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**AN EARNEST APPROACH TOWARDS DEVELOPMENT: PARADIGM
SHIFT IN THE GRUNDNORM**

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Abstract

The paper highlights the transformative character of the constitution, contends that the constitution values rights of the citizen so should also enforce their duties, and the directive principles laid down for the government must have better enforcement, the third gender should also have a stake in the affairs of the society, federal structure of the country must be justified by defining article 356 of the constitution with a clear and comprehensive definition, colonial laws which are derogative such as section 124A of IPC has to be repealed for maintaining the spirit and life of the constitution, the document is of such nature which argues for equality and thus to justify the statement the under privileged section of the section is upgraded by giving reservation, so the paper tries to explain that by the means of reservation the goal of upliftment should be fulfilled and thus the criteria on which reservations are granted must be evaluated, women are having reservation in the section but the most important area which is the legislative body, which makes laws has no room for women thus to have their stake, their opinion and view in the law making body the pre requisite need is to reserve their seats, because the law talks about gender neutrality and is framed by only one gender which is not justified.

Introduction

The constitution of India is a living document, it is a reflection of the society, constitution is like an organism it evolves and adapts to the changing needs of the society. The Indian constitution has the transformative character it was not a document of continuity, it is transformative in two aspect political transformation and societal transformation. The constitution ruptured from a colonial state into a republican nation, the political structure of the government to a democratic republic leading to political transformation. The introduction of

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universal adult franchise to all the citizens and by inculcating the concept of citizenship was a step towards the societal transformation. The constitution was framed 72 years ago and had it not been flexible in nature we won't be able to call it a mirror to the society, the society is changing and to serve the society, to regulate the changing people the law governing them should also change. With transformation we should not forget that the ability to change should not defer the basic structure which forms the essence of our constitution, thus transformation is admissible till the moment it does not hamper or affect the bedrock of our constitution.

A society which value rights should also enforce duties

The framers of Indian constitution aimed and aspired towards nation building and making India a welfare state, and to fulfill there aspiration chapter IV of the Indian constitution deals with the directive principle of state policy, they were incorporated in the constitution with a view that these principle will serve as a road map to the legislators and policy makers in framing the policies and law, with having such fundamental principle in governance of the country they are not enforceable or justiciable in any court of law, which means that the essence of accountability is not present and thus they are not followed with utmost sincerity though they were aimed to play an ideal before the legislator of the country who frame laws for achieving the ideal of the constitution embodied in the preamble “ justice, social, economic, political ; liberty, equality and fraternity , which is the basic structure of our constitution as held in the *Keshvanand Bharti V State of Kerala*, but because the directive principles are not enforceable in any court of law thus we can't question a government even if they deviate their path from the fundamentals laid down, thus to achieve the egalitarian society of which we all dream off the directive principle of state policy aim to create social and economic conditions under which the citizen can lead a good life and thus if they are enforced then only we can experience their effect in true spirit , because with accountability comes responsibility.

The constitution guarantees fundamental rights to the citizen in part III of the constitution and they are the bedrock of our constitution ,part III gives life to our constitution, and they are enforceable rights, we should never forget that a right always comes with a duty and if both rights and duties are followed sincerely then no wrong will occur and the dream of an utopian society will be achieved, our constitution do enforce rights but duties are not justiciable thus leaving the public at large without accountability, if the constitution guarantees certain rights then those rights do carry duties which should also be enforced, if right to equality is of

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paramount importance then the duty to abide by the constitution and respect its ideals and institutions should also get the space in the room, we are a diverse country with cultural, linguistic disparity and to imbibe the feeling of brotherhood and nationhood the duties should be enforceable, we have completed an era after independence and thus now it is time to work in the sphere of nation building and for nation building we have to promote and inculcate the feeling of togetherness which cannot be achieved by merely enforcing rights, the citizen should be liable and responsible in performing their duties as well, if they value their duty in the same manner as they appraise their rights then our aspiration of a welfare, developed state can be fulfilled.

Constitution is an inclusive document- inclusion of third gender

The constitution is a gender neutral, progressive document which guarantees equality among individuals, prohibits discrimination on the basis of sex, caste, creed, religion and race, but unfortunately our constitution is silent on the rights of the third gender which was recognized by the guardian of the constitution, they were recognized by the apex court in the case of *National legal services v. Union of India*, but their existence in the society is from the epic era of religious text, our constitution framers indicated that the document is inclusive of all the groups and the purpose of the Grund-norm is to serve the society and abolish all the inequalities and discrepancies of the society, but by their exclusion we somewhere have failed in proving our words, nonetheless the apex court has acted vigilantly and recognized the group, but now to help them live a dignified life which is in any way their fundamental and basic right the constitution should come up with a specific law or article which will include them too in the society, the supreme court has done its duty in interpreting the constitution in its best serving way now the onus is to include them, it is well said that a country is independent only when the vulnerable group of the country is living with dignity and respect, thus to justify our independence our spirits of constitution we need to act as an inclusive one.

Dissent and disturbance should be differentiated; criticism is the spark of democracy

The laws which are followed from the British era need to be modified and amended; the law of sedition which was a derogative law, used to suppress the voices of common people against the atrocities of the government was framed. The law is still being followed and obeyed, we have transformed from a colonial state to a democratic republic but we still go by the same law of

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colonial era which is not in line with the principle and fundamentals of democracy. The sedition law under sec124 A of Indian Penal code is poorly defined and the interpretation of the section is of such nature that any view which is in dissent and different from the opinion of government is seditious and people are booked under the law and harassed. Thus, to stop the atrocities by the police officials the law needs to be amended. A healthy democracy is such which accepts both appraises and criticism, so a broader definition must be introduced of the word sedition, a dissenting opinion or a different opinion which is against the view of government cannot be seditious or against the concept of democracy. We are a country of 138 Crores, and it is not at all possible that the population will be always in favour of the government, thus clash of opinion, questions on policies, difference in thinking is something which should be welcomed rather punished, because if we punish the voices then we are failing as a democratic nation, the law needs to be clear, just and must have reasonable ground to act on. The supreme court in the case of *Kedar Nath v State of Bihar* upheld the law on the basis that this power was required by the state to protect itself. But even after the judgement a number of cases are filed for sedition and many social activist, journalist are booked under the law and there free speech, opinion is barred by the government, this is the draconian law which booked

Mahatma Gandhi for his dissent against the ruling British Government, and Gandhi stated that

“This section of Indian Penal code is the prince among all the political sections of the IPC designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate promote or incite to violence”. This law needs a quiet burial so that the flowers of free speech, liberty can blossom in the garden of democracy.

President’s Rule under Article 356 of the Indian Constitution: Threat to the Federal Setup

Dr. Bhimrao Ramji Ambedkar said “*Constitution is not a mere lawyer’s document, it is a vehicle of Life, and its spirit is always the spirit of Age*”. The constitution of our country provides for a federal set-up, where there is a division of power between the central government and the state governments. **K.C Wheare** defined federalism as “the method of dividing power so that general and regional governments are each within a sphere co-ordinate and

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independent”. **Article 245** and **Article 246** of the Constitution lays down the provisions on the subject of distribution of legislative powers between the Centre and the States. To be more profound, the **Seventh Schedule** to the Indian Constitution defines and specifies allocation of powers and functions between Union & States. It contains three lists; i.e. 1) Union List, 2) State List and 3) Concurrent List, which clearly mentions their jurisdiction.

Quasi-federal to be more specific, when it is the present India to be discussed

Having said that, we cannot deny the reality that our country India is a federation with a slight unitary bias and is referred as a quasi-federal state, owing to the strong central machinery. Quasi federal is a system of government where the power distribution between the Centre and the state are not equal. In our country, we have a combination of the features of a federal government and the features of a unitary government which can also be called the non-federal features. Because of this, India is called a semi-federal state. **Prof K.C Wheare** defined it as “**a quasi-federal state**”. The Apex Court of India in the case of *State of West Bengal vs. Union of India* described our country as “a federal structure with a strong bias towards the Centre”. There are certain circumstances through which the Union Government can enter the jurisdiction of states, which exposes the entire system to a big chance misuse of power.

Political Interests of the Central government brought into light

The President, who is the nominal head of the state, can overtake the legislative and executive power of a state by imposing emergency, in case of “failure of Constitutional machinery.” **Article 356** of the Indian Constitution states that “If the President, on receipt of report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the activities of the State cannot be carried on in accordance with the provisions of this Constitution, the President may be Proclaim emergency in a state”. This article is invoked to suspend the legislative assembly of a state and to dismiss the elected government in totality.

Years of Freedom, but the matter is still undercover

70 years back, the framers of the Constitution were not able to foresee the nature of Indian politics and they could not predict that this provision laid down in Article 356 could be used by a political party for their selfish reasons. This article has been in use from years now, to surpass the state government by the union government to achieve their political goods.

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The powers given under this article has been grossly misused in the year 1951 and 1954, ironically, just after the independence. Jawaharlal Nehru and his government dismissed the chief minister of Punjab, Gopichand Bhargava, even though he had the majority and no situation of failure of constitutional machinery was there. 3 years down the line and the country saw the exact same case again, with the Andhra Pradesh government.

Dominance of the Council of Ministers

As per the provisions of our constitution, the Governor acts under the pleasure of the President, who himself is a nominal head and the real powers lie in the hands of the Prime Minister and his council. The President works under the aid and advice of the council of ministers which clearly supports the fact that Article 356 can be misused by the Union government to surpass the opposition party in a state. The ideologies of the central government can definitely coerce the president to work according to their desires and wants. President's rule has been imposed 5 times from the year 2014, without any reasonable ground. This article was supposed to be used in the rarest of the rare cases but now it has become a device to encroach upon the jurisdiction of state governments.

Threat to the Basic Structure of the Indian Constitution

In the case of *Keshavananda Bharti vs. State of Kerela*, it was established by the apex court that the federal structure of India is a part of the basic structure of the Constitution. If this matter of dominance of the Union over the states is not highlighted with utmost potential, it would violate the basic federal set-up that we are supposed to have in India and the misuse of article 356 has direct implications on the life of the citizens.

Probable Solutions that can be considered

To ensure proper distribution of powers between the Union Government and the State Government, the scope of Article 356 must be fixed and vagueness of any term can be used to establish superiority and dominance. The phrase "Failure of Constitutional Machinery" must be defined with utmost simplicity under the Ambit of Article 356 to ensure that both central and state governments remain supreme in their respective domains. President's rule should be and must be the last resort.

Reservation in India: Positive discrimination, backed by the Constitution

In our country India, there is huge socio-economic disparity, which demands for provisions related to reservation. If we talk about reservation in India, it is basically reserving access to seats in the government jobs, educational institutions and even law making wings of the country, to certain sections of the population. The two major provisions to provide reservation as per the Indian Constitution are:

1. In **Article 15(4), Article 15(5) and Article 15(6)** of the Constitution, reservation for the advancement of scheduled castes, schedule tribes and other backward classes of the citizens is given.
2. Adequate representation of the EWS under **Article 16(4) and Article 16(6)**.

103rd Constitutional Amendment, 2019: Menace to Merit

The 103rd Constitutional Amendment introduced 10% reservation to Economically Weaker Sections of the society for admission to Central Government- run educational institutions and private educational institutions, and for jobs under the Central Government. Any person having an annual family income less than Rs.8 lakh and who does not belong to any reserved category, would now get reservation, after this amendment. The criterion set by the government to fall under the EWS category is certainly vague and unreasonable. This amendment would favour the candidates who do not actually need reservation, and the true purpose of positive discrimination as desired by the law makers would be neglected.

With this amendment, we now have around 60 percent reservation in India for government jobs, leaving merely 40 percent of the seats under merit.

It is true that caste system prevailed in India from times immemorial but in the 21st century, the caste or the income / poverty of a person should not be the sole criteria to give him/her reservation. Original Constitution provided reservation for 10 years, until 1960, but it is still there in 2022, with a much wider ambit.

What Should the Government do?

It is the duty of the government to provide equality of opportunity in our country and ensure that the provisions of reservation that is guaranteed to certain sections of the society must be availed by those who actually need it. Reservation should not be a menace to merit and the reasonability behind reservation must be checked from time to time. Anything which is relevant

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today, might hold no value after 10 years. So, the rationality behind any amendment must be looked closely with a broad perspective.

Women's Reservation Bill: A step towards women empowerment

According to Global Gender Gap Report 2021, our country has declined on the political empowerment index by 13.5 percentage points, and a decline in the number of female ministers, from 23.1 percent in 2019 to 9.1 percent in the year 2021. According to Government's Economic Surveys, women's representatives in the house of people and the legislative assemblies are miserably low.

The 108th Amendment Bill, which aimed to reserve 1/3rd of all seats in the Lok Sabha and in all state legislative assemblies for women, is pending in the Parliament of India from over 10 years. The Government should examine this bill very intensely, as women's right to self representation and self- determination would in a way, inspire young girls to contribute to nation-building.

Transformation is the prerequisite need

The Indian Constitution is a concoction of rigidity and flexibility. We have had over 100 amendments in the last 60 years which clearly indicates we follow a middle path between the rigidity of the United States Constitution and the flexibility of the unwritten contraventions of the United Kingdom.

Our constitution can adopt the needs of the citizens with the change of time. India is a developing country and this flexibility of the constitution would prove to be very useful as an expression of development. To tackle the socio-political changes, amendments and transformation is the need of the hour

Judge Cooley said *"of all the constitutions, which may come into existence for the government of the people, the most excellent is obviously that which is the natural outgrowth of the national life, and which having grown and expanded as the nation has matured, is likely at any particular time to express the prevailing sentiment regarding government and the accepted principles of civil and political liberty."*

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