N.W.F.P and Sylhet were to decide their future by means of referenda based on adult suffrage. Accordingly on 15th August, 1947, India and Pakistan emerged as two states. The plan was announced officially on 3rd June 1947 by Prime Minister Attlee in the British Parliament later to be known as 'the June 3rd Plan'. The plan was accepted by the Congress and the Muslim League. Immediate effect was given to the plan by enacting the Indian Independence Act, 1947.¹⁵

Indian Independence Act, 1947

The Indian Independence Bill was designed to transfer power to the people of India and was introduced in House of Commons on 4 July and received the Royal assent on 18 July. It make the following provisions; (a) it ended the British rule in India and declared India as an Independent and sovereign state from Aug 15, 1947 and it provided for the partition of India and creation two independent dominions of India and Pakistan. (b) it abolished the office of viceroy and provided, a Governor-General who was appointed by the British King on the advice of Cabinet (c) it empowered the constituent Assemblies of two dominions to frame and adopt any constitution and repeal any British Act including Independent Act also. (d) it empowered the Constituent Assemblies of both the dominions to legislate for their respective territories till the new constitutions were drafted and enforced by them. No Act of British Parliament to be passed after August 15, 1947. (e) it abolished the office of the Secretary of State for India and transferred his functions to the Secretary of State for common wealth affairs. (f) it granted freedom to the Indian princely states either to join the dominion of India or dominion of Pakistan or to remain independent. (g) it provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new constitutions were framed. (h) it designed the Governor-General of India and the provincial governors as constitutional (nominal) heads of the states. They were made to act on the advice of the respective council of ministers in all matters. (i) it discontinued the appointment to the civil services and those appointed before Aug 15,1947 would continue to enjoy all benefits that they were entitled to till that time. Lord Mountbatten became the first Governor-General of new Dominion of India. The Constituent Assembly of India was formed in 1946 which became the Parliament of the Indian Dominion.¹⁶ All these are major land makers is shaping the constitution of India

V. Conclusion

Constitution is normally a document having legal sanctity which sets out the frame work and the main functions of the three organs of government. It is also an institutional expression of dominant ideology of the state concerned. Constitution is also a preface to the historical background of a country. Our historical institutions and historical legacy is writ large when we glance through our constitution. It is a Pandora of ambitions and aspirations of the people. Passage of time compels the law makers to amend the constitution to meet the emerging exigencies

V. References

1. Dr. Kumud Ranjan Singh, Indian Polity and Constitution Issues, Arihant Publications ltd, p.15
2. WWW.Gradeup. Co> important evens of Indian freedom movements, 26 feb,
3. Dr. D.D Basu, Introduction to the constitution of India, Lexis Nexis publication, 2013, p.4-5
4. J.M Pandev ,op.cit,p.10
5. Subhash C. Kashyap, op.cit, p21
6. ,Dr.Rana Nand Aggarwala National Movement and Constitutional Development of India, Metropolitan book co. Ltd ,1962, p161
7. V.D Mahajan Constitutional History of India,S.Chand &Co. Ltd,1952,p.130
8. Manik Lal Gupta, Constitutional development of India, Atlantic publisher and distributors, p.89
9. Kailash Rai, Indian Constitutional Law, Allahabad Law Agency Publishers, 1996,p.21-22
10. Manik Lal Gupta,op.cit,p.91
11. M Laxmikanth, Indian Polity, Tata McGraw Hill Education Private Limited, New Delhi,2012, p.1.8
12. Subhash C. Kashyap, op.cit, p.25-26
13. Manik Lal Gupta,op.cit, p.136
14. Subhash C.Kashyap, Our Constitution,p.28
15. Ibid.
16. M.Laxmikanth, op.cit,p.1.9

