

CONSTITUTIONAL FRAMEWORKS AND GOVERNANCE : A COMPARATIVE STUDY OF AUSTRALIA AND JAPAN

ABSTRACT

Constitutional Frameworks and Governance are two different words with some sort of similarities which have immense capacity to make and break the society from developing to developed state. Constitutional Frameworks and Governance of any country at times are considered to be something similar and sometimes completely different from each other. A man is considered a barbaric human, ages ago but as and when the society has evolved now a man is considered to be a social human being.¹ When a person is considered in any civilization, it is always been considered that he needs some morals, ethics, conscience and his value systems which works like a framework between him, his constitutional morality and structure of its governance with the help of forms of Government, which will lead to peaceful society between various forms of Government worldwide.

Now this can be a question of Constitutional jurisprudence, and the similar kind of justification will be dealt with under this research paper. This research paper is also trying to find out the comparative study between the constitutional framework and Governance in terms of forms of Government between Australia and Japan. The Australian-Japanese relations which are of such importance in themselves, on common law principles and civil law systems.

Constitutional Frameworks and Governance hold a greater position in interpretation of our legal system and to even understand the legal system we live in. This research paper will also focus on constitutional jurisprudence to clarify the concepts which are tough to understand backed by common law. This research paper will try to clarify the concepts of Constitutional framework and Governance in a better way.

Keywords: Constitutional Frameworks, Governance, Forms of Government, Constitutional Jurisprudence, Legal systems.

¹ Ananyaa Shrikanth, Law and Morality: An Analysis (Indian Journal of Law and Legal Research), Volume V Issue I/ ISSN: 2582-8878 Page no. 1

1. INTRODUCTION

The Legal System in all over the world differs in various modes but some of them follows the common law model which is prevalent in those countries which were at one time under British Rule or were part of the British Commonwealth.² Each system possesses its own historical background and has evolved out of different institutions and legal concepts.³ They might simply enumerate the apparently similar features in those two systems but as soon as the real content of those features is investigated important differences emerge.

Though despite differences between such legal systems of various nations, the researcher has tried to overlook on the legal systems of Australia and Japan, there are many common elements in the functions they perform. In spite of superficial differences in the law frequently conceal identical functions. Thus, the researcher has tried to cover the Constitutional frameworks and Governance perspective of various nations but also limited to comparison of certain aspects of the two systems with the primary purpose of providing Japanese observers with some insights into the Australian Legal System.⁴

Thus, it basically determines the complexity between the constitutional framework and Governing Structure of these two nations i.e., Australia and Japan. This will build a path to administer a person justice of who's the rights have been violated or infringed. Although both the countries have their own contemporary public laws but still, they have some sought of independent features which differ from English public laws. But the aspects which are common to both are overwhelmingly more numerous. Meanwhile the Australian Constitution was framed in the tradition of the British Constitution, but the Japanese Constitution is complex being composed of many heterogeneous elements so that as a whole it cannot be explained as having been modelled after the constitution of any particular country.

² B.N. Srikrishna, The Indian Legal System (International Journal of Legal Information) Volume 36 Issue 2 Summer 2008 Article 8 Page no. 2

³ Yasuhiro Okudaira (Peter Drysdale & Hironobu Kitaoji, Editors) (Australian National University Press) 1st Published in Australia, 1981 Page no. 169

⁴ Yasuhiro Okudaira (Peter Drysdale & Hironobu Kitaoji, Editors) (Australian National University Press) 1st Published in Australia, 1981 Page no. 169

1.2 RESEARCH PROBLEM

Constitutional Frameworks and Governance are two such concepts which are very generic but if researched and in-depth study is done on them there is lot more than it seems to be. The research problem for this research paper is that when a thorough study was done on these two topics it did not just connect to one entity but many of the aspects of constitutional jurisprudence were found through it. The researcher has also tried to make sure that both the comparison in form of Constitutional Framework as well as Governance i.e., Forms of Governments can be understood well. This research paper will look into that and also look upon such instances where there are any similarities as well as comparative analysis of both the countries and their constitution i.e., Australian Constitution and Japanese Constitution.

1.3 LITERATURE REVIEW

1.3.1 Yasuze Suzuki, Kempo seitei to Roesura (The making of the constitution and Herman Roesler) Toyo Keizai Shimpō, Tokyo, 1942

In this Article the main eyecatcher would be the citation drawn to the following work of Yasuze Suauki, who channeled the theme of making of the constitution in their cultural aspects. This paper has helped to understand the connection between constitutional framework and governance in a deeper sense and hence played a major role in formation of this research problem and the question as well.

1.3.2 B.N. Srikrishna, The Indian Legal System (International Journal of Legal Information) Volume 36 Issue 2 Summer 2008 Article 8

This journal has looked at the features of Indian legal system which had played a crucial role and it helped to understand and analysis in sense of comparison with Australia and Japan. This research paper has also tried to deal with the constitutional jurisprudence in relation to constitutional frameworks and governance.

1.3.3 Ananyaa Shrikanth, Law and Morality: An Analysis (Indian Journal of Law and Legal Research), Volume V Issue I/ ISSN: 2582-8878

This journal has helped the researcher to understand the basic foundation draft of any research paper.

1.4 SCOPE OF THE STUDY

This research paper pertaining to Constitutional Frameworks and Governance which includes the countries following common law system including Australia and Japan. The main focus is on the jurisprudential aspect of Australia and Japan and its common laws system to look at the concept of forms of Government. It will also cover the historical perspective of making those constitution on the colonial aspects with previous legacy and today's current scenario in modern world.

1.5 OBJECTIVE OF THE STUDY

The objective of this research paper is as follows:

1. To understand the wider concept of Constitutional frameworks and Governance
2. To analyze the similarities and comparative analysis present in them
3. To critically analyze forms of Government which creates a dogma while administering justice.

1.6. RESEARCH QUESTION

1. Whether there is any similarities or comparative analysis present between Australian Constitution and Japanese Constitution on ground of Constitutional Frameworks and Governance?
2. Whether the forms of Government created by Constitutional means in both the countries needs rift from Constitutional Monarchism to complete Democratic Governance?

1.7 HYPOTHESIS

The concept of Constitutional Frameworks and Governance has some sought of comparison and some similarities while understanding them in both the forms of legal system i.e. Common laws and Civil laws system but when it comes to having a clear stand in the rule of law, it can

be said that the Governance can induce as a body for decision making through modifying the law but it is never legally binding and doesn't procure the constitutional validity.

1.8 RESEARCH METHODOLOGY

In this research paper, the researcher has tried to follow the descriptive and comparative analysis method throughout the paper. The study is based on both collection of data method i.e. primary and secondary data. Primary data includes the Statutes, Cases and Books while Secondary data includes articles, blogs, websites, journals which are been used to refer for the formation of this paper. The entire context of this data is specifically used to understand the background of the paper which is also a part of the formation of the research questions as well. This entire data and its various sources have helped the researcher to prepare this research paper in understanding the current scenario in the society of both the countries with respect to the research topic. Thus, the study is basically more of existing scenarios and the laws made hence no field study has been done.⁵

2. HISTORICAL BACKGROUND BEHIND CONSTITUTIONAL FRAMEWORK OF BOTH THE CONSTITUTION OF AUSTRALIA AND JAPAN

The influence of British law on Australian Civil laws is easier to see from its historical perspective. Its nationhood came into existence after an Act of British Parliament on 9th July, 1900. Before the enactment of Commonwealth Australian Constitution, the six colonial parliaments in Australia were operated under Constitutions deriving from the imperial parliament at Westminster. In early 1850s most of the colonies were self-governing granted by the British imperial parliament which consist of a legislative assembly under governor representing the British Crown.

⁵ Ananyaa Shrikanth, Law and Morality: An Analysis (Indian Journal of Law and Legal Research), Volume V Issue I/ ISSN: 2582-8878 Page no. 5 and 6

The federal constitution of Australia enumerates federal powers specifically each of the states possesses all residual powers. Meanwhile each of the states have its own constitution in this federal structure of Australian Constitution. The framers of Constitution were in dilemma regarding allocation of powers between the federal government and the states.

Meanwhile the Japanese constitution of 1946 was enacted under the influence of the United States. It was first drafted by Americans on the orders of the Supreme Commander of the Allied powers.⁶ The old Japanese constitution upheld a system of strong imperial authority in the legislative, executive and military spheres in imitation of the constitutions of Prussia and the southern German states, which at that time had the strongest monarchical authority in the whole of Europe.⁷ The Japanese constitution was envisaged supra-party or transcendental, cabinets which was majorly prevailed in the period up to 1920's.

However, in the current scenario the present Australian Constitution adopts a bicameral system. Unlike the United States, which also have federation as the basis for a bicameral system whereas in Japan there is little rationale for such a system. Now the new constitution totally abolished imperial prerogatives and brought about a major reform of the executive. It also established a bill of rights to guarantee 'civil liberties. Under the influence of American Constitution, but they have never left their traditional Japanese culture.

3. CONSTITUTIONAL CRISIS AND DEVELOPMENT OF BOTH THE CONSTITUTION OF AUSTRALIA AND JAPAN

In the last several decades, the constitutional crisis which led to the downfall of the Whitlam government in November 1975 raised a number of important constitutional issues. During this time two major constitutional questions were emerged from the ensuing confrontation between the Senate and House of Representatives because both the

⁶ Yasuhiro Okudaira (Peter Drysdale & Hironobu Kitaoji, Editors) (Australian National University Press) 1st Published in Australia, 1981 Page no. 171

⁷ Yasuhiro Suzuki, Kempo seitei to Roesura (The making of the constitution and Herman Roesler) Toyo Keizai Shimpō, Tokyo, 1942, Page no. 316

parliamentary institution was controlled by both different political parties. Another question was concerned about the power of Governor-General.

Meanwhile, Japan was also facing its own so called constitutional crisis. The question raised in Japan under Takeo Miki's Prime Ministership was not in fact, the interpretation of the constitution, but a question of the consequences of its operation under new circumstances. In Japan, the Prime Minister is designated by the parliament or Diet, not by the emperor. The circumstances underlined the importance of these provisions of Japan's constitution in a situation of fluid party politics and where the two Houses are narrowly and differently divided.⁸

4. COMPARATIVE POLITICS & GOVERNANCE IN THE CONSTITUTION OF AUSTRALIA AND JAPAN

There are some interesting points of similarity between Australia and Japan both in the institutional arrangements of political life and in the trends of party politics since the second world war.⁹ Though that the Japanese and the Australian political systems have considerably more in common than the Japanese and the American which are more frequently compared.

One of the most come difference is that Japan is a unitary state, whereas Australia is a federal state. Japan has a single parliament for the whole nation i.e. the National Diet, situated in Tokyo which is the capital of Japan. The unitary system was originally set up under the Meiji Constitution of 1889, it was designed during the period of Meiji political leaders. Meanwhile, the Australia has a federal parliament, the parliament of the common wealth, which sits in Canberra and contains members elected from all parts of the nation, but it also has six state parliaments those are New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania. Japan has experienced strong centralizing trends since the Tokugawa period but steady concentration of power has

⁸ In 1947, the two Houses chose different Prime Ministers, Yoshida and Ashida. Provision exists for the two Houses meeting jointly to determine the Prime Minister in this event.

⁹ J.A.A Stockwin (Peter Drysdale & Hironobu Kitaoji, Editors) (Australian National University Press) 1st Published in Australia, 1981 Page no. 345

happening in Australia.

Japan introduced its first national parliament in 1890 to securely founded in the principle of a single national entity. Meanwhile in Australia the six British colonies federated as the commonwealth of Australia in 1901. In modern Japanese constitutional development has been discontinuous, whereas in Australia it has been much more continuous.

The two 'American' elements in the new Japanese constitutional arrangements are, first, a system of standing and special committees of both Houses of the Diet, which collectively have been the main forum of legislative business, much more so than the plenary session. The second is judicial review of the constitutionality of legislation. The Australian system, apart from its federal aspect, is again far closer to the British tradition than to the American, and in broad essentials the relationships between the commonwealth government and parliament have much in common with government-Diet relationships in Japan.

An obvious, but nevertheless crucially important aspect of politics in both Japan and Australia is that parliamentary elections in both countries are conducted on the basis of universal franchise (there are some minor exceptions in the case of one or two of the Australian state upper chambers). The systems of election, however, differ substantially. The electoral system for the Japanese House of Representatives is based on a single non-transferable vote in a multi-member constituency.

That is to say, each elector has one vote, and can indicate his preference for one candidate only, but each of the constituencies into which the country is divided elects a number of candidates. The number of members elected per constituency varies between three and five. There are two problems of elections in Japan which are much less evident in federal elections in Australia. One of the problems of inequality of constituency populations, and the other is the extent of restriction upon common electioneering practices, with resultant abuse.

5. CONCLUSION

Though both the countries have diverse culture, religious beliefs but still they both follows the constitutional principles drafted on the grounds of American and British Constitution. The concept of Constitutional frameworks and Governance has indeed given an epitome of

understanding whether its right or wrong but now in the modern era. Although there are lots of comparison between them but still some similarities have protected their constitutional values. This research paper would like to conclude that though Constitutional framework may have acted as a foundation on which law was made but now Governance has super cedes all moralities of an individual as a citizen of those nations. Hence, the conclusion would be that both the nations and concept of constitutional framework and governance hold a greater position in interpretation of our legal system and to even understand the legal system in the society where both the nations have complex difference.

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