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The Comparative Analysis Of Constitution: Juxtaposing India And Japan

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“Every great political campaign rewrites the rules; devising a new way to win is what gives campaigns a comparative advantage against their foes.”

-John Podhoretz

ABSTRACT

This paper aims to discover and disclose various elements of the constitutional framework of two Asian nations. The study juxtaposes the Indian constitution with that of the constitution of Japan to find similarities and disparities between the two countries. The Constitution is the basic framework for the good and effective governance of a state. Researching and learning about the constitution of a country comparing it with ours helps bring in efficient changes which would contribute to our growth and development. India is a country rich in cultural resources, we are rich in heritage and diversity. The customs, morals and values of the western nations are highly dissimilar to that of ours and so the writers have analysed the constitution of an Asian nation which also entails habits and traditions similar to India. Japan is an Asian nation which is in the north-west pacific ocean. It is an Island country in the eastern part of Asia. It has a strong administration system and has a parliamentary form of government. The constitution of Japan

ensures fundamental rights to its citizens and is a constitutionally monarch nation whereas India is purely republic. These are few of the objectives behind the authors electing to ponder Japan's constitution. The authors through this article strive to compile the similar cardinal characteristics and distinct details of the constitution of both the states.

KEY WORDS : Constitution, Constitutional Monarchy, Republic, Comparative analysis, Japan

INTRODUCTION

India and Japan are two culturally heterogeneous nations hailing from Asia, the largest continent in the world known for its diversity and ethnicity. Its surface encapsulates both higher and lower points. It has the broadest variety of human adaptation.¹ This scholarly publication seeks to analyse and explore the legal culture of both states, contributing to their overall development and growth. The primary objective of this study is to conduct a comparative analysis of the constitutions of these nations, highlighting their similarities and differences. The Constitution serves as a fundamental framework by which a state is governed. It is widely recognized as the foundation of all legal principles and holds the highest authority. It is the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it, a written or unwritten instrument embodying the rules of a political or social organisation. Japan, situated in the north-west Pacific Ocean, is an Asian nation. It is an island country located in the eastern part of Asia and boasts a robust administrative system with a parliamentary form of government.² The Constitution of Japan guarantees fundamental rights to its citizens, establishing it as a constitutional monarchy. In contrast, India is a purely republican nation in the southern part of Asia.

OUTLINE OF JAPAN

Japan is an island nation located off the eastern coast of Asia. It comprises a long chain of islands that stretches approximately 1,500 miles (2,400 km) in a northeast-southwest direction across the western North Pacific Ocean. The majority of the land area is occupied by the country's four main islands, namely Hokkaido, Honshu, Shikoku, and Kyushu. Honshu is the largest island, followed by Hokkaido, Kyushu, and Shikoku in terms of size. Tokyo, the capital city of Japan, is situated in the east-central region of Honshu and is renowned as one of the most densely populated cities in the world.³ One of the most striking features of Japan's topography is the

¹ Gourou, Pierre, Yefremov, Yuri Konstantinovich, Alexeeva, Nina Nikolaevna, Chapman, Graham P., Şengör, A.M. Celâl, Narasimhan, Chakravarthi V., Chandrasekhar, Sripathi, Pannell, Clifton W., Owen, Lewis, Spencer, Joseph E., Leinbach, Thomas R., Ryabchikov, Aleksandr Maximovich and Beaufort, Lieven Ferdinand de. "Asia". Encyclopedia Britannica, Invalid Date, <https://www.britannica.com/place/Asia>. Accessed 3 February 2024.

² Ibid.

³ Sakamoto, Taro, Masamoto, Kitajima, Toyoda, Takeshi, Watanabe, Akira, Notehelfer, Fred G., Hurst, G. Cameron, Jansen, Marius B., Masai, Yasuo, Hijino, Shigeki and Latz, Gil. "Japan". Encyclopedia Britannica, Invalid Date, <https://www.britannica.com/place/Japan>. Accessed 3 February 2024.

presence of numerous active and dormant volcanoes. These majestic giants dot the landscape, adding an element of awe and wonder to the country's natural beauty. Among these volcanoes, none stands more prominently than Mount Fuji, an iconic symbol of Japan. Nisshoki(also known as Hinomaru) is their national flag and “KimiGaYo” is their national anthem.⁴

CRAFTING JAPAN'S CONSTITUTION

Japan has the oldest unamended constitution. It is a small constitution with utmost 5000 words. The evolution of the constitution dates back to the 16th century.⁵ The present constitution is unamended for almost 75 years and was promulgated on 3rd of November, 1946 and was ratified on May 3rd, 1947. The contemporary constitution evolved from the age-old Meiji constitution drafted by the Meiji emperor. The progressive constitution bestowed universal suffrage, established a bill of rights, eliminated the peerage system, and prohibited Japan from engaging in warfare. It is also called the post-war constitution or peace constitution and is the fundamental law of Japan. The text was primarily authored by American civilian officials who were employed during the Allied occupation of Japan following World War II. The present Japanese constitution was established as a modification of the Meiji Constitution of 1890.

CREATION OF MEIJI CONSTITUTION :

In the 16th century, English and Christian missionaries attempted to colonise the Japan empire but they utterly failed. They espoused a strategy to isolate themselves from the rest of the world under the Tokugawa Shogunate empire (1603–1868) . This regime aimed to establish a military government and transform Japan into an invincible nation. This was until when she was forced to open her doors soon after the American Commodore Perry arrived in 1853 at Tokyo Bay with his fleet.⁶ As with her neighbour China, the Western powers imposed the “unequal treaty system” on Japan, and, like the Chinese, the Japanese began to seek effective means of defence against the West while, at the same time, building a “rich country” and a “strong military” that could stand up to the West.⁷ The Tokugawa Shogunate empire was founded by Tokugawa Iyeyasu after the victory in the Battle of Sekigahara defeating Ashikaga Shogunate. He governed from the Castle of Edo. They organised the kingdom into feudal domains and it was ruled by *daimyō* lords. The downfall of the Tokugawa shogunate

⁴ “JapanGov, the Official Website of the Government of Japan.” <https://www.japan.go.jp/copyright.html> accessed on 4 February 2024

⁵ Negi Advocate. C, “Japan: An Overview of the Constitution & Judicial System.” (2020) Available at SSRN 3661762. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3661762> accessed on 3 February 2024

⁶ Edwin O. Reischauer, “*Japan : The Story of a Nation*” , (3rd ed, Knopf 1981)

⁷ Edwin O.Reischauer , *The Japanese* 80 (1st edn, Belknap Press, 1977).

occurred during the Bakumatsu era, which commenced in 1853.⁸ Meiji Restoration took place soon after the decline of the Shogunate Empire.

MEIJI CONSTITUTION:

The transformation of the feudal system of governance to more centralised and bureaucratic rule took place in the reign of the Meiji emperor. The Meiji Restoration, in essence, aimed to restore the authority of the emperor, or more accurately, to return power from the shogun to the emperor. However, in practice, the power was transferred to a new political elite who operated on behalf of the emperor. This elite primarily comprised political leaders from the feudal domains of Satsuma and Choshu⁹. In the reign of the Meiji ruler, there was mushroom growth in the field of science and technology. There was modern and westernised legal, social, cultural and political thought. No other country other than Japan responded quickly and successfully to the challenge of superior Western economic and military technology¹⁰. Laws were framed according to the German and the British codes and legal systems were progressive and sophisticated.

The Meiji constitution was drafted by *Genro*, the elder statesman, Hirobumi Itoh¹¹. The Meiji constitution drew inspiration from the English and Prussian constitutions in 1850.¹² Its aim was to establish a constitutional monarchy and a parliamentary system of government, complete with a prime minister and a cabinet of ministers. The Emperor held the position of the head of state and had full control over the defence forces. This constitution was better known as the ruler's constitution than a people's constitution as the emperor was supreme according to it. The constitutional text was preceded by an "Imperial Oath" in which the emperor pledged "never at this time nor in the future to fail to be an example to Our subjects in the observance of the Laws hereby established." The oath was followed by the "Imperial Rescript on the Promulgation of the Constitution," by which the emperor promulgated "the present immutable fundamental law, for the sake of Our present subjects and their descendants." The preamble of the constitution stated, inter alia: "The right of sovereignty of the State, We [i.e. the emperor] have inherited from Our Ancestors, and We shall bequeath them to Our descendants." The text of the constitution declared that "[t]he Emperor is sacred and inviolable"¹³ and "is the head of the Empire, combining in Himself the rights of sovereignty."¹⁴ The Meiji constitution established a legislative body called the Imperial Diet, consisting of two chambers: the House of Peers, composed of nobles and appointed individuals, and the House of Representatives, elected by the citizens in accordance with the electoral law. The

⁸ Albert H. Y. Chen, "Pathways of Western liberal constitutional development in Asia: A comparative study of five major nations. *International Journal of Constitutional Law*". (2010) Oxford University Press and New York University School of Law. <<https://academic.oup.com/icon/article/8/4/849/667090>> accessed on 5 February 2024

⁹ Supra. (note 9)

¹⁰ Ibid. 84-85

¹¹ Supra.(note10)

¹² "Meiji Constitution | 1889, Japan". Encyclopedia Britannica. Accessed on 4 February 2024

¹³ Article 3 of the Constitution. For an English translation of the Meiji constitution

¹⁴ Article 4

downfall of the Meiji constitution commenced with the Meiji Emperor's defeat. In order to avoid any sort of civil unrest various legislations were formulated and the rights protected by the Meiji constitution were limited to the extent permitted by these laws, lacking any means to assess the constitutionality of legislation.

POST WAR CONSTITUTION:

After the conclusion of World War II, General MacArthur, the Supreme Commander of the Allied forces, played a crucial role in transforming Japan into a liberal constitutional democracy. He provided assistance to the post-war Japanese government by establishing a drafting committee and overseeing the creation of a new constitution. This new constitution encompassed three fundamental principles: Pacifism, Sovereignty of the People, and Fundamental Human Rights. It embraced the principles of constitutional monarchy and a parliamentary form of government, incorporating elements such as judicial review and universal suffrage, among others. Unlike the Meiji constitution, which it starkly contrasts, the new Constitution became the supreme law of the land, designed to serve the people. Since its inception, the Constitution has remained unamended and is characterised by its progressive nature. It has garnered widespread popular satisfaction, support, and respect.

FEATURES OF JAPAN CONSTITUTION

The current constitution possesses robust characteristics that contribute to its resilience, enabling it to remain steadfast for over seventy years. These characteristics are unique and utilitarian which aids in effective governance of Japan and is a fruit yield after long debate. It cannot be termed as a constitution born in the States but a constitution formed in the assistance of the States and stands unamended from its inception. There are three basic features which are the foundation or the heart and soul of the constitution. These postulations or ideas are pacifism, popular sovereignty and fundamental human rights.¹⁵

PACIFISM

Pacifism holds significant value despite not being directly associated with governance or individuals. The concept of pacifism is articulated in the second chapter of the Constitution, which comprises the renowned Article 9. The basic points of Japan's pacifism expressed therein are: the renunciation of war and the threat or use of force as a sovereign right of the nation in settling international disputes; the perpetual non maintenance of land, sea and air forces; and the non-recognition of the right of belligerency.

The concept of Pacifism is originally an idea of a world without war expressed in the 1928 Kellogg-Briand Pact¹⁶. MacArthur, the author of the present day constitution wanted no-war policy in Japan's supreme law.

¹⁵ Maki, J.M, "The Constitution of Japan: pacifism, popular sovereignty, and fundamental human rights. *Law and Contemporary Problems*," 53(1), pp.73-87.(1990) JSTOR <<https://www.jstor.org/stable/1191827>>

¹⁶ Dower, John, "Embracing Defeat: Japan in the Wake of World War II." New York: Norton, (1998)

MacArthur mandated that Japan would renounce the act of engaging in war as a sovereign prerogative of the nation. War would be renounced as a means to settle disputes and as a means to preserve security. Japan would not have the right to build or maintain a Japanese Army, Navy, or Air Force, and would relinquish the right of belligerency¹⁷. MacArthur's stipulations brought in ambiguity as these statements tend to deny Japan the right of national defence and through serious series of debates, argument and various court interpretations the letter of Article 9 is articulated as:

Article 9. *Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.*

*In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.*¹⁸

The Japanese government has interpreted Article Nine in a manner that justifies rearmament for the purpose of national defence.¹⁹

POPULAR SOVEREIGNTY

Popular sovereignty is a crucial aspect of the constitution that was absent in the original Meiji Constitution. The previous law upheld 'imperial sovereignty,' placing the ruler above all. However, in order to establish democracy in Japan, this principle was embraced and included in the preamble of the 1947 constitution.

Preamble. *Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded.*

The concept of popular sovereignty was expressed within the Constitution as a subordinate clause in Article 1 :

Article 1: *"The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power."*

The concept of emperor's sovereignty was altered to the sovereign power residing with the people to exercise democracy.

¹⁷ Gordon, Beate Sirota. *"The Only Woman in the Room: A Memoir.* New York: Kodansha International" (1997)

¹⁸ Article 9

¹⁹ Lynn Parisi, "Lessons on the Japanese Constitution"(2022)

<https://spice.fsi.stanford.edu/docs/lessons_on_the_japanese_constitution>

FUNDAMENTAL HUMAN RIGHTS

The concept of fundamental human rights is an extension of principles of democracy as entailed in popular sovereignty. It was the aspirations of the American drafters of the Japanese constitution to preserve the human rights of the citizens. The Military Occupation, from where the idea of fundamental human rights emerged determined in 1945 that it would be supportive, not suppressive, of democratic tendencies.²⁰ The old authoritarian form was destroyed. Central to the creation of a new democratic constitutional order was the recognition of a new role for the individual, not as the passive object of an authoritarian order, but as the active repository of fundamental human rights²¹.

The fundamental human rights are enshrined under chapter III of the original text of the constitution. Article 11 specifically reads it.

Article 11. *The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.*

Article 10 to 40 asserts fundamental human rights to the people, it ensures to treat all citizens with dignity, equality,²² and not be discriminated against by means of race, creed, sex, social status or family origin.²³ The subjects are guaranteed with 'public welfare'²⁴ and shall be ensured of right to due process and provides that no one may be punished "except according to procedure established by law"²⁵

While these guarantees may seem limitless, Article 12 outlines the obligations that come with the exercise of all rights and freedoms. It provides that the freedoms and rights must be maintained by "the constant endeavour of the people." Article 12 links "constant endeavour" to two potentially restrictive responsibilities. First, the people must refrain from "any abuse of these rights and freedoms." Second, the people must "always be responsible for utilising them for the public welfare."²⁶

The utilisation of the public welfare doctrine by the Japanese Supreme Court has effectively upheld a fair equilibrium between an individual's rights and freedoms and the overall well-being of both society and other individuals. However, it is important to note that the Court's stance has not gone unopposed. The ongoing

²⁰ Supra. (note17)

²¹ ibid

²² Article 13

²³ Article 14

²⁴ Article 29

²⁵ Article 31

²⁶ Ibid n.17

tension between the Court and its critics, not only on this matter but also on various other issues, serves as a testament to the presence of a thriving democratic environment.²⁷

COMPARING IT WITH OUR NATION

The examination of the constitution, which serves as the fundamental framework for governing a nation, facilitates comprehension of conflict resolution methods and legal precedents established by other countries. Additionally, it contributes to the progress of a nation by embracing developmental approaches implemented by other nations. The Indian constitution, is a fusion of various constitutions worldwide, is designed to promote the well-being of its citizens.

BRIEF OVERVIEW OF INDIAN CONSTITUTION

The Indian constitution is the longest written constitution in the world. It's a document which states the structure of governance, powers and arrears of officers, rights and duties of citizens. It was drafted by Dr.BR Ambedkar with the help of a drafting commission. On the 26th of November 1949, the Constituent Assembly officially espoused the Constitution, which also took effect on the 26th of January 1950. This Constitution comported of 395 papers and 8 Schedules, gauging roughly 145,000 words. It holds the distinction of being the lengthiest public Constitution ever espoused. The members of the Constituent Assembly devoted 11 sessions and 167 days to meditate on each Composition, diligently casting the Constitution over a span of 2 times and 11 months India's Constitution begins with a preamble that declares the country as a sovereign, socialist, secular, and democratic Republic. It also guarantees justice, equality, and liberty to its citizens, while striving to foster a sense of fraternity among them. The Constitution establishes a Parliamentary form of government, which has a federal structure but also includes certain unitary features. The President serves as the constitutional head of the Executive of the Union. According to Article 79 of the Constitution, the Parliament of the Union consists of the President and two Houses, namely the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Under Article 74(1) of the Constitution, a Council of Ministers is established with the Prime Minister as its head. Their role is to assist and advise the President, who exercises their functions in accordance with this advice. As a result, the real executive power lies with the Council of Ministers, led by the Prime Minister.

KEY VARIATIONS:

The Indian constitution and the Japanese constitution exhibit notable disparities; few of them are 1. The Indian constitution combines both flexible and rigid provisions, while the Japanese constitution is exclusively rigid in nature.

²⁷ *ibid.*

The constitutional design of Japan's constitution is rigid in nature. This justifies its position as the oldest unamended constitution in the world. This emphasises stability preserving the core principles of the constitution. The amendment procedures of the Japanese constitution is cumbersome and has strict procedures. The provision for amendment of the constitution is presented in Article 96 which reads as:

Article 96. *Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.*

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

Article 96 of the Constitution mandates that any changes to the Constitution necessitate "a concurring vote of two-thirds or more of all the members of each House" and "the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify." In essence, laws are enacted by the Diet's approval, whereas amendments to the Constitution demand a national referendum, which upholds the principles of participatory democracy. Consequently, this empowers the people to exercise their sovereignty and make the ultimate decision regarding constitutional amendments.²⁸

Indian constitution is a blend of flexible and rigid constitution. The chairman of the drafting committee, Dr. B R Ambedhkar was adamant about the fact that law is dynamic and framed a constitution which is flexible and strong enough to hold the nation.

“Dr. B.R. Ambedkar observed that ‘I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and war time.’”²⁹

Through the celebrated case of *Keshavanandha Bharti v State of kerala*³⁰ It was observed that the basic structure which includes fundamental rights, supremacy of the constitution, the preamble, unity of the nation, the mandate to make India a welfare state cannot be amended which justifies its rigid characteristics and the rest of the part of the constitution can be amended to make it a flexible constitution.

2. The Indian constitution combines elements of both federal and unitary systems of government, whereas in Japan, it is purely a unitary system of government.

²⁸ Research Commission on the Constitution, House of Councillors JAPAN, “Handbook on the Research Report on the Constitution of Japan” (2005)

²⁹ Kumar, A., 2019. Adaptability, Change and Amendability in Indian Constitution. Think India Journal, 22(2), pp.607-611.

³⁰ (1973) 4 SCC 225: AIR 1973 SC 1461.2,

Unitary government refers to a form of governance where a sole authority, known as the central government, exercises complete control over the entire government. Essentially, all powers and administrative divisions are centralised at one central location. Japan follows a unitary form of government with the emperor as the head along with the prime minister and cabinet of ministers.

India is a Sovereign Socialist Secular Democratic Republic with a Parliamentary form of government which is federal in structure with unitary features. There is a Council of Ministers with the Prime Minister as its head to advise the President who is the constitutional head of the country. Similarly in states there is a Council of Ministers with the Chief Minister as its head, who advises the Governor³¹

3. The Indian constitution and the Japanese constitution exhibit a notable contrast in terms of their political systems. While Japan embraces a constitutional monarchy, India stands as a pure republic. Article 1-8 of Chapter 1 of the Japanese constitution speaks about the position of the Emperor, his powers and functions. The Emperor is the symbol of Japan and of the unity of the people, performs the following acts in matters of state, with the advice and approval of the Cabinet, such as the promulgation of amendments of the Constitution, laws, cabinet orders and treaties, the convocation of the Diet, the dissolution of the House of Representatives, the proclamation of general election of members of the Diet. The Imperial Throne is dynastic and succeeded from father to son.³²

Article 1. The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power.

India is a constitutional republic as the framers of the constitution agitated strongly against the monarchical system of the British. The preamble of our constitution reads as

"We, the people of India having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens: justice, liberty, equality and fraternity,"

securing the republic characteristic of our nation. The Indian Republic was established on January 26, 1950, with the implementation of the Constitution of India, which replaced the Government of India Act of 1935 that was in effect during the colonial era. This significant event marked the beginning of a new era, and Dr Rajendra Prasad took on the role of the President, signifying a transition from loyalty to the British monarch to an autonomous Indian head of state.

4. In contrast to India, where quasi-judicial bodies known as tribunals have been established to reduce the backlog of cases, Japan does not have any tribunals that can exercise judicial power.

³¹ IndiaGov, the Official Website of the Government of India .<<https://www.india.gov.in/topics/governance-administration>>

³² Article 2 of the Constitution of Japan

In India, judicial or quasi-judicial institutions known as tribunals are established by law³³. They intend to provide a platform for faster adjudication as compared to traditional courts, as well as expertise on certain subject matters. Pendency of cases in courts is one of the key challenges faced by the judicial system. The Constitution of India underwent an amendment in 1976, resulting in the inclusion of Articles 323A and 323B. These articles granted Parliament the authority to establish administrative Tribunals at both the central and state levels. These Tribunals were responsible for resolving issues pertaining to the recruitment and terms of employment for public servants. Additionally, Article 323B outlined specific areas, including taxation and land reforms, where Parliament or state legislatures could establish tribunals through legislation.

In Japan, the exclusive power to adjudicate cases and carry out judicial functions lies with the supreme court and subordinate courts. The provisions outlining the judiciary are embedded in chapter VI, specifically Art 76-82, of the Japanese constitution.

Article 76. *The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law. No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power. All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.*

KEY SIMILARITIES

It is worth mentioning that both constitutions share a common focus on the well-being of the people, granting them sovereignty and safeguarding their fundamental human rights as the fundamental framework.

1. India and Japan both possess written constitutions.

Indian and Japanese constitutions are written in nature. A written constitution is a comprehensive and authoritative document that serves as the foundation of a country's legal and political system. It outlines the fundamental principles, values, and rules that govern the relationship between the government and its citizens. This constitution is typically written down and codified in a single document or a series of documents that are bound together as a book. The purpose of a written constitution is to establish the framework for the functioning of the government and to protect the rights and freedoms of individuals. It sets out the powers and limitations of the different branches of government, such as the executive, legislative, and judicial branches. It also defines the rights and responsibilities of citizens, ensuring that their fundamental liberties are safeguarded. Thus, a written constitution serves as a vital tool for ensuring the stability, legitimacy, and accountability of a country's political system. By clearly defining the powers and responsibilities of the government and protecting the rights of individuals, it provides a framework for democratic governance and the rule of law.

³³ Report No. 272 – Assessment of Statutory Frameworks of Tribunals in India, Law Commission of India, October 2017

2. The concept of 'procedure established by law' originated from the Japanese constitution.

The concept of "procedure established by law" is a significant aspect that has been adopted from the Japanese constitution into the Indian Constitution. Specifically, it pertains to the protection of the right to life and personal liberty. Article 31 of the Japanese Constitution emphasises the right to life and personal liberty, stating that criminal liability can only be imposed in accordance with the procedure of law. This provision bears a striking resemblance to Article 21 of the Indian Constitution.

Art.21 of the Indian constitution reads as

“ No person shall be denied the right to life and personal liberty except according to the procedure established by law.”

Art 31 of the Japanese constitution reads as

“No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.”

During the formulation of India's constitution, the framers were primarily guided by Article 31 and overlooked the significance of other essential articles in the Japanese constitution. Regrettably, they failed to incorporate the notion of "due process of law" into the constitution, which is a more fitting alternative to the "procedure established by law." The utilisation of the term "procedure established by law" resulted in numerous difficulties, particularly during times of emergency, as it undermined the integrity of the entire justice system. The 'procedure established by law' is a restriction upon the liberty provided by Article 21, this restriction must be reasonable and it was observed In *Maneka Gandhi v UOI*³⁴. “That a procedure lacking rationale and fairness is void. Procedure as established by law should not be bizarre, oppressive or arbitrary otherwise it would not be a procedure in law. Justice Bhagawati pointed out that the "procedure established by law under article 21 should fulfil the test of reasonableness under article 14. Law should be reasonable law, and not enacted piece of law ”

3. Both constitutions uphold the notion of constitutional supremacy and judicial review.

Constitutional supremacy and judicial review is considered as the basic structure which cannot be amended in the Indian constitution. Judicial review encompasses the authority wielded by the courts of a nation to scrutinise the actions undertaken by the legislative, executive, and administrative branches of the government, guaranteeing their compliance with the stipulations outlined in the country's Constitution. This process serves two crucial purposes: validating government actions and safeguarding the constitution from unwarranted

³⁴ AIR 1978 SC 597

infringement by the government. Judicial review is considered a basic structure of the constitution in *Indira Gandhi vs Raj Narain Case 1975*³⁵

In Japan, The Supreme Court in Japan is designated as the ultimate court of appeal and is empowered to carry out judicial review, as stated in Article 81 of the Japanese Constitution. Judicial review, a fundamental aspect of the Japanese legal framework, allows the Supreme Court to examine the constitutionality of laws, regulations, and governmental actions. This authority enables the court to assess the compatibility of legislative and executive acts with the provisions of the constitution, ensuring their adherence to the principles of justice, fairness, and individual rights. By virtue of its power of judicial review, the Supreme Court acts as a guardian of the constitution, safeguarding the fundamental rights and liberties of Japanese citizens. It has the authority to strike down laws or governmental actions that are found to be in violation of the constitution, thereby preventing any infringement upon the rights of individuals or encroachment upon the separation of powers.

Article 81. *The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.*

4. Citizens of both Japan and India have access to writ remedies.

The fundamental human right forms the bedrock of the constitutions of Japan and India, serving as the cornerstone of their legal systems. These constitutions recognize the inherent dignity and worth of every individual and guarantee certain fundamental rights that are essential for the protection and development of their citizens.

In Japan, the fundamental human right is enshrined in the Constitution of Japan, which was adopted in 1947. Article 11 of the Japanese Constitution states that "the people shall not be prevented from enjoying any of the fundamental human rights." These rights include freedom of speech, religion, assembly, and association, as well as the right to life, liberty, and the pursuit of happiness. The Japanese Constitution also prohibits any discrimination based on race, creed, sex, social status, or family origin. Similarly, in India, the fundamental human right is a crucial component of the Constitution of India, which was adopted in 1950. Part III of the Indian Constitution, titled "Fundamental Rights," guarantees certain basic rights to all citizens. These rights include the right to equality, freedom of speech and expression, protection of life and personal liberty, freedom of religion, and the right to constitutional remedies. The Indian Constitution also prohibits discrimination on grounds of religion, race, caste, sex, or place /of birth. One of the significant aspects of recognizing fundamental human rights in these constitutions is the provision of writ remedies. Writs are legal orders issued by the courts to protect the fundamental rights of individuals. In both Japan and India, citizens have the right to approach the

³⁵ AIR 1975 SUPREME COURT 2299, 1976 2 SCR 347

courts through writ petitions in case of any violation of their fundamental rights. These writ remedies, such as habeas corpus, mandamus, certiorari, prohibition, and quo warranto, provide a mechanism for individuals to seek redressal and ensure that their rights are safeguarded. The inclusion of writ remedies in the constitutions of Japan and India reflects the commitment of these nations to uphold and protect the fundamental human rights of their citizens. It establishes a legal framework that empowers individuals to seek justice and hold the government accountable for any infringement on their rights. By providing citizens with the means to challenge violations of their fundamental rights, these constitutions promote the principles of democracy, equality, and justice, fostering a society that respects and upholds the dignity of every individual.

5. The governmental structure follows a parliamentary form in both countries.

The parliamentary form of government is present in both the Indian and Japanese constitutions. In Japan, the National Diet holds the highest executive authority and is composed of two houses, namely the House of Representatives and the House of Councillors. On the other hand, India has a Union Parliament consisting of two houses, with the upper house called Rajya Sabha and the lower house known as Lok Sabha.

CONCLUSION

The examination of the Japanese and Indian constitutions reveals that they share several similarities and differences, which aids in comprehending the distinctiveness of both nations. Both countries have faced numerous challenges in establishing their own constitutions, but despite the arduous process of constitution-making, the outcomes have been rewarding. One similarity between the Japanese and Indian constitutions is their emphasis on fundamental rights and freedoms. Both constitutions guarantee certain fundamental rights to their citizens, such as the right to equality, freedom of speech, and the right to life and personal liberty. These rights are considered essential for the protection and well-being of individuals in both nations. Another similarity is the presence of a parliamentary system of government in both countries. Both Japan and India have a bicameral legislature, with a lower house and an upper house. The Prime Minister holds significant power in both nations, being the head of government and responsible for the day-to-day administration. However, there are also notable differences between the Japanese and Indian constitutions. One significant difference is the presence of a monarchy in Japan, with the Emperor serving as a symbol of national unity and continuity. In contrast, India is a republic with a President as the head of state, elected by an electoral college. Despite these differences, both nations hold their supreme law in high regard and adhere to it diligently. The Japanese and Indian constitutions serve as the foundation for their respective legal systems and provide a framework for governance, ensuring the protection of individual rights and the functioning of democratic institutions. In conclusion, the comparative analysis of the Japanese and Indian constitutions reveals both similarities and differences, aiding in understanding the distinctiveness of both nations. Despite these differences, both nations hold their supreme law in high regard and adhere to it diligently. The Japanese and Indian constitutions serve

as the foundation for their respective legal systems and provide a framework for governance, ensuring the protection of individual rights and the functioning of democratic institutions. In conclusion, the comparative analysis of the Japanese and Indian constitutions reveals both similarities and differences, aiding in understanding the distinctiveness of both nations. Despite the challenges faced in constitution-making, both countries have established rewarding outcomes. The supreme law is highly regarded in both nations, and adherence to it is a fundamental aspect of their governance.

