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## THE CONSTITUTION OF INDIA YESTERDAY AND TODAY (on the 75<sup>th</sup> anniversary of the adoption of the Constitution of India)

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**Abstract.** The present article is devoted to the study of the main problems dealing with the drafting, adoption and further development of the Constitution of India of 1950. Various issues of its framing and designing are raised. The specifics of the procedures and limits of constitutional review are of undoubted interest to any lawyer, and the Constitution of India in this regard has a number of characteristic features. A general picture of Constitution's main features and peculiarities is demonstrated, while its great volume does not permit to go into detail in a relatively short article. Some results of the historical path of the Constitution of India are summed up.

**Key words:** Constitution, India, the basic structure doctrine, drafting Constitution, constitutional amendments, judicial review of constitutionality, historical evolution of the Constitution.

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## КОНСТИТУЦИЯ ИНДИИ ВЧЕРА И СЕГОДНЯ (к 75-летию принятия Конституции Индии)

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**Аннотация.** Настоящая статья посвящена исследованию основных проблем, связанных с разработкой, принятием и дальнейшим развитием Конституции Индии 1950 года. Поднимаются различные вопросы ее разработки. Специфика процедур и пределов конституционного контроля представляет несомненный интерес для любого юриста, и Конституция Индии в этом отношении имеет ряд характерных особенностей. Дан общий обзор основных черт и особенностей Конституции, при этом ее весьма большой объем не позволяет вдаваться в подробности в относительно короткой статье. Подводятся некоторые итоги исторического пути становления Конституции Индии.

**Ключевые слова:** Конституция, Индия, доктрина базовой структуры, разработка проекта Конституции, конституционные поправки, судебное рассмотрение конституционности, историческая эволюция Конституции.

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### Introductory notes

In November of 2024, the Constitution of India celebrates the 75<sup>th</sup> anniversary of its adoption and in January of 2025, the 75<sup>th</sup> anniversary of its entry into force. As it is well known the Constitution of India (भारतीय संविधान in Hindi [Devanāgarī script]) became effective on the 26<sup>th</sup> of January of 1950, and this day is celebrated as Republic Day (गणतन्त्र दिवस or गणतंत्र दिवस), because on this day the Dominion of India became the Republic of India. The 26<sup>th</sup> January was chosen because it was on this day in 1930 that the Indian National Congress declared India as Purna Swaraj (पूर्ण स्वराज)<sup>1</sup>, which might be translated as “Complete Independence”. The anniversary, which marks the history of the Constitution of India for three quarters of a century, serves as an occasion for addressing some of its main features.

**Drafting and entry into force.** The preparation of the Constitution of independent India was carried out by the Constituent Assembly (whose members were elected by elected deputies of the provincial assemblies), which began its activities on the 9<sup>th</sup> of December of 1946. The majority of seats in the Constituent Assembly were won by representatives of the largest political party in India – the Indian National Congress.

The Constituent Assembly was set up before the formal recognition of the independence of India in accordance with the Cabinet Mission Plan. The Mission sent by the British Government arrived to India on the 24<sup>th</sup> of March of 1946 to elaborate in talks with major Indian movements a plan of transition of India to independence. Although the elaborated and quiet complicated plan did not work, the Interim Government headed by Jawaharlal Nehru, the leader of the Indian National Congress, started to work on the 2<sup>nd</sup> of September of 1946<sup>2</sup> and Constituent Assembly election was organized.

On the 13<sup>th</sup> of December 1946 Jawaharlal Nehru presented a draft Objective Resolution<sup>3</sup> contained the basic principles of

the future Constitution. The Objective Resolution was unanimously adopted on the 22<sup>nd</sup> of January of 1947<sup>4</sup> and later became the Constitution’s Preamble.

The Constituent Assembly set up a Drafting Committee under the chairmanship of Bhimrao Ramji Ambedkar, a distinguished Indian political and legal figure, to frame the Constitution and it did so, nevertheless a preliminary draft Constitution was composed by Benegal Narsing Rau, an eminent Indian jurist, who was appointed in 1946 as a Constitutional Advisor to the Constituent Assembly (a civil service office). “Rau was not a member of the Constitutional Assembly but was the most important expert who did the primary thinking and writing”, – Biswaraj Patnaik noted and regretted that “[h]e has been religiously ignored by frontline politicians who never gave him his due space in history. Rau is the principal framer of the Indian Constitution; others only did the cosmetic jobs here and there”<sup>5</sup>. Meantime, contemporaries praised B.N. Rau for his input to the Constitution drafting. Thus, B.R. Ambedkar, the head of the Drafting Committee, said in his concluding speech (the 25<sup>th</sup> of November of 1949) presenting the draft Constitution: “The credit that is given to me does not really belong to me. It belongs partly to Sir B.N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee”<sup>6</sup>. The President of the Constituent Assembly Rajendra Prasad on the day of Constitution adoption (the 26<sup>th</sup> of November of 1949) also noted his merits and merits of the team of civil servants aiding the drafting process: “I must convey, if you will permit me, my own thanks as well as the thanks of the house to our Constitutional Adviser, Shri B.N. Rau, who worked honorarily all the time that he was here, assisting the Assembly not only with his knowledge and erudition but also enabled the other Members to perform their duties with thoroughness and intelligence by supplying them with the material on which they could work. In this he was assisted by his band and research workers and other members of the staff who worked with zeal and devotion. Tribute has been paid justly to Shri S.N. Mukerjee who has proved of such invaluable help to the Drafting Committee”<sup>7</sup>. So, the Constituent Assembly President mentioned Surendra Nath Mukherjee (not confuse with Dr. Harendra Coomar Mukherjee, the Constituent Assembly Vice-President), who served as a Chief Draftsman of

<sup>1</sup> As Sneha Shukla reminds in his blog on the history of Republic Day: “इसकी शुरुआत तब हुई जब 1929 में लाहौर में पंडित जवाहरलाल नेहरू की अध्यक्षता में हुए कांग्रेस अधिवेशन के दौरान या प्रस्ताव पारित किया गया कि यदि 26 जनवरी 1930 तक अंग्रेजी सरकार भारत को डोमिनियन स्टेटस नहीं प्रदान करते तो भारत अपने आप को पूर्णता स्वतंत्र घोषित कर देगा” (i.e. in English: “It started when a resolution was passed in Lahore in 1929 during the Congress session presided over by Pandit Jawaharlal Nehru that if the British Government did not grant a Dominion status to India by 26<sup>th</sup> of January of 1930, India would declare itself completely independent”). In: URL: <https://www.thegreatinfo.in/2020/01/republic-day-essay-in-hindi.html> (accessed: 09.12.2023).

<sup>2</sup> See: Kulke H., Rothermund D. A History of India. 4<sup>th</sup> ed. London and New York, 2004. P. 320.

<sup>3</sup> See: Constituent Assembly Debates (Proceedings), vol. I, para. 1.5.2–1.5.19; here and further in the article the Debates are cited by: URL: [https://www.constitutionofindia.net/constitution\\_assembly\\_debates](https://www.constitutionofindia.net/constitution_assembly_debates) (accessed: 09.12.2023).

<sup>4</sup> See: ibid, vol. II, para. 2.14.39.

<sup>5</sup> Patnaik B. BN Rau: The forgotten architect of Indian Constitution. In: The Pioneer, State Edition in Bhubaneswar, 26 January 2017.

<sup>6</sup> Constituent Assembly Debates (Proceedings), vol. XI, para. 11.165.305.

<sup>7</sup> Ibid, vol. XII, para. 11.166.51.

the Constituent Assembly<sup>8</sup>. But, of course, it was not only the staff who worked on the text of the Constitution, the role of the Drafting Committee was significant, and many members of the Constituent Assembly contributed to elaborating it.

Addressing the Constituent Assembly in his presentation of the draft Constitution on the verge of its final approval B.R. Ambedkar informed his colleagues: "Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution as prepared by the Constitutional Adviser as a text for the Drafting Committee to work upon, consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the total number of amendments actually moved in the House were 2,473"<sup>9</sup>. Along with the Drafting Committee the Constituent Assembly set up 12 more Committees (one of them divided in Sub-Committees) to deal with sundry constitutional issues, and the Drafting Committee brought all the suggestions together to develop the text.

The personal involvement of B.R. Ambedkar as a chairperson of the Drafting Committee in elaboration process can be judged by the words of another member of the same Committee (since January 1948) T.T. Krishnamachari on the 5<sup>th</sup> of November of 1948: "I am one of those in the House who have listened to Dr. Ambedkar very carefully. I am aware of the amount of work and enthusiasm that he has brought to bear on the work of drafting this Constitution. At the same time, I do realise that that amount of attention that was necessary for the purpose of drafting a constitution so important to us at this moment has not been given to it by the Drafting Committee. The House is perhaps aware that of the seven members nominated by you, one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs, and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So, it happened ultimately that the burden of drafting this constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable. But my point really is that the attention that was due to a matter like this has not been given to it by the Committee as a whole. Sometime in April the Secretariat of the Constituent Assembly had intimated me and others besides myself that you had decided that the Union Powers Committee, the Union Constitution Committee and the Provincial Constitution Committee, at any rate the members thereof, and a few other selected people should meet and discuss the various amendments that had been suggested by the members of the House and also by the general public. A meeting was held for two days in April last and I believe a certain amount of good work was done and I see that Dr. Ambedkar has chosen to accept certain recommendations of the Committee, but nothing was heard

about this committee thereafter. I understand that the Drafting Committee – at any rate Dr. Ambedkar and Mr. Madhava Rau – met thereafter and scrutinised the amendments and they have made certain suggestions, but technically perhaps this was not a Drafting Committee"<sup>10</sup>. Although T.T. Krishnamachari, according to his sayings, would have preferred wider participation of other deputies in drafting Constitution, he recognized the role of B.R. Ambedkar in preparation of the constitutional text.

At the same time all the results of drafting work were submitted to the Constituent Assembly as a whole, which discussed, approved, rejected or amended them. That is why B.R. Ambedkar, who gave explanations and clarifications, answered the questions from Constituent Assembly members, argued his position, spoke at plenary sessions more than any other deputy. During the plenary sessions of the Constituent Assembly B.R. Ambedkar pronounced 267544 words (counting in lakhs – 2,67,544)<sup>11</sup>. Deputy H.V. Kamath is next in terms of spoken words, namely 188749 (in lakhs – 1,88,749)<sup>12</sup>. All other Constituent Assembly members spoke less in the course of plenary sessions. Only 6 deputies, including B.R. Ambedkar and H.V. Kamath, who pronounced more 100000 (1 lakh) words at Constituent Assembly plenary sessions<sup>13</sup>. By the way women members of the Constituent Assembly "altogether contributed to 2% of the discussion"<sup>14</sup>. 15 women were elected to the Constituent Assembly, 10 of whom took part in the discussions during the plenary sessions.

The text of the Constitution was finally adopted on the 26<sup>th</sup> of November of 1949 in the presence of 284 of its 299 members (initially 389 members were elected to the Constituent Assembly, but after partition their number reduced to 299). On the 19<sup>th</sup> of November of 2015 the Government of India decided "to celebrate the 26<sup>th</sup> of the November of every year as the "Constitution Day" to promote constitutional values among citizens"<sup>15</sup>. Constitution Day (संवैधान दिवस) is also known as National Law Day (राष्ट्रीय कानून दिवस).

The provisions of the Constitution concerning issues of citizenship, elections, the functioning of the provisional Parliament, the validity of temporary and transitional provisions (Articles 5–9, 60, 324, 366, 367, 379, 380, 388, 391–393 and 294) took effect on the 26<sup>th</sup> of November of 1949. The rest of the Constitution's provisions entered into force on the 26<sup>th</sup> of January of 1950.

The 1950 Constitution replaced the adopted by the British parliament 1935 Government of India Act<sup>16</sup> as amended in 1943<sup>17</sup> and the 1947 Indian Independence Act<sup>18</sup>. The latter received the Royal Assent on the 18<sup>th</sup> of July of 1947, became effective at midnight between the 14<sup>th</sup> and the 15<sup>th</sup> of August and provided for partition of India and Pakistan, which became separate Dominions (i.e. monarchies) within the British Commonwealth of Nations.

<sup>10</sup> Ibid, vol. VII, para. 7.49.107.

<sup>11</sup> See: *Kanadje M. Vital Stats. Analysis of the Constituent Assembly Debates*. In: PRS Legislative Research. November 25, 2019. P. 2 (Institute for Policy Research Studies [New Delhi]). URL: [https://prsindia.org/files/policy/policy\\_vital\\_state/PRS\\_Constituent\\_Assembly\\_Debates\\_Final.pdf](https://prsindia.org/files/policy/policy_vital_state/PRS_Constituent_Assembly_Debates_Final.pdf) (accessed: 10.12.2023).

<sup>12</sup> See: *ibid*.

<sup>13</sup> See: *ibid*.

<sup>14</sup> Ibid.

<sup>15</sup> F. No. 19022/11/2015-VI (E).

<sup>16</sup> See: 26 Geo.5. Ch. 2.

<sup>17</sup> See: 26 Geo. 5 & 1 Edw. 8 Ch. 2.

<sup>18</sup> See: 1947 c. 30 (10 & 11. Geo. 6.).

<sup>8</sup> See: *Wangchuk R.N. Two Civil Servants Who Built India's Democracy, But You've Never Heard of Them!* January 22, 2019. Available on: <https://www.thebetterindia.com/170367/ias-hero-republic-day-india-first-election-democracy/> (accessed: 09.12.2023).

<sup>9</sup> Constituent Assembly Debates (Proceedings), vol. XI, para. 11.165.300.



**Amending the Constitution.** In contrast to many other constitutions, the majority of which are either *rigid* (amended in a manner that is more complicated than that of ordinary statutes) or *flexible* (amended in the same way as ordinary laws), the Constitution of India combines the rigidity and super-rigidity of most of its provisions with the flexibility of some of them.

Thus, amendments to certain provisions of the Indian Constitution<sup>19</sup> are made in the same way as ordinary laws are adopted, i.e. by a simple majority of votes of parliamentarians present in each of the chambers of the Union Parliament. These are issues such as the admission to the Union (i.e. the Republic of India) of any new state, the formation of new states, changing their borders or names (Articles 2, 3<sup>20</sup>), the abolition or creation of upper chambers in the state legislatures (Article 169<sup>21</sup>) and others. Article 4(1) deals with “[l]aws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters”<sup>22</sup>, and as it is proclaimed in Article 4(2) “[n]o such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368”<sup>23</sup>, and Article 169(3)<sup>24</sup> contains the same formulation, however, of course, referred to laws mentioned in Article 162. So, that means that changes made to the mentioned Constitution’s Articles are amendments to the Constitution, but not in the meaning of Article 368. In general, articles 2, 3 (conforming Article 4), 169, 239A(2), 239AA(7b), 243M(4b), 243ZC(3), 244A(4), 312(4), para. 7(2) of Schedule V and para. 21(2) of Schedule VI are amended in accordance with the procedure applied for adoption of ordinary statutes.

The Supreme Court of India supported the power of Parliament to amend the aforementioned constitutional provisions by enacting a law approved by a simple majority as any ordinary statute. For instance, in a case *Mangal Singh v. Union of India*, considered in 1966, the Supreme Court ruled: Power to reduce the total number of members of the Legislative Assembly below the minimum prescribed by Art. 170(1) is, in our judgment, implicit in the authority to make laws under Art. 4. Such a provision is undoubtedly an amendment of the Constitution, but by the express provision contained in clause (2) of Art. 4, no such law which amends the First and the Fourth Schedule or which makes supplemental, incidental and consequential provisions is to be deemed an amendment of the Constitution for the purposes of Art. 368<sup>25</sup>. Therefore, Article 368 should be viewed as a specific case of constitutional amendments regulation, not embracing all the possible changes made to the Constitution, though this article is unique in the Part XX of the Constitution entitled “Amendments of the Constitution”.

Article 368<sup>26</sup> provides, as a general rule, for adoption of amendments by  $\frac{2}{3}$  of the members of each House of Parliament present and voting (who must make up more than 50% of the total number of deputies of these chambers) and then submitted to the President, who signs and publishes the relevant act on constitutional amendment. So, mentioned earlier constitutional

provisions amended by a simple majority of parliamentarians is one of the exceptions of this general rule stipulated in Article 368.

The second exception is established by Article 368 itself: to change a number of constitutional provisions on the most important issues, it is not enough to obtain a qualified majority of the votes of parliamentarians, but before the acts on such amendments are submitted to the President of the Republic for signature, they must be ratified by at least a half of State legislatures. Such issues, as, for example, the mode of President election, the limits of the executive powers of the Union and the States, the competence of the Supreme Court of India and the high courts of the States, the distribution of legislative powers between the Union and the States, the representation of the constituent units of Indian as a Union in Parliament, etc., are enumerated in Article 368. This type of amendments includes Amendments No. 3–8, 13–16, 22–25, 28, 30–32, 35, 36, 38, 39, 42–46, 51, 54, 61, 62, 70, 73–75, 79, 84, 88, 95, 99, 101–106. This shows that the complicated amendment procedure does not preclude frequent changes of the Indian Constitution.

There are not only procedural restrictions for amending the Constitution of India, but also substantive ones, which derived from the basic structure doctrine, according to which Parliament cannot override fundamental principles established by the Constitution. In 1973 the Supreme Court in a case *Kesavananda Bharati v. State of Kerala* ruled that an amendment cannot destroy what it seeks to change; it cannot violate the basic structure or framework of the constitution, which is immutable<sup>27</sup>. In this ruling the Supreme Court formulated certain constitutional principles which should be respected by Parliament while amending the Constitution: supremacy of the Constitution; republican, democratic form of government; secular nature of India; separation of powers; federal character of India. Later this doctrine was developed by the Supreme Court in its rulings in such cases as *Indira Nehru Gandhi v. Raj Narain*<sup>28</sup> (1975), *Minerva Mills Ltd. and Ors. v. Union of India and Ors*<sup>29</sup> (1980) and others. As a result a list of fundamental constitutional principles expanded up to more 20 and integrated as following: rule of law; freedom and dignity of the individual; unity and integrity of the Nation; the concept of social and economic justice; the balance between Fundamental Rights and Directive Principles; powers of the Supreme Court under Articles 32, 136, 141, 142; the principle of free and fair elections; etc. Vivek Krishnamurthy argues that “the Supreme Court of India’s basic structure doctrine checks the representatives of the people from abusing the amendment power until the people themselves can speak on constitutional issues of fundamental importance”<sup>30</sup>.

Nevertheless, during the existence of the Constitution of India, 106 acts were adopted, referred to as a “Constitution (No. \_\_\_ Amendment) Act”, each of which contained a number of changes (cancellations, additions, reformulations) to the constitutional text. In total, the Constitution of India has undergone more than 600 such changes. An Amendment No. 106 (the latest one) has been enforced since the 28<sup>th</sup> of September of 2023.

**Main features of the Constitution.** In order to unify legislation throughout the country, the Constitution included norms related to civil, administrative, financial, labor and other branches of law, which are usually not enshrined in the Basic Law. As a result, the

<sup>19</sup> Here and further in the present article the Constitution of India is quoted by: The Constitution of India. New Delhi: Government of India, Ministry Law and Justice, Legislative Department, 2023.

<sup>20</sup> See: The Constitution of India. P. 23.

<sup>21</sup> See: *ibid.* P. 70.

<sup>22</sup> *Ibid.* Pp. 23, 24.

<sup>23</sup> *Ibid.* P. 24.

<sup>24</sup> See: *ibid.* P. 70.

<sup>25</sup> See: A.I.R.1967 S.C. 944.

<sup>26</sup> See: The Constitution of India. Pp. 159, 160.

<sup>27</sup> See: A.I.R. 1973 S.C. 1461.

<sup>28</sup> See: A.I.R. 1975 S.C. 2299.

<sup>29</sup> See: A.I.R. 1980 S.C. 1789.

<sup>30</sup> *Krishnamurthy V. Colonial Cousins: Explaining India and Canada’s Unwritten Constitutional Principles.* In: The Yale Journal of International Law. Vol. 34: 207, 2009. P. 238.

Indian Constitution has proven to be one of the most voluminous and detailed Fundamental Laws in the world. All its provisions are clustered into a Preamble, 22 Parts (comprised around 450 articles, bearing in mind the cancellation of more than 20 Articles and the introduction of around 100 new Articles), 12 Schedules and 5 Appendices.

The Indian Constitution organically combines the institutions of common, civil and traditional for India law. A number of constitutions of all over the world were studied and creatively used while drafting the Indian one. For example, there were borrowed from the UK Constitutional Law – Parliamentary Government, Cabinet system, legislative procedure, nominal state of head, concept of single citizenship, etc.; from the USA Constitution and constitutional practice – impeachment of the President, judicial review of legislative acts, removal of Supreme Court and high courts judges, etc.; from the Constitution of Ireland – concept of directive principles of State policy (Ireland had adapted it historically from republican Spanish Constitution), method of President election, etc.; from the Canadian Constitutional Law – federation with a strong Centre, vesting of residuary powers in the Centre, advisory jurisdiction of the Supreme Court, etc.; from the Constitution of South Africa – certain procedures for amendment of the Constitution, etc.; from the Constitution of Australia – joint sitting of the two Houses of Parliament, freedom of trade, commerce and intercourse, etc.; from the Constitution of the USSR – fundamental duties in connection with rights, five-years plans and a mandated planning commission to oversee the economic development, the ideal of justice (social, economic and political) in the Preamble, etc.; from the French Constitution – Republicanism, ideals of “liberté, égalité, fraternité” (Liberty, Equality, Fraternity) in the Preamble, etc.; from the German Weimar Constitution (historically) – suspension of Fundamental Rights during the emergency, etc.; from the Constitutional Law of Japan – concept of the “procedure established by law”, legal regulation of the Supreme Court functioning, etc.<sup>31</sup> The Constitution of India took from the 1935 Government of India Act norms dealing with judiciary, Public Service commissions, some administrative details, etc. Panchayat (पंचायत) is one of the traditional institutions in India adapted to modern circumstances by its Constitutional Law.

In its turn the Constitution of India due to the accuracy of the approach to legal institutions and thorough development of the norms' wording has become a pattern for many foreign constitutional drafters.

The most important features of the Constitution of India are the legal stipulation of the sovereignty of the Indian Republic; proclamation of a fairly wide range of rights, freedoms and duties of citizens; consolidation of the principle of a mixed economy, in which the public sector plays an important role; the establishment of a parliamentary republic; approval of a federal form of State structure (in relation to federation, the term “Union” is

used in the Constitution), taking into account the ethnic and linguistic characteristics of the peoples inhabiting India.

In India, subsequent specific constitutional review is applied, that is, control over the constitutionality of acts is carried out after their entry into force in connection with a specific case, when the application of an act entails a violation of constitutional provisions. In case of violation of constitutionally enshrined rights, one can file a claim directly with the Supreme Court. At the same time, it should be borne in mind that constitutional control, although not on all issues, but only on issues of individual rights, is also carried out by the high courts of the States. Meanwhile the high courts of the states by their decisions ensure the supremacy of the federal constitution, since the states do not have their own constitutions.

The Supreme Court of India has the right to interpret the Constitution (Article 132<sup>32</sup>), and the law formulated by the Supreme Court is binding on all courts in India (Article 141<sup>33</sup>). Exercising constitutional control, the Supreme Court may recognize federal laws, state laws, regulations and other legal acts as unconstitutional, which entails a ban on their application.

The legal status of an individual in India is determined by a number of articles of the Constitution that are unequal in their significance. The most significant rights and freedoms are provided for in Part III of the Constitution as the so-called fundamental rights. These rights include political rights, personal rights, and certain provisions on property rights. Article 13<sup>34</sup> of the Constitution prohibits the enactment of laws restricting fundamental rights, and in the event of violation of these rights, citizens can apply directly to the Supreme Court of India for their enforcement. The electoral rights of citizens are enshrined in Part XV of the Constitution, dedicated to elections. Most of the socio-economic rights are formulated as directive principles of state policy (part IV<sup>35</sup> of the Constitution) and are not subject to judicial protection. The possible sanction for violation of the directive principles may be political in nature and be expressed in discrediting the authorities, as well as in the non-re-election of certain personalities in the next elections.

Among personal or civil rights and freedoms, the Constitution names the inviolability of the person, home, freedom of movement, privacy of correspondence, etc. The Constitution paid considerable attention to the issues of equality of citizens. To this end, it abolished the traditional institution of “untouchables”, banned discrimination based on religion, race, caste, gender and place of birth, proclaimed freedom of religion, and provided measures to improve the situation of the backward segments of the population.

The political rights and freedoms enshrined in the Constitution include freedom of expression, the right to association, various electoral rights, etc. Unlike many other constitutions, India's Constitution does not contain specific provisions guaranteeing freedom of the press. This freedom is considered by Indian constitutional law as an integral part of freedom of expression, which means the freedom to express your own views and notify others about the views of others by any means, including through the media. In accordance with Article 19(2)<sup>36</sup> of the Constitution, reasonable restrictions on freedom of expression are permissible in the interests of the security, sovereignty and integrity of India, the maintenance of friendly relations with foreign states, public

<sup>31</sup> See: Constitution Day: Borrowed features in the Indian Constitution from other countries. In: India Today, November 26, 2019, available on: <https://www.indiatoday.in/education-today/gk-current-affairs/story/constitution-day-borrowed-features-in-the-indian-constitution-1622632-2019-11-26> (accessed: 10.12.2023); *Bahl R.* How India Borrowed from the US Constitution to Draft its Own. November 27, 2015, available on: <https://www.thequint.com/news/politics/how-india-borrowed-from-the-us-constitution-to-draft-its-own> (accessed: 10.12.2023); *Krithika R.* Celebrate the supreme law. In: The Hindu, January 21, 2016, available on: <https://www.thehindu.com/features/kids/Celebrate-the-supreme-law/article14011992.ece> (accessed: 10.12.2023); *Dhavan R.* Document for all ages: Why Constitution is our greatest achievement. In: Hindustan Times, 25 November, 2015, available on: <https://www.hindustantimes.com/india/the-constitution-of-india-66-yrs-of-change-and-progress/story-ngDCPtXWjXX-06LwDIUzBZL.html> (accessed: 10.12.2023).

<sup>32</sup> See: The Constitution of India. P. 61.

<sup>33</sup> See: *ibid.* P. 63.

<sup>34</sup> See: *ibid.* P. 25.

<sup>35</sup> See: *ibid.* Pp. 34–36.

<sup>36</sup> See: *ibid.* P. 27.

order, decency and morality, or to prevent manifestations of contempt of court, defamation and incitement to crime.

The Constitution refers to socio-economic rights and freedoms as the right to protection from exploitation, the right to adequate means of subsistence, the right to State assistance in case of illness, unemployment, the right to a living wage, the right to work, education, public assistance, the right to compulsory free education for children, etc.

The fundamental duties of citizens were fixed in the 42<sup>nd</sup> Amendment adopted in 1976 and included in Article 51A (part IV A)<sup>37</sup> of the Indian Constitution. These include several essential duties: to abide by the Constitution and respect the national flag and national anthem; to cherish and follow the noble ideals of the national liberation struggle; to uphold and protect the sovereignty, unity and integrity of India; defend the country; to help spread the spirit of universal brotherhood among the various representatives of the Indian people; to preserve the rich heritage of Indian culture; protect and improve the environment; to develop the scientific temper, humanism and the spirit of inquiry and reform; to safeguard public property and to abjure violence; to strive for excellence in all areas of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This list was supplemented with another obligation by the 86<sup>th</sup> Amendment in 2000: "who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years". Fundamental duties are not enforced by the courts. Many of them are rather declarative and have a predominantly moral and ethical character. At the same time, in the event of an attempt to defend certain fundamental rights in court, the court, taking into account all the provisions of the Constitution, may refuse to enforce the fundamental right on the grounds that the person concerned has grossly violated any of the duties specified in Article 51A.

As noted, India is a federation with strong federal powers. This, in particular, is evidenced by the consolidation of the residual powers of the union by the Constitution (Article 248<sup>38</sup>), the regulation by the federal Constitution of the mechanism of power not only of the federation, but also of its constituent units, broad emergency and control powers belonging to the highest bodies of federal power. Harshan Kumarasingham identifies three main features of Indian federalism: its origins, and namely in its Partition and in historical existence of the Princely States; the constitutional power of Federal Government over the borders and territories of its constituent units; its early compromise of different cultural elements in the first decade<sup>39</sup>. With dissolution of the State of Jammu and Kashmir, its division into two Union territories, abrogation of Article 370 of the Constitution and extension of all constitutional provisions to the territory of the former State of Jammu and Kashmir in 2019 the status of all States of India became equal. However, there are still units with sundry status in India, to wit States (today 28) and Union territories (now 8).

In case of a violation of the Constitution by a State, Presidential rule can be proclaimed in conformity with Article 356<sup>40</sup> of the Constitution, and the President takes over the respective State's administration with ex post facto consent of the

Parliament in accordance with Article 357<sup>41</sup>. On the basis of the named proclamation, the President may, firstly, assume some or all of the functions of the State government (including through the dissolution of the State government) and all or some of the powers that are vested in or may be exercised by the governor, or any institution or authority in the State, excluding the State legislature, and secondly, declare that the powers of the State legislature can be exercised by Parliament. Since the entry into force of the Constitution, the presidential rule has been proclaimed more than a hundred times.

The Indian Parliament (भारतीय संसद) consists of two Houses and a President. The President, like the British monarch, is formally viewed as a constituent part of Parliament, since a bill passed by the Chambers cannot become law without his/her approval. The head of state, however, does not sit in Parliament, except when he addresses Parliament with messages at the beginning of each session. The lower house is called the House of the People (Lok Sabha — लोकसभा) and is the body of people's representation, which expresses the interests of the federation as a whole. The upper house is called the Council of States (Rajya Sabha — राज्य सभा) and represents the interests of the constituent units of the Union and reflects the federal structure of the Indian state.

The Indian Parliament works in sessions. The Constitution vests in the President the obligation to convene each House in session in such a way that the period between them does not exceed six months (Article 85[1]<sup>42</sup>). Ordinary sessions are usually convened twice a year. The quorum for sittings in each chamber is 1/10 of the members of that Chamber.

According to Article 53(1) of the Constitution, "the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution"<sup>43</sup>. He or she is elected for a term of 5 years by a special electoral college, which includes on an equal footing the elected but not appointed members of the both Houses of federal Parliament, as well as elected members of the legislative assemblies of the constituent units of the Union. Any citizen of India who has reached 35 years of age and meets the requirements of being elected to the House of the People can be elected President.

The Constitution of India also provides for the post of Vice President, who (like the President) is elected for a term of 5 years, but according to a different procedure: at a joint meeting of the Houses of Parliament. The conditions for the election of the Vice President are the same as for the head of state. At the same time, the Vice President must have the qualifications necessary to be elected not to the Lok Sabha (House of the People), but to the Rajya Sabha (Council of States), since he presides over this Chamber. In his daily activities, the Vice President assists the head of state, and also replaces the President in the event of his temporary or permanent inability to fulfill his duties.

For violation of the Constitution, the President may be dismissed through impeachment proceedings (Article 61<sup>44</sup> of the Constitution). In deciding the issue of impeachment, both Houses of Parliament have equal rights. 14 days after the preliminary notification of the head of state of the intention to initiate impeachment, signed by at least 1/4 of the total number of members of the relevant Chamber, this House may, by a special decision, adopted by a majority of 2/3 of the total number of its members,

<sup>37</sup> See: The Constitution of India. Pp. 36, 37.

<sup>38</sup> See: *ibid.* P. 111.

<sup>39</sup> See: Kumarasingham H. A political legacy of the British Empire: power and the parliamentary system in post-colonial India and Sri Lanka. London and New York, 2013. Pp. 91, 92.

<sup>40</sup> See: The Constitution of India. Pp. 50–151.

<sup>41</sup> See: *ibid.* Pp. 151, 152.

<sup>42</sup> See: *ibid.* P. 47.

<sup>43</sup> *Ibid.* P. 37.

<sup>44</sup> See: *ibid.* P. 39.



begin the impeachment procedure. Another House investigates the case and, by a majority of  $\frac{2}{3}$  votes of the total number of its members, decides whether the President is guilty or innocent. If the President is found guilty, he is removed from office since the moment the House adopts the appropriate resolution.

Although the stipulation of the institution of impeachment in the Constitution should testify to the independence of the President in the exercise of his powers, according to the established practice, confirmed by a number of court decisions and provided for in the 42<sup>nd</sup> Amendment to the Constitution, the leading role in the exercise of the powers of the head of state belongs to the government headed by the Prime Minister in agreement with which the President usually acts.

The main body of the executive mechanism of India is the Government – Council of Ministers (Article 74<sup>45</sup>). Its competence is practically not defined by the Constitution, however, since India is a parliamentary republic by its form of government, the government in practice exercises most of the powers that formally belong to the head of state. The Council of Ministers in its activities is responsible to the Lok Sabha (House of the People), therefore it can remain in power as long as it enjoys its confidence. The Government is formed by a party (bloc of parties) with the support of a majority of members of the lower house of parliament. Its number usually varies from 40 to 60 people. And as prescribed by Article 75(1A) there is a limit for a quantity of Ministers: “The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People”<sup>46</sup> (introduced in 2003 by the 91<sup>st</sup> Amendment).

In practice, the Council of Ministers, as a rule, does not meet in full. All the most important issues of public administration are decided by the Cabinet – a body that is narrower in composition, which includes not all members of the Government, but only 15–20 ministers in charge of the main spheres of the country’s life. A decisive role in the functioning of the Indian Government is played by its head – the Prime Minister. The head of Cabinet (Government) is usually the leader of the parliamentary faction of the party (bloc of parties) that won the elections to the People’s Chamber. However, there were also exceptions.

India’s judiciary is unified and centralized, headed by the Supreme Court of India, composed of a Chief Justice and 33 judges (since 2019<sup>47</sup>). Supreme Court justices are appointed by the President from among the country’s most distinguished jurists in consultation with the Chief Justice and Cabinet of Ministers. Members of the Supreme Court are required to retire at the age of 65. A member of the Supreme Court can be removed only if each of the chambers of the union parliament by an absolute majority of its members and a majority of  $\frac{2}{3}$  of the members present accuses him of misconduct or declares him incapacitated.

The highest legislative body of the State in India is the legislature, which consists of one (legislative assembly) or two (legislative assembly and legislative council) chambers and a governor. Members of the legislative are elected by direct suffrage from territorial constituencies for a term of 5 years in accordance with the majority system of plurality. The total number of members of the legislative assembly must not exceed 500 or be less than 60.

Legislative councils are formed (Article 171<sup>48</sup> of the Constitution) according to the following pattern:  $\frac{1}{3}$  are elected by the state legislature from among non-members;  $\frac{1}{12}$  is elected by persons with a university education and after graduation from the university for at least three years living in the state;  $\frac{1}{12}$  is elected by persons who have taught at least high school in state educational institutions for at least three years;  $\frac{1}{3}$  are elected by municipal authorities;  $\frac{1}{6}$  is appointed by the governor from among persons with special knowledge or practical experience in areas such as literature, science, art, cooperative movement and social activities. The total number of members of the legislative council must not exceed  $\frac{1}{3}$  of the total number of members of the legislative assembly of the corresponding state, but in any case must be at least 40. Unlike the legislative, the legislative council is not subject to dissolution. The term of office of a member of the legislative council is 6 years, and a third of its composition rotates every two years.

The executive branch of the state is headed by a governor, who is appointed by the president for a term of 5 years and holds “office during the pleasure of the President” (paragraph 1 of article 156<sup>49</sup> of the Constitution). Sometimes the same person is appointed as a governor of several neighboring states. An Indian citizen who is at least 35 years old can become a governor. The governor exercises most of his powers on the advice of the State government (Council of Ministers), headed by the chief minister of the State (moreover, the governor also acts as a representative of the federal center, with some discretionary powers). The state government (usually 6–14 people) is formed by the party (bloc of parties) that wins the elections to the legislature.

At the level of the constituent units of the Indian Federation, there are high courts, consisting of a chief judge and as many judges as is established from time to time by the President of India. The head of state appoints the judges of the high court in consultation with the Chief Justice of India, the Governor and the Chief Justice of the State. High court justices hold office until the age of 62. According to Article 233(1)<sup>50</sup> of the Constitution, “[a]ppointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State”.

The system of governmental bodies of the Union territory is headed by an administrator appointed by the President and acting on his behalf. By a decision of the Federal Parliament, for the Union territories, their own legislatures can be created, which have the right to form local councils of ministers. The highest legislative power in relation to the Union territories is exercised by the Federal Parliament, while the President issues general rules on those territories administration.

The union territory of Delhi, which, in accordance with the 69<sup>th</sup> Amendment to the Constitution adopted in 1991 (Article 239AA<sup>51</sup> of the Constitution), is the “National Capital Territory”, has a special status, very close to that of a constituent entity of the federation. Delhi has its own legislative assembly and government, and the role of governor here is performed by a Lieutenant Governor appointed by the President.

Local self-government in large cities is carried out by municipal corporations, in small cities – by municipal councils. At a village level self-government is organized in the form of

<sup>45</sup> See: The Constitution of India. P. 42.

<sup>46</sup> Ibid. P. 43.

<sup>47</sup> See: The Supreme Court (Number of Judges) Amendment Act, 2019 (37 of 2019), s. 2 (w.e.f. 9-8-2019).

<sup>48</sup> See: The Constitution of India. P. 71.

<sup>49</sup> See: *ibid.* P. 67.

<sup>50</sup> See: *ibid.* P. 90.

<sup>51</sup> See: *ibid.* Pp. 91–93.

## REFERENCES

panchayat (पंचायत) – Part IX of the Constitution<sup>52</sup>. Panchayat raj (पंचायत राज) is the system of self-government in rural areas as opposed to urban and suburban municipalities, but now panchayats are organized at different levels of local government: gram panchayat (ग्राम पंचायत) at a village level, panchayat samiti (पंचायत समिति) – at a territorial block level, zila parishad (जिला परिषद) – at a district level. Altogether they make up panchayat raj system. Within an urban territory inhabited by several dozen thousand people a nagar (town) panchayat might be set up. For instance, Tamil Nadu is the first State to have introduced a classification in the status of local bodies as ‘Town Panchayat’ (தான் பஞ்சாயத்து in Tamil language), which was planned as a transitional body between Rural and Urban Local Bodies. The devolution of powers to the local (sub-state) level is seen as a means of expanding the participation of the population in governance, increasing the effectiveness of the latter and solving social problems.

Panchayat is a traditional institution, which is adapted by the Constitution to new conditions. In compliance with the Constitution there are reserved seats in its bodies for representatives of scheduled castes and scheduled tribes to give them possibility to participate in self-governance and to help everybody to overcome outdated prejudices. However still there are panchayats not provided for in the Constitution and oriented at obsolete habits and uses, and even they are changing their attitudes. For example, in the Satraula Khap Panchayat in Haryana’s Hisar district, people said that the time has changed, so the rules of six hundred years old should be changed, deciding to lift the ban on inter-caste marriages in 2014, but some other kin panchayats disagree with the abovementioned panchayat in this respect<sup>53</sup>. This is how development takes place in the interweaving and struggle of the old and the new.

## Some Conclusions

The Indian Constitution, adopted 75 years ago, continues to remain relevant and influences the development of many aspects of public and private life. The drafters of the Constitution have demonstrated their wisdom by laying the regulatory foundations for the evolution of society and the State for many years to come. Nevertheless, when solving some problems, people are faced with others, which also require resolution. That is why the Constitution of India is constantly undergoing changes in response to the challenges of the times. It has shown itself to be a living organism that responds to changes in the economic, political, social, legal, intellectual environment. Meantime, the Constitution preserves its potential and maintains its ability to move forward. Therefore, it waits for new studies and explorations.

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1. *Bahl R.* How India Borrowed from the US Constitution to Draft its Own. November 27, 2015, available on: <https://www.thequint.com/news/politics/how-india-borrowed-from-the-us-constitution-to-draft-its-own> (accessed: 10.12.2023).
2. Constitution Day: Borrowed features in the Indian Constitution from other countries. In: India Today, November 26, 2019, available on: <https://www.indiatoday.in/education-today/gk-current-affairs/story/constitution-day-borrowed-features-in-the-indian-constitution-1622632-2019-11-26> (accessed: 10.12.2023).
3. *Dhavan R.* Document for all ages: Why Constitution is our greatest achievement. In: Hindustan Times, 25 November, 2015, available on: <https://www.hindustantimes.com/india/the-constitution-of-india-66-yrs-of-change-and-progress/story-ngDCPtXWjXXO6LwD-1UzBZL.html> (accessed: 10.12.2023).
4. *Kanadje M.* Vital Stats. Analysis of the Constituent Assembly Debates. In: PRS Legislative Research. November 25, 2019. P. 2 (Institute for Policy Research Studies [New Delhi]). URL: [https://prsindia.org/files/policy/policy\\_vital\\_state/PRS\\_Constituent\\_Assembly\\_Debates\\_Final.pdf](https://prsindia.org/files/policy/policy_vital_state/PRS_Constituent_Assembly_Debates_Final.pdf) (accessed: 10.12.2023).
5. *Krishnamurthy V.* Colonial Cousins: Explaining India and Canada’s Unwritten Constitutional Principles. In: The Yale Journal of International Law. Vol. 34:207, 2009. P. 238.
6. *Krithika R.* Celebrate the supreme law. In: The Hindu, January 21, 2016, available on: <https://www.thehindu.com/features/kids/Celebrate-the-supreme-law/article14011992.ece> (accessed: 10.12.2023).
7. *Kulke H., Rothmund D.* A History of India. 4<sup>th</sup> ed. London and New York, 2004. P. 320.
8. *Kumarasingham H.* A political legacy of the British Empire: power and the parliamentary system in post-colonial India and Sri Lanka. London and New York, 2013. Pp. 91, 92.
9. *Patnaik B.* BN Rau: The forgotten architect of Indian Constitution. In: The Pioneer, State Edition in Bhubaneswar, 26 January 2017.
10. *Shukla S.* An Essay on Republic Day in Hindi – 26 जनवरी – गणतंत्र दिस पर नबिंध. 17.01.2020, available on: <https://www.thegreatinfo.in/2020/01/republic-day-essay-in-hindi.html> (accessed: 09.12.2023).
11. *Wangchuk R. N.* Two Civil Servants Who Built India’s Democracy, But You’ve Never Heard of Them! January 22, 2019. Available on: <https://www.thebetterindia.com/170367/ias-hero-republic-day-india-first-election-democracy/> (accessed: 09.12.2023).
12. अंजलि सिन्हा. खाप पंचायतों का हृदय परिवर्तन! In: सहारा समय Live, 26.04.2014, available on: <http://www.samaylive.com/editorial/262627/khap-deleted-conditional-ban-on-interracial-marriages.html> (accessed: 10.12.2023).

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<sup>52</sup> See: The Constitution of India. Pp. 95–100.

<sup>53</sup> See: अंजलि सिन्हा. खाप पंचायतों का हृदय परिवर्तन! In: सहारा समय Live, 26.04.2014, available on: <http://www.samaylive.com/editorial/262627/khap-deleted-conditional-ban-on-interracial-marriages.html> (accessed: 10.12.2023).