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1st Year, BA.LLB.**POSITIVISTIC INTERPRETATION OF THE CONSTITUTION OF
INDIA****Abstract**

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The constitution of a country is believed to be the law of the land. It lays down the political framework of the state along with the rights and duties of the citizens. Similarly, In India, the structure of the state along with the rights and duties of the citizens is contained within the constitution. With 395 articles and 22 parts, the Constitution of India is believed to be the lengthiest constitution in the world. Since the document governs the second largest country of the world by population, the authority that it holds is undeniable.

Due to the authoritative nature of the Indian Constitution, its analysis demands the application of legal positivism, a jurisprudential school of thought that claims law to be a social fact independent of its merits and demerits. While the analysis of the Indian Constitution through legal positivism can enables us to interpret its provisions as facts, separate from ideals of the rule of law, democracy and justice, it is true that supreme law of the country has an unavoidable relationship with morality. This research paper aims to analyse the relationship of the Indian constitution with morality through legal positivism.

Introduction

Ever since the inception of society, law has played an active role in laying down a code of conduct for the people who operate within it. There is no doubt that law protects individuals against the violation of their rights by ensuring that the moral standards of the society are being adhered to, but what implication does the separation of law from morality have on society? The answer to this question lies in the various theories of law that have been developed over time. Certain theories of the law suggest that the law of the land must be moral as that is what will make it capable of promoting good behaviour among the members of the society. On the other hand, lies the theory of legal positivism that refuses to believe that law and morality must always complement each other. A distinct analysis of each of these schools of thought is necessary to understand the effect that these have on the way that society perceives the state and the laws formulated by the same.

Interpretation of the Constitution

The theory of legal positivism which emerged in the 18th century was set forth as an approach to understanding law that was in contrast to the pre-existing schools of thought such as the “natural law theory.” The foundation of legal positivism was laid down by Thomas Hobbes and Jeremy Bentham and was later worked upon by John Austin. Austin worked upon the theory of legal positivism to justify the formulation and existence of the laws that were perceived as immoral by the members of the society. He successfully confronted the ideas set forth by jurists such as Sir William Blackstone who suggested that laws must always be moral. In his commentaries, Sir William Blackstone stated that the “laws of God” are superior to all man-made laws, which is why they should never be allowed to contradict the morals and ethics set forth by nature. While opposing this, Austin argued that law and morality are both separate subjects altogether. He pointed out that the merits and demerits of law are different from the very existence of the same. This idea encouraged society to understand the law in terms of its conformability. This implied that any law, as long as it was legitimate, could regulate the society irrespective of whether it invited acceptance or criticism by the members of the society.

Legal positivism has proven to be useful in ensuring adherence to the laws introduced by the legislature. In the 21st century, many legislative organs across the world have adopted the ideals of legal positivism to introduce laws, both moral and immoral. This research paper aims

to analyse the constitution of India from the perspective of legal positivism as devised by John Austin.

The constitution of India came into force on 26th January 1950 after 2 years, 11 months and 18 days of drafting. The lengthiest constitution of the world that finds itself to be the law of the land is itself influenced by legal positivism; this is because the document is believed to be the supreme authority of the country which not only protects the rights of the citizens but also dictates the functions of the state. The Indian constitution covers all aspects of Indian democracy, from citizenship to the appointment of the president; this owes to the fact that every institution within the state operates under it. If we analyse the constitution from the positivistic approach, we will arrive at the conclusion that it is indisputable and will remain so because of the significance and authority that it holds in the Indian context.

Despite the fact that the Indian Constitution furthers the theory of legal positivism by setting an example, it does not fail to reflect morality within its provisions. An example of this is contained within the articles of the constitution which are as follows:

- Article 14 - this article awards the citizens of India “equality before law” by compelling the state to safeguard the right of a citizen to approach the court upon the violation of his/her right irrespective of his/her social standing.¹
- Article 15 - this article prohibits the discrimination of any citizen on the grounds of religion, race, caste, sex or place of birth by the state. It ensures that every citizen of the country is treated equally, especially by the state that promises to safeguard the people’s rights.²
- Article 16 - this article provides the citizens with equal opportunity in matters of public employment to secure their economic right to earn.³

¹ India Const. art 14.

² India Const. art 15.

³ India Const. art 16.

- Article 17 - this provision bans the practice of untouchability which discriminates against individuals on the basis of a social hierarchy thereby preventing them from overcoming economic distress.⁴
- Article 18 - this article abolishes titles to ensure no citizen gets exclusive treatment over the others on the basis of a mere title.⁵
- Article 19 - this article grants the citizens the right to freedom. It ensures that every citizen gets to assemble, move, reside and express himself/herself freely.⁶
- Article 20 - this article grants the citizens, rights against self-incrimination and double jeopardy to ensure that no citizen is forced to speak against himself/herself or be punished for the same offence more than once.⁷
- Article 21 - this article guarantees the citizens the right to life and personal liberty by compelling the state to ensure that no citizen, under its watch, is deprived of his/her basic right to live with dignity.⁸
- Article 21 A- this article guarantees the right to education to children between the ages of six and fourteen so that no child is denied access to basic economic opportunities.⁹
- Article 22 - this article protects the citizens against arrest and detention to ensure that no citizen is detained or tried without reasonable justification.¹⁰
- Article 23 - this article prohibits human trafficking and forced labour by ensuring that the state protects the human rights of the Indian citizens.¹¹

⁴ India Const. art 17.

⁵ India Const. art 18.

⁶ India Const. art. 19.

⁷ India Const. art. 20.

⁸ India Const. art. 21.

⁹ India Const. art. 21 A, inserted by The Constitution (Eighty-sixth Amendment) Act, 2002.

¹⁰ India Const. art 22.

¹¹ India Const. art 23.

- Article 24 - this article prohibits the employment of children in factories to ensure that no child is forced to work or sacrifice the developmental years of his/her life.¹²
- Article 25 - this article gives the Indian citizens the right practice or propagate any religion of their choice.¹³
- Article 26 - this article gives the citizens the right to manage their personal religious affairs.¹⁴
- Article 27 - this article gives the citizens the right to pay taxes for the promotion of any religion.¹⁵
- Article 28 - this article gives the citizens the right to attend to religious instructions in places of worship or educational institutions.¹⁶
- Article 29 - this article gives protection to the interests of minorities, i.e., those communities that have suffered over the years due to constant suppression.¹⁷
- Article 30 - this article gives the citizens the right to establish and administer educational institutions so that no citizen is denied to promote education in his/her own ways.¹⁸

Articles 25 to 28 protect the religious rights of individuals while articles 29 and 30 protect the cultural and educational rights of the citizens.

While some may argue that even though the constitution of India provides the citizens with these rights, it also limits these rights by subjecting them to “reasonable restrictions”, it is true that giving these rights the status of absolute rights would disrupt the law and order of the

¹² *India Const. art. 24.*

¹³ *India Cons. art 25.*

¹⁴ *India Const. art 26.*

¹⁵ *India Const. art 27.*

¹⁶ *India Const. art 28.*

¹⁷ *India Const. art 29.*

¹⁸ *India Const. art 30.*

country. In order for law to operate, there must be an order within the society which is ensured by the provision of “reasonable restrictions” within the constitution of India. Neither the rights awarded to the citizens nor the reasonable restrictions imposed upon these rights are absolute in nature. The restrictions imposed on the rights of the individuals are reasonable and justifiable in nature and thus do not undo the effect of these rights on individuals.

Conclusion

While the Indian Constitution is positivist by nature, it also has an inevitable relationship with morality. As observed in the landmark case of *Keshvanada Bharti v. State of Kerala*, AIR 1973 SC 1641, the legislature of the country can both introduce new laws as well as amend pre-existing ones. However, an exception to this provision lies in the basic structure of the constitution that safeguards the fundamental rights of the citizens of the country, the structure of the state and the separation of powers among the legislature, executive and judiciary. Therefore, it can be implied that while the authority of the Indian constitution is positivist by nature, it also inculcates morality into the state.

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