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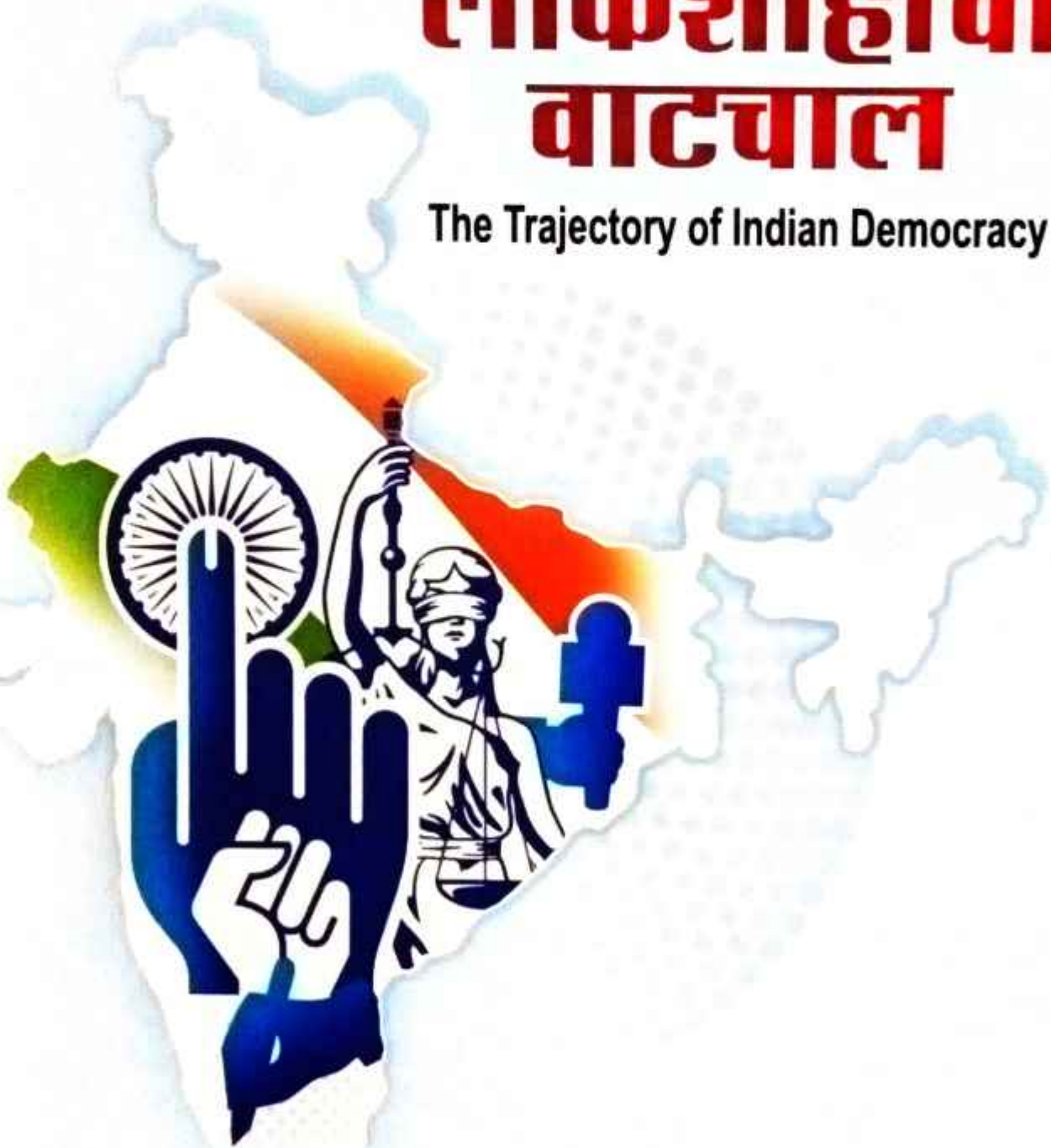


  
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# भारतीय लोकशाहीची वाटचाल

The Trajectory of Indian Democracy



- संपादक -

डॉ. हनुमंत कुरकुटे । डॉ. वसंत खरात । डॉ. श्रीकांत देशमुख

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# Nepotism in Political Parties a Shrinking Value of An Indian Democracy

- Kapil B. Chaurpagar

Assistant Professor,

Shri Omkarnath Malpani Law College, Sangamner.

The famous definition of the democracy is given by the former American President Abraham Lincoln that 'government of the people by the people, and for the people.'

The term democracy is evolved in the ancient Greece. So also the word democracy derives from Greek word 'demos' which means people and 'kratos' means power. Hence democracy means the power of the people. In the advent of the modern world many countries adopted this process of governing and India is not an exception to this. Indian people govern by the Britishers from 1600 A D onwards and they were well acquainted with the British form of Parliamentary democracy. Therefore the constituent assembly of India, deliberately adopted the democratic type of governance. The constitution of India also commence with the preamble with declares that India is Democratic State.

There are many deliberation on the effective functioning of the democracy its pros and cons. Similarly there are so many factors which can runs aswell as ruin the democracy. In the Indian context one can assess that, it is functioning in satisfactory manner.

Nepotism can be term as one of the darker side of Indian political parties. Nepotism can be defined as 'the act of using power or influenceto get the unfair advantages for members of one's family.' India has adopted multi-party system because according to the founding fathers of the Indian Constitution, political parties are the soul of democracy. 'The purpose of the democracy is to widen the voters choice not narrow it, by choosing dynasts over professionals, parties limits the choice that voters might have had otherwise and lower the overall level of competence in parliament.'

Indian political history witnesses the darker side of nepotism despite the fact that we have adopted the democratic form of government. Talking about the single largest party at the time of independence Indian National Congress from Motilal Nehru to the Rahul Gandhi (Congress Party) at present time we can observe that our country has been controlled by dynasty.

Dynast no longer arouse surprise, much less unease. In Indian political scenario there are many national as well as regional parties that are obsessed with dynasty rule and nepotism.

There are some major regional parties which are important to refer here, in Utter Pradesh Samajwadi Party which is established and controlled by Mulayam Yadav and later taken over by his son Akhilesh Yadav. Which have been working on the principles of nepotism. Similarly Bahujan Samaj Party supremo Mayawati declares her nephew Akash Aanad as her political successor. Mamata Banerji in West Bengal who mocks dynastic politics in the Congress when she left the party in 1997 to start Trinmool Congress she too has a nephew Abhishek Banerjee who makes no secret of the fact that he is successor of Mamata Banerjee.



On the same footing in Maharashtra's politics the Thakre family maintain their dominant presence from Balasaheb Thakre to Uddhav and Aditya Thakre. Another largest party in Maharashtra Nationalist Congress Party maintaining the same with recent 2019 Loksabha elections where 28 year old Parth Pawar given a Party ticket to contest from *Maval* constituency. Parth is Sharad Pawar's grand nephew and son of Ajit Pawar. Supriya Sule is the present member of Loksabha and she might be the successor of her father Sharad Pawar.

In Kashmir the Abdulla's and Muftis have been in power for years. Similarly in Telangana K Chandrashekar Rao family, Chandrababu Naidu's family in Andhra Pradesh and late Karuna Nidhi's son and daughter in Tamil Nadu. These are the few major examples of nepotism which our country witnesses.

The Bhartiya Janta Party for long time opposed to the nepotism in political parties. But in recent past it seems that they left their principles in this regard. In Maharashtra alone over 40% BJP candidates are dynasts Pankaja and Preetam Munde can be quoted as examples in this regard. This situation is more or less similar in the other states.

Some years ago, one researcher Patrick French in a study of Indian Parliament revealed some disturbing information. He found that the young parliamentarian below the age of 30 in the Loksabha are entirely belong to the political background families. This is unique example found anywhere in the world. Further he added that if this trend continues, it is possible that most member of Indian Parliament would be there by heredity alone, and the country would be back to rule by hereditary monarch.

It is true spirit of democracy that everyone gets a fair chance in all field and professions. From ancient times Indian social structure is bonded with the Varna system where in the occupation of the father is bequeath to his son. This system does not allowed the any person to work other than his determined occupation. With coming of independence and constitution this system is finally unlock and now everyone can choose his profession as per his will and wish. But with the current trend of nepotism in political parties we are again moving backward in time.

In the democracy, it is expected that power should not be concentrated in one hand for the long time. Therefore American Constitution does not permit any President to hold the post more than two terms. Though there was Kennedy and Bush Family who occupied the said post within their clan but it is not in Indian line where the near relatives without any mandate hold the position of political supremacy and ultimately remain in the power.

The lower structure of any political party is the real strength of that organisation. Every person who works there expecting that, one day on the power of his talent he will move up in the upper level of political party and become a mass leader who could acquire the power and serve the nation. Unfortunately this expectation could not be satisfy and the upcoming talent thus suppressed at the bottom level only. There are various examples in national parties that young and talented leadership does not allowed to take prominent place in the party, only due to fear that they will take over the party which is private property of particular dynasty. This ultimately harm the benefit of the society and nation.

Thus in concluding remark it can be emphasised that young and talented leadership should be encouraged and promoted in the political parties instead of their family members. Then only the democratic principles can be survived and bringing the smart and talented politicians in the power the mission of nation building can be accomplished.

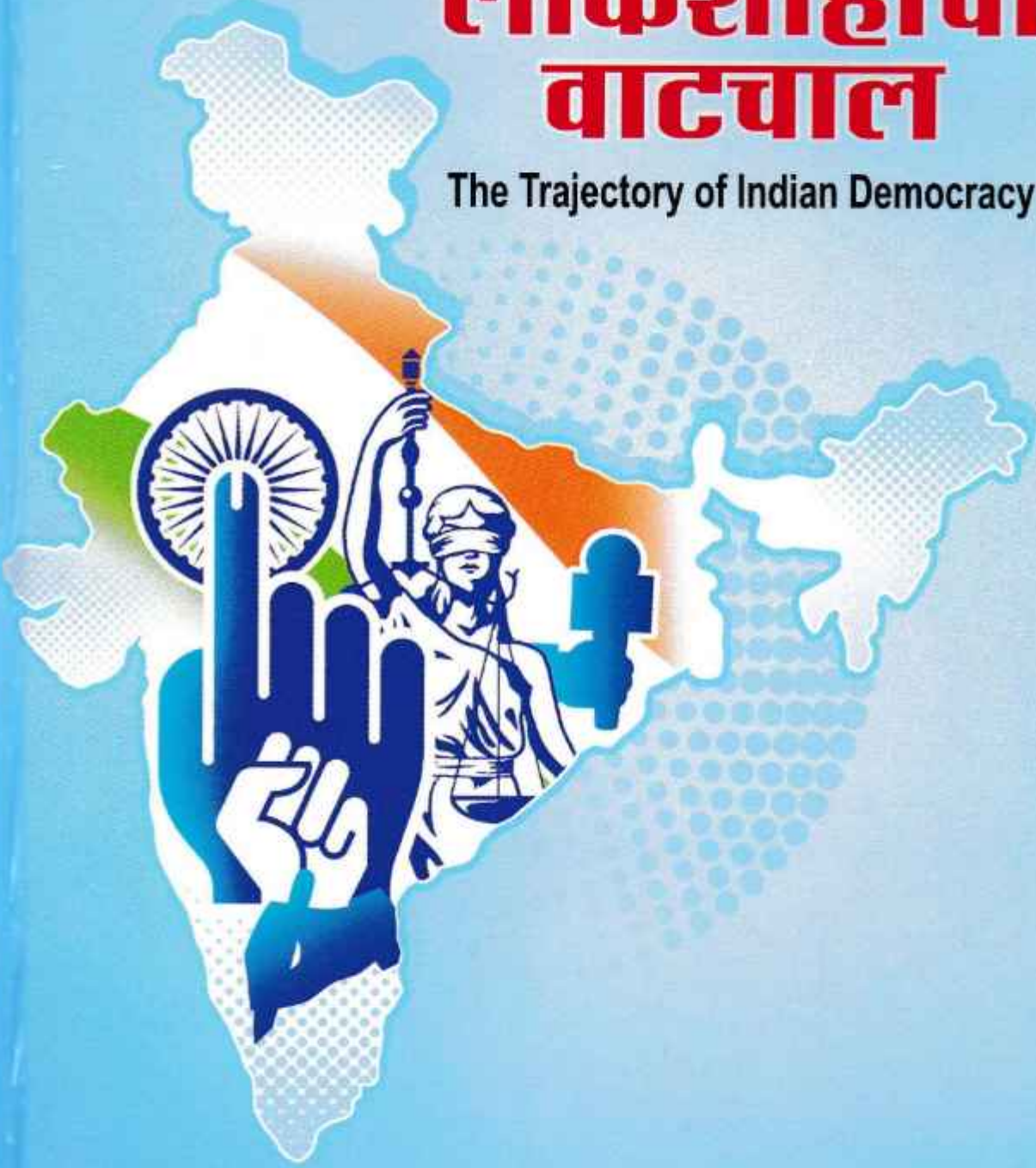
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अथर्व पब्लिकेशन्स

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या पुस्तकातील कोणत्याही भागाचे पुनर्निर्माण अथवा वापर इलेक्ट्रॉनिक अथवा यांत्रिकी साधनांनी - फोटोकॉपींग, रेकॉर्डिंग किंवा कोणत्याही प्रकारे माहिती साठवणुकीच्या तंत्रज्ञानातून प्रकाशकाच्या व लेखकाच्या लेखी परवानगीशिवाय करता येणार नाही. सर्व हक्क राखून ठेवले आहेत.

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या पुस्तकात प्रसिद्ध झालेली मते संपादक आणि प्रकाशक यांना मान्य असतीलच असे नाही. या पुस्तकात प्रसिद्ध करण्यात आलेल्या लेखातील लेखकांची मते ही त्यांची वैयक्तिक मते आहेत, तसेच शोधनिबंधाची जबाबदारी ज्या - त्या लेखकांवर राहिल.

# **Judicial Independence and Indian Democracy : An Overview of Related Constitutional Amendments**

**- Sachin B. Pathare**

Asst. Prof., Shri Omkarnath Malpani Law College  
Sangamner, Tal. Sangamner, Dist. Ahmednagar. (M.S.)

## **I) Introduction**

The two dispensable bulwarks of democracy are a free press and an independent judiciary. Justice Frankfurter said:

“The court has no reason for existence if it merely reflects the pressure of the day. Our system is built on the faith that men set apart for this special function, freed from the influences of immediately and from the deflections of worldly ambition, will become able to take view longer range than the period of responsibility entrusted to Congress and Legislature.”<sup>1</sup> No doubt this is true with India also. Independence of judiciary is very cardinal principle for any democratic country. Impartial and accountable judiciary creates faith of people in the democracy because democracy is government of the people. Well informed citizenry contributes for strong judiciary and liberal democracy.

An independent judiciary is the very heart of a republic. The foundation of a democracy, the condition for its growth and the hope for its welfare- all lie in that great institution, an independent judiciary.<sup>2</sup> Indian Constitution has maintained the independence of judiciary under its provisions in proper manner. With the principle of check and balance it has separated three organs of the State from each other.

So long as there is a judiciary abides by constitutional morality and its conscience the citizens' rights are safe even in the absence any guarantee in the Constitution. But when the judiciary becomes subservient to the executive and to the party politics of the government of the day, then there is no hope for citizen's fundamental rights because at that time court loses its independence and integrity and becomes government's courts. In such a situation guarantee of the citizens right found in the personality and intellectual integrity of the Supreme Court judges as it has experienced in India during 1975's emergency.

Amendment of the Constitution is also one of the important set up in constitutional growth but when this amending power abuse by government of the day for establishing its supremacy and departing from constitutional mandates then the independence of judiciary comes into danger. In this paper, the author has attempted to study and analyze the constitutional amendments which have been introduced to Indian Constitution relating to judiciary from 1950 till April 2020. Further it will take into consideration in nutshell concepts of independence of judiciary and democracy and also suggest effective suggestions in order to ensure independent judiciary in democratic India.

## **II) Objectives of the Study**

To bring the point at home as discussed earlier, this paper closely examines the following



objectives:

- » To study the concept of democracy.
- » To assess the meaning and importance of independence of judiciary.
- » To examine constitutional amendments relating to judiciary from the point of view of independence of judiciary.
- » To suggest effective suggestions to avoid undermining of judiciary by executive and legislatures in Indian democracy.

The present study has been divided into four parts. *First* part attempts to study meaning and concept of democracy, the *Second* part assesses the meaning and importance of judicial independence, the *Third* part is the core of this paper it examines constitutional amendments which had made changes in judicial provisions from the point of view of judicial independence and the *Final* part makes certain suggestions to maintain independence of judiciary with concluding observations. In this context, we will discuss some fundamental questions and find out probable solutions to them. The questions are as follows:

- » What is mean by democracy?
- » What is independence of judiciary and its importance?
- » Which are those amendments, which had modified judicial provisions under the Indian Constitution?
- » Whether above expected amendments damaged independence of judiciary/ if yes, then which are those ?
- » What are the solutions that will help in maintaining independence of judiciary and avoid abuse of amending power in this regard ?

#### **Research Methodology**

The present study is relied upon the secondary sources of data. In the present study concept of democracy and independence of judiciary for making analysis of constitutional amendments relating to the judiciary has been analyzed from the point of view of independent judiciary. The data have been collected from various published and unpublished sources like research journals, magazines, reference books internet, Government Reports etc.

#### **1) Meaning and Concept of Democracy**

There is no universal definition of democracy. What one thinks and expects from this institution accordingly its meaning has been attached to it.

The term democracy is derived from the Greek word 'demos' and 'kratos', the former mean the people and the later power. It means government of the people or power of the people.

According to Sir Stafford Cripps, "By democracy we mean a system of government in which every adult citizen is equally free to express his views and desires, upon all subjects in whatever way he wishes and influences the majority of his fellow citizens to decide according to those views and implement those desires"<sup>3</sup> this definition is appropriate for a democratic State.

Walter Bagheot called it "government by discussion"<sup>4</sup> according to Dicey "democracy is form of government in which the governing body is comparatively large section of the entire society."<sup>5</sup> Finer observed that, "The primary meaning of democracy is government which derived from public opinion and is accountable to it."<sup>6</sup> According to J. S. Mill, "Democracy is

a form of government in which the whole people or some numerous portions of them exercise the governing power through deputies periodically elected themselves.”<sup>7</sup>

Abraham Lincoln in his famous speech at Gyatisberg defined democracy as, “government of the people, by the people and for the people.”<sup>8</sup> All those definitions indicates only political democracy it is not restricted only elections and change of governments, the aim and goal of democracy is to fulfill socio-economic hopes and aspirations of its citizens. Democracy is not merely a political system but it is a way of life. In this regard it is pertinent to quote Dr. B.R.Ambedkar here that he has in very apt words had provided the meaning of democracy. He says, “A form and method of government where by revolutionary changes in the economic and social life of people are brought about without bloodshed.”<sup>9</sup> He further stated that the conditions requisite for successful working of democracy are equality, two party system, equality in law and administration, constitutional morality, no tyranny of majority, moral order and public conscience. According to him political democracy cannot be successful unless there is social and economic democracy. In case of India it is found true.

In its comprehensive meaning, democracy means:

- » A form of government;
- » A type of state
- » A pattern of social system;
- » A design of economic order;
- » A way of life and culture.

When we speak about Indian democracy at that time we come to know that every citizen enjoys himself and also respecting others basic democratic values of equality, liberty, fraternity, secularism and justice. For this purpose there is need of impartial and independent judiciary which is already covered under the provisions of the Constitution.

## **II) Independence of Judiciary and its Importance**

The framers of the Indian Constitution were very stalwarts and visionary. They have a faith and reliance on independent judiciary which will protect not only the Constitution but also rights of citizens. In this regard member of the Constituent Assembly K. M.Munshi was of the opinion that in a democracy, the judiciary must be there to adjust the differences between citizen and citizen, between state and state and that if the independence of the judiciary is not secured the country would drift towards totalitarianism.”<sup>10</sup>

Supreme Court of India plays its role as federal umpire in Indian federalism simultaneously it is also guardian of the Constitution and liberties of citizens. Unless and until there is no independent judiciary there is no scope for citizens’ rights, rule of law and welfare of state.

Generally independence of judiciary means judiciary must be free from encroachment by other organs. There should not be interference, pressure, and influence in the functioning of judiciary by any other outer organ.

According to Britannica judicial independence means the ability of courts and judges to perform their duties free of influence or control by other actors, whether governmental or private.<sup>11</sup>



Dealing with judicial independence, Professor Stephen Burbank said, "True judicial independence...requires insulation from those forces, external and internal, that so constrain human judgment as to subvert the judicial process."<sup>12</sup>

A comprehensive definition of judicial independence given by Sir Guy Green, "Judicial independence as the capacity of the courts to perform their constitutional functions free from actual or apparent interference by, and to the extent that it is constitutionally possible free from actual or apparent dependence upon, any persons or institutions including, in particular, the executive arm of government, over which they do not exercise direct control."<sup>13</sup>

From the above discussed definitions it comes to know that judiciary must discharge its functions impartially, without interference, influence, pressure, domination, inducement, threat or restrictions by any other internal or external organ as assigned by Constitution on its shoulder then and then only it will be called judicial independence in true sense.

### **Importance of Judicial Independence**

Justice Khanna is known for his stature and become a legend in Indian judicial history who hold the independence of judiciary in very unfavorable and critical situation has observed that, "The existence of a fearless and independent judiciary can be said to be the very basic foundation of the constitutional structure in India. The independence of judiciary is linked with the concept of human rights and civil liberties which has been evolved through the years as an essential concomitant of civilized existence"<sup>14</sup>

The rights and civil liberties making meaningful and real one as alive there is need of independent judiciary. M.P.Jain observed, "The judiciary interprets the Constitution and act as its guardian by keeping all authorities-legislative, executive, administrative, judicial and quasi-judicial within the legal bounds."<sup>15</sup> No any democratic country will be found in the world who had not provided independent judiciary.

While stressing the importance of judiciary the then C.J.I., B.P.Sinha stated that, "The democracy cannot exist without justice, justice cannot exist without an independent judiciary, and there can be no independent judiciary without a fearless lawyer."<sup>16</sup> According to him independent bar as represented by lawyer is also important for the survival of liberal democracy. Judicial independence is the hallmark of Indian Constitution. Accordingly provisions have been incorporated under the Indian Constitution to maintain the judicial independence. However, practice and experience has shown the government of the day had attempted to undermine the judiciary by setting wrong practices and sometimes through constitutional amendments which needs to be assessed.

### **III) Constitutional Amendments Relating to Judiciary and Judicial Independence**

From 1950 till April 2020 there are ten amendments (7<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, 30<sup>th</sup>, 38<sup>th</sup>, 42<sup>nd</sup>, 43<sup>rd</sup>, 44<sup>th</sup>, 54<sup>th</sup> and 99<sup>th</sup>) made changes in the Constitution pertaining to the judiciary. In this segment attempt has been made to highlight only those provisions which has been altered by above mentioned amendments which has nexus with judicial independence.

#### **I) The Constitution (Seventh Amendment) Act, 1956**

Article 216, as originally enacted, provided that the judges appointed shall at no time exceed in number such maximum number as the President may, from time to time, by order,

fix in relation to that court. This provision was deleted by Section 11 of the Act. This was the barrier in increasing the number of judges.<sup>17</sup> To increase the number of judges is in the interest of justice and supports the independence of judiciary.

Through Section 12 of the Act it fixed the retirement of acting and additional judges until he attains the age of sixty years. Similarly Section 13 imposed restriction on practice after being a permanent judge. By Section 15 it substituted new Article for Article 224 for appointment of additional and acting judges for two years according to arrears in the business and workload in the High Court. Through Section 16 it is substituted new articles 230 and 231 as extension of jurisdiction of High Courts to Union Territories and establishment of a common High Court for two or more States respectively.<sup>18</sup>

Above changes made by the Seventh Amendment Act are providing stability, reducing workload, giving assurance of tenure to acting and additional judges, extension of jurisdiction and covering of two or more states within one High Court is straightening the judicial system which ultimately results in maintaining judicial independence. The provision as substituted new article for article 224 for appointment of additional and acting judges for two years is somewhat objectionable. Because their position remains vulnerable until he becomes permanent judge. This provision had provided discretion with executives about shorter tenure of additional judges with reference to work load in High Court militates against the concept of independence of judiciary. M. P. Jain observed it as objectionable because there is no limit on the number of such judges who can be appointed at one time.<sup>19</sup> The power of appointing Additional Judges was conferred upon the Government that Article has been blatantly misused and the constitutional scheme has been distorted. Current scenario of High Courts in India is of maximum number of Additional Judges which needs to be reduced in the interest of justice. If the tenure is uncertain or precarious, it would be difficult him to perform the duties of his office without fear or favor and judicial independence up to great extent is depend upon it.

## **II) The Constitution (Fifteenth Amendment) Act, 1963**

The Fifteenth Amendment added Clause (2 A) after Clause 2 of Article 124 for determination of age of the Supreme Court judge by such authority in such a manner Parliament by law provide.<sup>20</sup>

Relating to retirement age of the Supreme Court judges, cannot be determined by Parliament from time to time, but it must be fixed in the Constitution itself was the view of Dr. B.R.Ambedkar.<sup>21</sup> Security of tenure helps in building confidence, courage and strongness in judges which leads towards judicial independence. Towards this end Parliament fixed the retirement age 65 years for Supreme Court judges and 62 years for High Court judges as under Articles 124(2) and 217(1) respectively. Their removal made somewhat difficult by impeachment on the ground of proved misbehavior or incapacity.<sup>22</sup>

Article 217 was amended by the Fifteenth Amendment to add one clause, numbered as Clause (3), providing that if any question arose regarding the age of judge, it shall be decided by the President in consultation with Chief Justice of India. This is what is already discussed above. Article 222 was amended to provide that in case a judge was transferred, he should be entitled to receive in addition to his salary such compensatory allowance as the President



may by order fix.<sup>23</sup> Ensuring such compensatory allowances is great step in maintaining independence of judiciary.

Article 224-A was inserted to provide for appointment of retired judges and their allowances. This is a sound change which has been made by this Amendment to invite the retired High Court judges to decide cases if he is sound in mind and body and capable for a certain number of years to render good service to the nation is tune with the framers of the Constitution.

It has also amended Article 226 to provide that every High Court would have power to issue Writs which was restricted by the decision of *Khajoor Singh v/s India*.<sup>24</sup> This is salutary change which was made by providing every High Court to issue Writs. It is enhancing power of high courts means availing justice to the poor laymen within their convenient territory is in the interest of justice.

### **III) The Constitution( Twentieth Amendment) Act, 1966**

The Twentieth Amendment validated certain judicial appointments of District Judges which the Supreme Court had held to be invalid in *Chandra Mohan v/s U.P.*<sup>25</sup> THIS Amendment is an instance of bypassing the decision of the Supreme Court; Parliament had established its supremacy by undermining the judiciary. Judicial independence has been vibrated by this Amendment.

### **IV) The Constitution (Thirtieth Amendment) Act, 1972**

The Thirtieth Amendment made some changes in Article 133 of the Constitution. Originally an appeal against the decision of the High Court in civil cases lay to the Supreme Court if the value of the subject matter of appeal was not less than Rs. 20,000. By the Amendment this was removed and it was provided that an appeal would lie if the case involved a substantial question of law and in the opinion of the High Court the said question needed to be decided by the Supreme Court. This change is in the interest of justice by avoiding barriers which were needs to be removed according to the need and circumstances.

### **V) The Constitution( Thirty-Eight Amendment) Act, 1975**

This Amendment was introduced during the emergency and this was the first step of Indira Government towards authoritarianism. This Amendment is related to the promulgation of Ordinances. It has amended Articles 123 and 213 and also inserted Article 239-B that the power of President, Governor and Administrator to promulgate the Ordinances respectively. It made the satisfaction of the President (Article 123), Governor(Article 213) and Administrator (Article 239-B) shall be final and conclusive and shall not be questioned in a court on any ground. Similarly, under Article 352,356 and 360 relating to national state and financial emergency proclamation of President made final and unquestionable in any court.<sup>26</sup>

This Amendment ousted the jurisdiction of the higher courts to test the validity of proclamation of emergency and promulgation of ordinances. Judicial review is the essential element or basic feature of Indian Constitution which is integral in judicial independence. It is legitimate expectation that judicial arm must run in an independent and autonomous manner. It should not be subject to executive or legislative organ. Here legislative organ by its power ousted judiciary from its constitutional duty is set a block on judicial independence.

### **The Constitution (Forty-Second Amendment) Act, 1976**

The Forty-second Amendment is known as darkest period in Indian constitutional history. This amendment is also known as mini-Constitution. It has amended 59 articles of the Indian Constitution among those changes made relating to judiciary are very worst and attacked on the very important organ of the State i.e. judiciary.

The Act placed all amendments beyond challenge in the courts and curbed their writs powers. Central or State laws could be invalidated only by two thirds majority of sitting judges.<sup>27</sup>

The curtailment of the powers of the Supreme Court to enforce fundamental rights under Article 32 and of the High Courts under Article 226 to issue writs, directions and orders. It will result in crassly disturbing the balance between the executive, the legislature and the judiciary is relegated to the background. This is subverting the Constitution and undermining the judiciary.

Another change which can be stuck down as unconstitutional was the constitutional validity of a law, a Bench of atleast seven judges must sit in the Supreme Court and of atleast five judges in a High Court, and that no law can be invalidated except by the decision of not less than two thirds of the number of judges constituting the Bench. According to NaniPalkhivala it violates rudiments of arithmetic. It is not practicable, except in rarest of rare cases.<sup>28</sup> He further observed that, law declared and held to be unconstitutional and invalid by a majority (of less than two-thirds) of the Supreme Court or the High Court would still be enforced by the executive against the citizens. This is patently destructive of one of the basic features of the Constitution and is violative of the rule of law. Where there is violation of rule of law there is no independence of judiciary.

Such an attack on judiciary dealing with restrictions on the powers of the Supreme Court and High Courts, among other, were fraught with great dangers was observed by the Palkhivala.<sup>29</sup> The exclusion of jurisdiction of courts from invalidating constitutional amendments is criticized by Miss Maniben Patel as, "Holding up the entire judiciary to ridicule."<sup>30</sup> The changes were also criticized by Working Committee of Hindu Mahasabha as, "Proposed changes anti-democratic for depriving them of powers to review any legislation."<sup>31</sup> The Forty-second Amendment had given a blow on the judicial independence. Arrangements were being unfair to the citizens, could reduce the respect in judiciary. Judiciary has been crippled and circumscribed. Thus, independence of judiciary threatened up to great extent.

### **VI) The Constitution( Forty-Third Amendment) Act, 1977**

This Amendment was held during the regime of Janata Government it wanted to undo the changes made by earlier government and restored the curtailed powers of the Supreme Court and High Courts as were before the Forty-second amendment. It was considered that articles 32-A, 131-A and 228-A cause hardship to persons living in distant parts in India.<sup>32</sup> To clear the hurdles it was proposed to omit articles 32-A, 131-a, 144-A, 226-A and 228-A. Accordingly changes had been made and restored the integrity of the judiciary as it was before 1976.

### **VII) The Constitution (Forty-Fourth Amendment) Act, 1978**

The Forty-fourth Amendment was a much more comprehensive amendment to restore



the status quo ante the emergency amendments. The provisions which were inserted by Thirty-eighth Amendment were repealed and status quo ante was restored: Articles 123(4), 213(4) and 239 B (4). these were provisions pertained to the ordinance making power of the President the Governor and the Administrator of Union Territories respectively. These provisions specifically provided that the satisfaction of the President was final and no question regarding it could be raised in any court.

Article 217(2) (c) which made a distinguished jurist eligible for appointment as a judge of High Court was deleted. This change was come out of misunderstanding.<sup>33</sup> In Article 225, the proviso was omitted by the Forty-second Amendment was restored by the Forty-fourth Amendment. In Article 226 required changes were also made to restore it as it was before injured.

In Article 227, the word "tribunals" was inserted in Clause (1) and restrictions that High Court's jurisdiction under that Article would be limited to the courts subject to its appellate jurisdiction contained in clause (5) was omitted. It means that it restored judicial review in the High Courts which is in favor of judicial independence.

#### **VIII) The Constitution (Fifty-Fourth Amendment) Act, 1986**

This Amendment Act has comprises 4 Sections only. It has amended Articles 125 and 221 in respect of salaries of judges of the Supreme Court and the High Court's respectively.<sup>34</sup> It has also amended Second Schedule of the Constitution relating to salaries.

The Supreme Courts expenses are charged upon the Consolidated Fund of India, which means that this item is non-votable in the Parliament although a discussion on it is not ruled out.<sup>35</sup>

Ensuring the salaries of judges independent of Parliamentary vote is a great step in ensuring the Supreme Courts independence from political pressures.<sup>36</sup>

#### **IX) The Constitution( Ninty-Ninth Amendment) Act, 2014**

After reviewing the relevant constitutional provisions, the pronouncements of the Supreme Court and consultations with eminent jurists, it was felt by the government of the day broad based Judicial Appointment Commission should be established for making recommendations for appointment of judges of the Supreme Court and High Courts.<sup>37</sup> It was expected that meaningful role will be played by judiciary and transparency will be maintained in the selection process.

Articles 124, by insertion 124 A, 124 B, 124 C and 127, 128, 217, 222, 224 A and 231 were amended by the said amendment respectively for the above mentioned object. This Amendment Act was held as unconstitutional and void by the Apex Court of India.<sup>38</sup> WHILE DOING SO THE Court held that primacy to judiciary in appointment of judges Is the basic structure of the Constitution, which is violated by this amendment Act hence, unconstitutional and void.

Collegium system gives primacy to the judiciary in selection of judges was criticized due to lack of transparency, nepotism and abuse of power. In this regard for selection and transfer of judges the Ninety-ninth Amendment has importance but under the garb of to maintain judicial independence as a basic structure of the Constitution the Apex court strucked down the amendment.

### **Politics in Selection and Transfer of Judges**

In India, there is established convention relating to appointment of Chief Justice of India that is the senior most judge of the Supreme Court is to be appointed as Chief Justice of India according to the vacancy. But, in 1973 justice A. N. Ray was appointed as Chief Justice of India by superseding three senior most judges who immediately resigned from their post they were K.S.Hegde, J. M. Shelat and A. N. Grover. This was done by Indira government for political gain.

Adverse reactions to the suppression from the legal community were immediate and vociferous. The same day, in a 'high pitch of excitement', the Supreme Court Bar Association adopted a resolution strongly condemning the 'purely political' action of the government as 'a blatant and outrageous attempt at undermining the independence and impartiality of the judiciary'.<sup>39</sup> Moving the resolution, Chagla called it a black day and said that, 'what is left of democracy and the rule of law is fast disappearing from the country.'<sup>40</sup>

Another instance of suppression of justice H.R.Khanna who was superseded and justice Beg was appointed as Chief Justice of India in 1976 due to Khanna's dissent in A .D. M. Jabalpur against the government. Such practices are 'constitutionally unsound and politically unwise' 'needs to be given up. The convention appointing senior most judge of the Supreme Court as a Chief Justice is sound one and avoids interference of other organs is in the interest of judicial independence.

Primacy of judiciary in selection of judges through collegium is also criticized for hereditary and nepotism reasons. It is alleged that there no judges in the higher judiciary out of 40 families only. This practice also undermines the judicial independence and disturbs democratic set up.

Transfer of High Court judges is also one of the threatening factors to independence of judiciary. Article 222(1) deal with transfer of High Court judges by the executives. This provision has been abused by government at many times. During 1975 emergency 16 judges were transferred from one High Court to another High Court under the garb of 'national integration'. Palkhivala called it, "In reality, the policy of transfer of judges is calculated to accomplish disintegration of judicial independence rather than national integration."<sup>41</sup> Such transfers had created sense of fear and panic, incredible dissatisfaction in the mind of judges who stood against the government. During the 1975's emergency transfer orders of judges M.C.Chagla said, "The most brutal and inglorious period of our history."<sup>42</sup>

### **IV) Conclusions and Suggestions**

Democracy is not only a political; power of people but it is Way of life. It has to serve liberty equality and fraternity to the citizens. Political democracy is the means to achieve socio-economic democracy. For the survival of liberal democracy there is a need of impartial and independent judiciary. To protect the civil liberties and rights of citizens in every democratic country there is need of strong and impartial judiciary.

Thus, judicial independence has great nexus with democracy. In judicial independence it is expected that judiciary separated from other organs. There should not be interference, pressure, influence, encroachment, threat by internal or other organs on the judiciary so that

it discharges its functions without fear or favour. Justice Krishna Iyer stated that fearless justice is a prominent creed of our Constitution and that the independence of judiciary is the fighting faith of our founding document.<sup>43</sup> That document needs to be updated through required amendments.

Indian Constitution has undergone 10 Amendments relating to judicial provisions till date from its inception. Out of these 10 Amendments i.e. 7, 15, 20, 30, 38, 42, 43, 44, 54 and 99 provisions of 7, 138 and 42 Amendments had impaired the judiciary for example 1) The Seventh Amendment provided for appointment of additional judges for two years which is resulted in vulnerability among them. 2) The Fifteenth Amendment supported for transfer of judges which mostly abused by governments for punishing judges contradicting them. 3) The Thirty-Eight Amendment ousted the jurisdiction of higher courts upon proclamation of emergency and promulgation of ordinances by executive authorities. 4) The Forty-Second Amendment is known for its darkness. It has set a blow on judiciary by curtailing powers of judiciary and giving primacy to executive and legislature.

Barring above provisions of the 7, 15, 38 and 42 amendments all other amendments i.e. 20, 30, 43, 44 and 54 supported the judicial independence and the 99 amendment has been strucked down by the judiciary itself as on the ground of violation of judicial independence as basic structure of the Constitution.

Corruption, face value, nepotism, heredity, primacy to judiciary, intellectual dishonesty, unfairness in distribution of cases to brother judges of the Supreme Court, personal clutches, judges fallen in line with government for jobs after retirement etc. are the biggest internal challenges to the independence of judiciary.

Once Dr. Ambedkar was asked by one person, whether India will retain the democracy? Dr. Ambedkar replied, "India will retain the democracy in form and not in fact." This is totally true with the current scenario. Lincoln's definition of democracy seems like to be changed as 'Government off the people, buy the people and for the people. At this juncture it is the first duty of the judges to uphold the Constitution and the laws without fear or favour. Judicial independence is the corner-stone of any democratic structure. For the long life of such structure the corner-stone should not be destroyed. On the basis of above conclusions following suggestions are made:

- » In appointment of Chief Justice of India the convention prevailed in India is good that the senior most judge is to be appointed as Chief Justice. It must be continued and government should not by pass it.
- » Relating to transfer of High Court judges Article 222 should be amended in proper manner so that transfer of judges must not seem as punishment for their courage to stand against the government.
- » To meet the workload in the courts remedy lies in increasing the strength of suitable, efficient and intelligent judges.
- » After retirement re-employment of judges should be totally banned and if their ability and talent is required then it should be gain on honorary basis to avoid the before retirement influenced decisions.



- » Chief Justice of the Supreme Court is the master of roster. Fair distribution of cases has to be done by him in the interest of institution so that once again judges of Supreme Court should not come out to face the press in the interest of justice.
- » Judges should refrain from corruption, caste, nepotism and communal politics.
- » The politicians should also respect the true spirit of democracy while amending the Constitution or making the law they must read it properly and avoid tactics and strategies damaging other organs of the State.
- » Judicial independence should not rise to the level of becoming super legislature or super executives.
- » Self-restraint is the best policy must be observed by three organs of the State so that they can act within their assigned sphere.
- » Transparency in judicial functioning must be maintained. Judges by themselves should disclose their assets every year so that faith of common man in the dignity and integrity of the judiciary will survive for ever.

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**THE SIGNIFICANCE OF EFFECTIVE COMMUNICATION SKILLS  
IN TEACHING- LEARNING PROCESS- AN OUTLINE**

**PROF. KISHOR MARUTI SHITOLE**  
SHRI.OMKARNATHMALPANI LAW COLLEGE,  
SANGAMNER, DIST. AHMEDNAGAR 422605.  
Mob. 9970870613  
kishorshitole007@gmail.com

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**Abstract**

In this 21<sup>st</sup> century, communication skills have been playing the significant role in the human interaction. A communication skill indicates the thoughts, having information, feeling gestures and movements, ideas. The role of communication is that to focus the significance of exchange of information for maintaining the relationship to the people. The man is a social animal and every human being communicates through their mother tongue or any other language they already know. In communication there are four skills necessary for effective communication from one person to another person these skills are Listening, Speaking, Reading and Writing. The person having these skills is able to convey his/her message in an effective way. The main purpose of the communication is that the senders and receivers communication to become effectively and there must have a feedback in every communication. The present paper deals with the significance of effective Communication skills in teaching –learning process.

**Keywords:-**

Sender, Receiver, Medium, Message, Feedback, Language, Exchange of Ideas, Continues – Process etc.

**Introduction:-**

The term 'Communication' is derived from the Latin word "Communicare" which refers to sharing, contributing, informing, popularizing and spreading the information from one person to another person. Communication can be expressed as a process in which individuals share their views, suggestions, evidences, thoughts and feelings. The individuals required in this process are known as sender and receiver. Communication is a process which includes the

sharing of information and mutual understanding among the individuals at same or different levels. Communication offers help to the workers in achieving their individual goals by making them aware of the internal as well as external events which is also beneficial for the organization. Communication is a very crucial in order to provide a worthwhile interaction among people to begin, to carry out, achieve, or to oppose some particular situations. Communication can be understood as an exchange of views, ideas or information by gaining knowledge and assurance in order to maintain cordial industrial relations. The means of Communication is usually spoken in words, pictures and symbols. But we also give information through body, gestures, looks and facial expressions can show how we feel and what we think about an issue or another person.

**Definitions of Communication:**

1) According to Newman and summer:

"Communication is an exchange of facts, ideas, opinions or emotions by two or more persons".

2) According to Keith Davis:

"Communication is a process of passing information and understanding from one person to another person".

3) According to the American Management Association:

"Communication is any behavior that results in an exchange of meaning".

4) According to Brown C.A:

"Communication is a process of transmitting ideas or thoughts from one person to another person for the purpose of creating understanding in the thinking of the person receiving the communication".

**Objectives of Communication:**

**D) Transformation of ideas:** To transfer ideas from one person to another, communication play an important role. Every human being has some ideas that are unique to his own mind and many of these ideas may get translated into successful concepts, projects or creations. To take ideas to the stage of implementation requires effective communication. The idea should be communicated as a plan drawing or description so that it can be taken further.



**ii) For Interacting with society:** People interact with people in their surroundings continuously. Whenever a person talks to others, he is not only expressing himself, but also knowingly or unknowingly, reacting to their questions, actions or even comments. Healthy and continuing communication is essential for a healthy society.

**iii) For Education and training:** To educate someone, we need to communicate the ideas in the syllabus or the study material to the student. Education in fact involves all kinds of communication. eg. Audio, video, books and lectures. The objective here is not just to communicate, but to communicate effectively; so that students understand and relate to the subjects taught. Inefficient communication can lead to transfer of uncertain knowledge.

**iv) To Update One:** In the modern world, it is necessary for people to be well informed any through proper channels of communication can people be updated with current affairs and important events across the globe. News can actually stand for as a collection of information from the four directions. North, East, West and South that in turn is delivered to us through various communication channels.

#### **The Nature of Communication:**

**i) Inevitable:** Communication is a social and psychological activity. If a person is facilitated with all physical comforts but is not allowed to read, write, speak or listen he will become mentally weak and incapable of performing any task. So, communication is very important process in the world.

**ii) As continuous process:** Communication is an ongoing process and not an art or a time based event. It includes various events and actions that are interconnected and dependent on the each other. Communication Process is always in two way and it was not completed proper way.

**iii) Two way process:** Communication is said to incomplete unless the receiver is able to understand the message. So it can be said that feedback is very essential for an effective Communication. Therefore, Communication is two way traffic instead of one-way traffic.

**iv) Contextual:** Communication always takes place in a particular context. Similar words may lead to different meanings if spoken in different contexts. Therefore, the meaning of communicated words may change according to the context. For proper understanding of the message, the message should be clearly and briefly expressed in words. The media for

Communication are many but the main objective is an appropriate understanding of the message by the receiver.

**The Scope of Communication:**

**i) In personal life:**

Communication is present situation throughout a person's life and is strongly related to all the activities performed by him. Communication is such essential part of an individual's existence as each person needs communicate daily with a variety of people and organizations. Thus he cannot move a head in his life without using Communication.

**ii) In social life:**

Human beings of society are social in nature. They build connections with each other. Communication preserves and makes these social relations stronger.

**iii) In Industry, Business and Managements:**

An industry to co-ordinate and combine all five aspects of Communication these five aspects are man, machine, material, money and method. In Industry effective Communication is must necessary. Communication is the most important requirement of every business, without communication, a business cannot operate. An organization can fulfill the demands of the public only through effective communication. In management also communication is the most important role presents. In management; communication is the soul of management.

**iv) In Decision Making:**

Decision making is a daily routine issue for both the individuals and the organizations. For taking best decision it is necessary to have complete information about it and communication is the best source to provide such information.

**The Elements of Communication:**

- i) Sender/Encoder
- ii) Message
- iii) Medium/Channels
- iv) Receiver/Decoder
- V) Feedback

**i)Sender/Encoder:**

The creator of idea or the message is known as source or sender/encoder. A sender could be an individual a group or an individual who might be acting on behalf of a group. The sender acts as the transmitter of the message.

**ii) Message:**

Message refers to the impulse that the sender transfers to the receiver. Messages are made up of symbols which have specific meaning to the parties, the sender and the receiver.

**iii) Medium/Channels:**

Channels play an important role as means of transmitting the message. Mostly, the channels are in written or oral form but as technology are developing rapidly. Visual channels are becoming more popular and common.

**iv)Receiver/Decoder:**

The person who receive the message understood it stand interprets its meaning is known as receiver. The next element that comes after selecting the right communication channel is decoding the message. Decoding has been done by the receiver.

**v) Feedback:**

The most significant element of communication is feedback. In the absence of feedback communication will not be effective. The sender will not be able to verify that the receiver has understood his message correctly. Feedback is very important to make communication successful. It is the reaction reply or effect of the information transferred to the receiver.

**Conclusion:**

Thus, communication is the most important in day to day life. It is the way to communicate with each other; communication is most in a society to express our ideas, views and thoughts. Therefore communication skills are more important for students to learn. Students are more energetic and open-minded. Communication skills will help to develop our brain power and memory. So there are reasons why communication skills are important for students to improve their oral and written communication skills effectively. They can also learn communication skills from motivational speakers, teachers, journalist, scientist and parents also. Good communication skills are and the evidence of well-liberate person or highly well



educated person. Finally we can try to communicate every person in respectively manner. In communication respect everyone not on the based some things like caste, religion and social status.

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## **PARENTS PARTICIPATION POWER: NEED OF THE HOUR**

**DR. SARITA DESHPANDE,**

EX-PROFESSOR-FNU, FIJI ISLANDS, NOW IN INDIA

[saritachandrakant63@gmail.com](mailto:saritachandrakant63@gmail.com), 8329948790, 7888040226

**DR. DILIP SAWARKAR,**

EX ASSISTANT PROFESSOR, SFS COLLEGE, NAGPUR

[dilip.sawarkar@rediffmail.com](mailto:dilip.sawarkar@rediffmail.com), 9823109083

### **Abstract**

We recognise that education takes place in an individual by one or all of the three means such as Formal, Non-formal and Informal education. These means are not in isolation but are in continuum, merging into each other directly or indirectly with no line of demarcation. It is the informal way of education that realizes, appreciates and enforces the role of parents along with family / community members in child's education. During and after pandemic situation due to corona virus, children's education has suffered a lot. The time that did not prove to be useful cannot come back and has been wasted or unsuccessful in making the children their normal progress due to lockdown. This paper emphasises on role of parents in providing learning experiences in an informal way to scaffold and make the child ready for Formal and Non-Formal learning.

**Key words:** New normal, Parents' participation, informal education, childhood, projects,

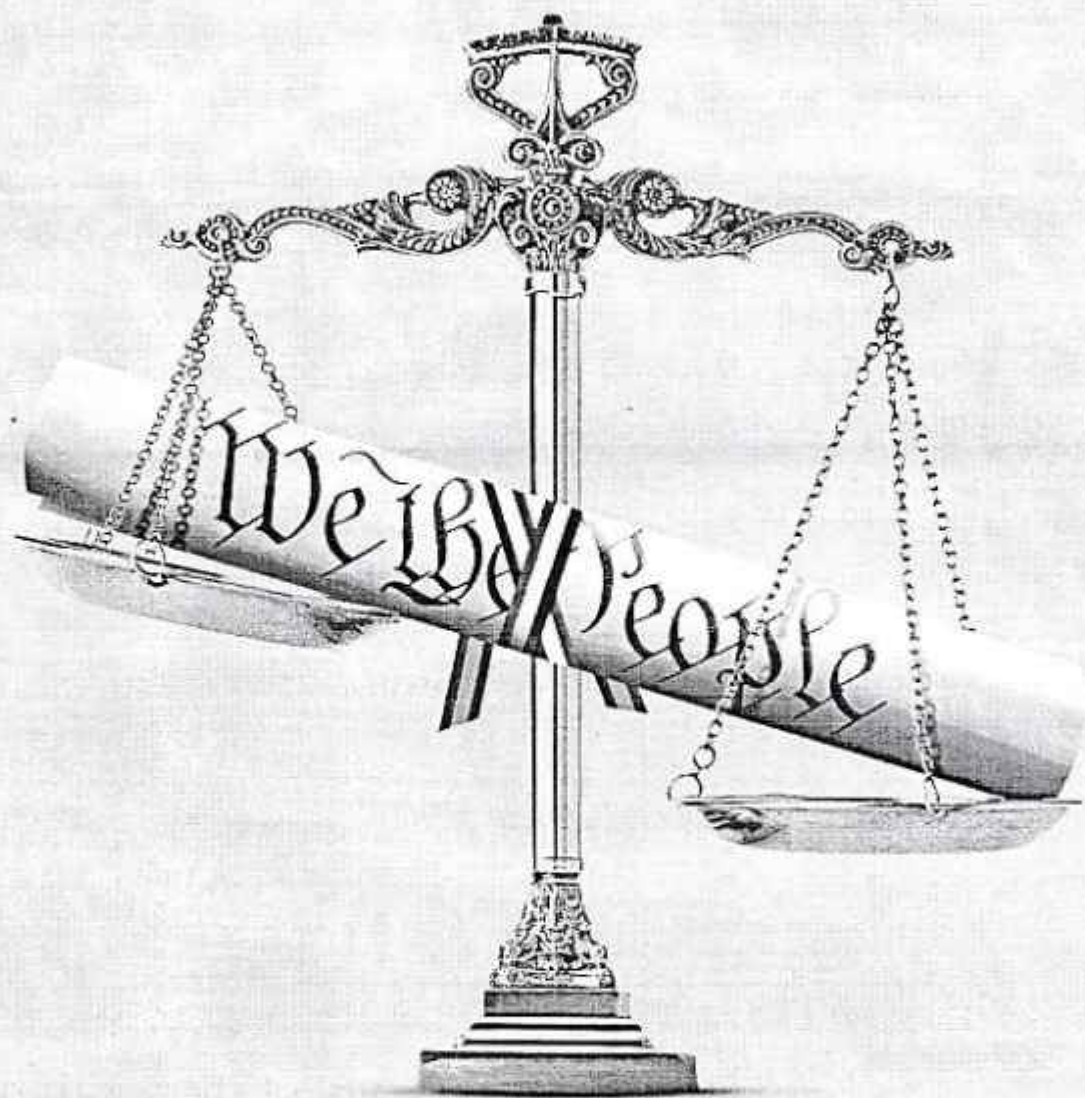
### **Introduction**

It has been really a challenging situation for parents to handle, engage and monitor children and their learning process during pandemic and lockdown situation, not only in India but world over. People had to struggle a lot to adjust to new normal. With the pandemic there was a feeling of fear and discomfort due to sheer think of getting infection by Corona virus. Majority of children belonging to early childhood and late childhood continued indoor games, but soon got bored. They started playing outdoor games in the evenings such as riding

# **WORLD CONSTITUTION**

A New Horizon of Human Rights

(Peer Reviewed Research Publications)



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## A Dream of World Constitution and Reality

*Dr. Kapil Bhimrao Chaurpagar*

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### ABSTRACT

*In modern world every nation has its own constitution to run its function within its territory. It is essential for every state to establish some fundamental organs which can function on its behalf and manage state activity. The modern era of 21<sup>st</sup> century is the age of technology. One thought in this direction is to establish 'world constitution' which can bring together the world community under the common roof of human race. The formation of United Nation was first step in that direction. In 1947 attempt was made in USA to frame world constitution. One committee was formed in this regard which it entitled: "Preliminary Draft of a World Constitution". This stated that "It may well be that the machinery and authority of the U.N, if the U.N so decides, will prove someday to be the best available stepping stones toward a real world union". It was realized without coming together globally the survival of mankind is in danger. Though United Nations was not created to become world state as its charter seeks the only the cooperation of member state for specific purposes. Every nation has its own ideology, religion, language, culture, race and history and it distinguishes them from other states. The concept of world constitution and the Nation State Theory both goes in different direction and plays opposite roles to each other. New policies like globalization of trades gives new dimension to the international politics. This way now both the concept of world constitution and nation state theory are coming closer to each other and started a new era. Role of UN and Security Council is crucial in framing the world constitution.*

**Keywords:** *World Constitution, Nation State Theory, Practicability & Consequences of World Constitution, Role of Security Council as Enforcing Power, etc.*

### Introduction

In modern world every nation has its own constitution to run its function within its territory. It is essential for every state to establish some fundamental organs which can function on its behalf and manage

state activity. Constitution is the document which establishes these basic organs of the state. Define their structure, power, functions and their mutual relations as well as relations with its people, more particularly, political relationship.<sup>1</sup> Constitutions of different nations may be federal or unitary or written or unwritten but there must be set of basic rules to govern that country. Generally the country runs on three basic organs, Legislature, Executive and Judiciary. Through these organs state performs its necessary functions. Constitution thus plays an important role to bring people of the country in common faith. It binds people together in unique thread of nationality. The modern era of 21<sup>st</sup> century is the age of technology and it has changed the lives of the people at large. This change is connected with establishing peace and harmony worldwide. One thought in this direction is to establish 'world constitution' which can bring together the world community under the common roof of human race. Whether the world constitution is the answer of the common threat to the mankind? Whether it is practicable to make such frame work for entire globe? What will be the consequences if such system is adopted? This article focus on these questions and attempt is made to find the answers.

### Historical Background of the World Constitution

The concept of new world order and world government emerged after the Second World War. The formation of United Nation was first step in that direction. The concept World constitution was proposed by many international lawyers.<sup>2</sup> The reason behind that was, globally mankind was facing similar problem, experiences and challenges and by adopting world constitution certain measure can be made for running smooth world order and prevent world crisis of third world war. Jurist like Kant also in his writing, mentioned about cosmopolitan constitution for real prospect of humanity, it certainly needs a code of common values, rights and responsibilities.<sup>3</sup> In 1947 an attempt was made in USA to frame world constitution. One committee was formed in this regard which it entitled 'Preliminary Draft of a World Constitution'. This Committee was formed at the University of Chicago headed by Chancellor Robert M. Hutchins, of the University of Chicago. The committee issued a statement of policy, published in July, 1947. This stated that

1 Jain M.P, Indian Constitutional Law, fifth edition, Wadhwa and company, Nagpur, 2003, p.1. Wade & Philips, Const. Adm. Law, 1 (IX Ed, ed Bradly); K C Wheare, Modern Constitutions 1 (1971), O Hood Phillips, Const And Adm Law, 5 (1987)

2 The Crisis in global ethics and the future of the global governance, fulfilling the promise of earth charter, Edited by Peter Burdon, Klaus Bosselmann and Kirsten Engel, 2019, <https://doi.org/10.4337/9781786430878.00011>

3 *Ibid.*



"It may well be that the machinery and authority of the U.N, if the U.N so decides, will prove someday to be the best available stepping stones toward a real world union. In this context the constitutional draft we are trying to design should be considered as an all round amendment to the U.N. Charter, adopting its ends while proposing the adequate means."<sup>4</sup> These statements indicate that, the concept of world constitution was connected with United Nations and its functions. This way background is found of the world constitution in the mid of 20<sup>th</sup> century.

### Need of World Constitution

League of Nations after World War I and United Nations after World War II was an attempt to avoid further world war and destruction of mankind.<sup>5</sup> Similarly the protection of human rights of every person is recognized by united nation in universal declaration of human rights. It was realized without coming together globally the survival of mankind is in danger. To regulate the relations of member state on various fronts in time of war, and peace, trade, health and environment the cooperation of every state is required. Though United Nations was not created to become world state as its charter seeks the only the cooperation of member state for specific purposes.<sup>6</sup> But in letter time it was observe that some conventions are not signed by many states and makes situation difficult give effect to those particular conventions. Therefore full implementations of the conventions on various matters of human interest it is needed a binding force like world constitution.

### Importance of Nation State Theory

What is nation or state? It simply means that a territorially bounded sovereign polity that is ruled in the name of a community of citizens who identify themselves as a nation.<sup>7</sup> Prior to the concept of modern nation state theory, older states were govern by the rule of legitimacy, in dynastic states, a prince was entitled to assume the mantle of power upon the death of his father. In the late-eighteenth century French and American revolutions began the ideal of the modern nation-state theory,

4 Ray Garrett, Jr., A World Constitution: Analysis of the Draft by the Hutchins Committee, American Bar Association Journal , JULY 1948, Vol. 34, No. 7 (JULY 1948), pp. 563-566, 640, <https://www.jstor.org/stable/25716486>

5 Preamble of United Nations Charter, at, <https://www.un.org/en/about-us/un-charter/preamble>, last accessed on 10/12/21

6 Doyle, M. (2009). The UN Charter – A Global Constitution? In J. Dunoff & J. Trachtman (Eds.), *Ruling the World?: Constitutionalism, International Law, and Global Governance* (pp. 113-132). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511627088.005

7 <https://www.britannica.com/topic/nation-state> last accessed on 10/12/21



which is ruled in the name of a nation of equal citizens.<sup>8</sup> In modern era we can analyze that these state has build on particular ideology like religion, race, ethnicity, language, etc. generally there is feeling of patriotism and nationalism in its citizen. This binds people together in name of common nation. Every nation has its own ideology, religion, language, culture, race and history and it distinguishes them from other states. Likewise their form of polity and type of governments are also different from one another. Most importantly, they are sovereign in their capacity, which means they are completely independent and no external force can command or control them.

### World Constitution & Nation State Theory

The concept of world constitution and the Nation State Theory both goes in different direction and plays opposite roles to each other. On one hand world constitution speaks about coming all states together under one roof and common world order, on the other hand Nation State theory protect the state from any outer control. Any one of it cannot exist without countering to other concept. With the establishment of United Nations and governance of international law some changes had gradually took place. New policies like globalization of trades gives new dimension to the international politics. Globalization does not mean simply global capitalism, but the worldwide realization of functional differentiation.<sup>9</sup> World has become a global village, where all human being are citizens. In this background, some international laws imposes obligation on member state to act in accordance with conventions ratified by it. The reason behind it that some common problems are existed every where no matter which state it belong and these problem cannot be resolve in isolation, like environmental problems, terrorism, medical and health issues. Recently we have seen the pandemic of Corona virus, which became threat to humans all over the world. This way now, both the concept of world constitution and nation state theory are coming closer to each other and started a new era, where both the concepts are on the point of golden mean.

### United Nations and World Constitution

United nation was established by the UN Charter in the form of international treaty. It seeks international cooperation in implementing various international treaties. Any peace loving state can take its membership When a member state voluntarily accepted membership and agrees to

8 Wimmer, A., & Feinstein, Y. (2010). The Rise of the Nation-State across the World, 1816 to 2001. *American Sociological Review*, 75(5), 764-790.

9 M Albert, "Observing World Politics: Luhmann's System Theory of Society and International Relations", 28 Millenium: Journal of International Studies, 1999, 239-265.



any convention and sign on it, then it became binding principal for that state. But in case member state not becomes signatory and not give its consent to any agreement then difficulty arises in implementation of treaty in that state. On the other hand if non member state becomes threat to international peace and security then UN Security Council can intervene and can take collective action against it. Therefore the system and organ which are created by the UN charter cannot be comparing with the other international treaties. Some jurist also argues that UN charter had a quality of constitution from its inception. Even in the final session of draft making of UN charter in San Francisco, then US president Harry Truman compared the charter as constitution that grows, develops and expands as times goes on.<sup>10</sup> This way idea was developed to see the United Nations Charter as the constitutional law of the 'international community' put into force by a world sovereign global political power.<sup>11</sup>

#### Role of Security Council as Enforcing Power:

Security Council is one of the prime organs of the United Nations. It has the responsibility to keep global peace and security.<sup>12</sup> After the formation of United Nation about twenty years the role of Security Council was silent in the matter of enforcing human rights. But in 1967, war in the Middle East, Security Council recommended that the governments concerned comply with the Geneva Conventions related with international humanitarian law. When cold war was over the role of Security Council became more impressive as an 'international policeman' in enforcing the international humanitarian law.<sup>13</sup> But according to charter<sup>14</sup> these powers of council only use by council if there is 'threat to the peace, breach of the peace, or act of aggression' it means that their power is only for global peace keeping and not for enforcing the law.<sup>15</sup> In later years this position has changed. For the first time in 1993 with regard to Bosnia and Herzegovina Violations of international humanitarian law were expressly considered as a threat to the peace by the Security Council. Therefore primary responsibility for securing compliance with international humanitarian law is with Security Council. Now the question is whether Security Council can enforce the world constitution?

10 Harry Truman speech (June 26 1945) in I DOCUMENTS OF THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANISATION 680 (United Nations Information Organizations eds, 1945).

11 B Fassbender, "The United Nations Charter as Constitution of the International Community", 37 Columbia Journal of Transnational Law 1998, 529- 619; P Dupuy, "The Constitutional Dimension of the Charter of the United Nations Revisited", 1 Max Planck Yearbook of United Nations Law 1997, 1 - 33.

12 Article 24(1) UN Charter

13 Roscini, M. (2010). The United Nations Security Council and the enforcement of international humanitarian law. *Israel law review*, 43(2), 330-359.

14 Article 39

15 Hans Kelsen, (1950) THE LAW OF THE UNITED NATIONS 294.



Common intervention for international peace and security or enforcing humanitarian law is something different than enforcing world constitution. So these powers cannot be used for enforcing the world constitution.

#### **Security Council and Rivalry:**

Security Council consists of five permanent members UK, US France, Russia and China (P5) with the veto power. Baring China, all these states are then winner of World War II and the nuclear powers. In the time of cold war world was divided between US and Russia. So the split was also seen in the Security Council. After the collapse of USSR sole US become the super power and world order shifted from bipolar to unipolar. All these years the relations of these five members were complex among them.

Now again the shifting world order giving rise to a new set of concerns. Russia and China are rising as new super powers and today there is significant danger of a stand-off amongst Security Council itself. On the other hand the status of super power of US, has also got set back after misadventures in Iraq and its embarrassing experiences in Afghanistan. So US also withdrawing itself from international burden which are absolutely not necessary. In recent past there are many situations where these conflicts of these P5 are clearly been seen. If the peace keeper themselves are in conflict then who is going to protect international peace and security? There is also constant fear of third world war due to such kind of strained relations. The other positive side of the Security Council is that there is a consensus on some common problems particularly terrorism, nuclear non-proliferation, and transnational organized crime. Overall, the P5 display a remarkable degree of unity on these issues, with most resolutions on terrorism and weapons of mass destruction.<sup>16</sup> Thus there are certain points of agreements and disagreement. In changing time new nations are also claiming to be member of Security Council but present members does not want to lose their importance by allowing to join other powerful nations and giving them veto power. Analyzing the present situation, the proposed enforcer states of world constitution are not united.

#### **Practicability & Consequences of World Constitution**

The concept of world constitution whether it is practicable concept? The answer is partially positive and partially negative. As we know that running of any constitution its organs must function in coordination. In any particular nation such superior organs or checked and balanced organs

16 Von Einsiedel, S., Malone, D. M., & Ugarte, B. S. (2015). The UN Security Council in an age of Great power Rivalry. *Tokyo: United Nations University Working Paper*, (4).

are working together in coordination. If any conflict arises constitutional interpretation resolve such issues. In enforcement the world constitution such conflict will also going to arise. In such kind of situation, some concrete mechanism must be there to resolve such issues. We have observed that in present situation present functioning of United Nations and Security Council is not matching the criteria to make end enforce world constitution. The other point is the presumption that if the world constitution becomes reality what will be the consequences? Certainly there will be some pros and cons on this point. World constitution will be the greatest thing in the history of mankind. Human race will get equal treatment on many front, as there are some nations are called third world or undeveloped countries, their situation on human rights and poorness is horrible. These people are facing altogether very different problems on the front of hunger, unemployment, medical care, poverty, civil war etc. World constitution will be definitely better helping hand to such countries and its people. On the other hand as mention above world constitution will diminish the nation state concept and powerful and affluent nation never want to lose their identity as nation. So also the other factors as geographical condition, nationalism, culture, language, religious beliefs are stood as great wall in the dream of world constitution.

### Conclusion

World constitution is future of mankind. In this process the role of United Nations is crucial. In present structure of UN and Security Councils certain loopholes are present. Consensus and active participations of all nations is required in making of world constitution. Therefore members state should be sensitized on the matter of framing world constitution. Similarly Security Council members and its unity should be increased. These changes certainly move towards framing the world constitution in future. At present the concept of world constitution not seems to be real. But in coming time it may be reality of the world.