

# POLITICS AND ITS IMPACT ON INDIAN LEGISLATIONS

**By Asst. Prof. Deepa Abhinandan Vagyani,**

Prof-in-Charge,  
Vasantdada Patil Pratishthan's Law College, Sion,  
Mumbai, Maharashtra 400 022.

## Introduction

Politics deals with getting or using the power within a particular group or organization. Politics also denotes the views or beliefs of people within society. In short, politics is a system of ideas and a state of political affairs. To understand politics and its impact on Indian Legislation, let's go by etymology and understand the meaning of the terms politics and Legislation. English politics has its roots in the name of Aristotle's classified work 'Politika,' which introduced the Greek term politika -meaning 'affairs of the cities.' In the mid of 15th Century, Aristotle's Composition was rendered as 'Polettique,' which would become politics in modern English. If we refer to Wikipedia, 'politics' is the activities associated with making decisions in groups or other forms of power relations among individuals, such as distributing resources or status. Political science is the branch of social science that studies politics and government. Oxford Learners Dictionary defines politics as the activities involved in getting and using power in public life and being able to influence decisions that affect a country or a society.

**Legislation** is derived from two Latin words – 'legis' meaning Law, and 'latum' meaning to make, put, or to set. Legislation means making or setting Laws. Salmond defines Legislation as "That source of Law, which consists of the Declaration of Legal rules by a competent authority" when used in the broader sense, the term includes all methods of law-making. Still, when used in a strict sense – Legislation is the laying down legal rules by a sovereign or subordinate legislator. According to Gray, Legislation means "the formal utterance of the legislative organs of the society."

Legislation can be:

1. Law itself, and
2. Process of Law making

To understand politics and its impact on Indian Legislation, we need to understand the second aspect of Legislation, the 'process of law making.' Legislatures do the Process of law-making in India, that is, Parliament and State Assemblies/ Council. The Process of law-making is broadly divided into five steps. In 1<sup>st</sup> step identifies the need for a law or an amendment of a particular Law. The said identification is made by the Government or citizen groups who can raise awareness. In 2<sup>nd</sup> step, a Drafting of the proposed law is done, which is called a 'Bill '. The Bill is circulated among other ministries for input, and even comments from the public may be sought. Then the Bill is checked by the Law Ministry and presented to the Cabinet for approval. In 3<sup>rd</sup> step, the Bill goes under three readings. Once it gets Cabinet approval, it is introduced in Parliament. After 3<sup>rd</sup> reading and the Bill undergoing the scrutiny of various Parliamentary Committees (Standing /Joint), the Bill is discussed on the floor. Then the house votes on the Bill. In 4<sup>th</sup> step, once both houses of Parliament pass the Bill, it is presented to the President for assent. In the 5<sup>th</sup> step, after President gives acceptance, the Bill is notified as an "Act ". Subsequently, the Bill is brought into force, and rules and regulations to implement the Act/Statute are the framework by the concerned ministry and tabled in Parliament.

If we see this law-making process carefully, we can understand that the significant part of an executive responsible for the implementation/execution of Acts/Statutes made by the Parliament itself is the crucial part of the Legislature (Parliament/State Assemblies/Councils). The separation of powers is opaque here. For the free and fair working of democracy, three pillars of it (Executive, Legislature, and Judiciary) shall be independent, irreplaceable, and

interfered with. However, there could be limited means of checks and balances to keep control and put one another in their domain. Here we need to make a watertight compartment for the Executive and Legislature.

The research author has assessed ten different legislations and the impact of politics on them in this research paper.

### **1. Politics and unfulfilled dream of Uniform Civil Code:**

The UCC refers to a standard set of laws governing personal matters such as marriage, divorce, adoption, inheritance, and succession for all citizens, irrespective of religion. Implementing a uniform civil code across the nation is one of the contentious promises pursued by the BJP. Currently, the personal laws of various communities are governed by their religious scriptures. It is a crucial issue that remains disputed by India's political left wing, Muslim groups, and other conservative religious groups and sects. Article 44 of the Constitution says, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Many political leaders have backed the UCC, saying it will bring equality to the country. However, some parties, including the All-India Muslim Personal Law Board, have termed it "an unconstitutional and anti-minorities move." There are different laws of different religions. Following India's independence, Hindu code bills were introduced, which essentially codified and reformed personal laws in various sects among Indian religions like Buddhists, Hindus, Jains, and Sikhs while exempting Christians, Jews, Muslims, and Parsis, being identified as distinct communities from Hindus.

In 1947, UCC was sought to be enshrined in the Constitution of India as a fundamental right by Minoo Masani, Hansa Mehta, Amrit Kaur, and Dr. B.R. Ambedkar. The Constitution Assembly debated UCC in 1948. Article 44 was placed in Part four of the Indian Constitution, i.e., Directive Principles of State Policy, due to politics and pressure

of Hindu orthodox and Muslim conservatives. Since then, UCC has remained very sensitive and controversial. From Constituent Assembly debates to date, UCC has fallen prey to politics.

## **2. Politics and anti-defection law: No entry!**

Indian Politics has always witnessed multi-party national and regional cultures bejeweled by various ideologies. It has also seen several political defections and major and minor political turmoil. How could the politicians stay behind by not enforcing laws to control such political uncertainties? They brought the Legislation to deal with the situation. In 1967, an MLA from Haryana, Gaya Lal, changed his party thrice on the same day. "Aaya Ram Gaya Ram" became a famous phrase in Indian Politics after this. It became a common practice to switch political parties across States which brought down state governments from their power. This raised concerns in the Lok Sabha, and a committee was set up under Y B Chavan to assess the problem. The Chavan Committee recommended that if a legislator changes party for monetary gains, they should be excluded from the Parliament and be barred from contesting elections for some time. The anti-defection law was introduced to prevent such floor choosing and was therefore inaugurated under Rajiv Gandhi's rule through the 52<sup>nd</sup> Amendment. In 1992, the Tenth Schedule was brought to the Constitution. In 2003, through the 91<sup>st</sup> Amendment, the anti-defection law was made more effective in dealing with regular defection. It deleted the provisions that protected legislators in case of a split in the party. It also stated that any legislator disqualified under Tenth Schedule would also be disqualified from the executive or ministerial post. In this way, Legislation is placed to control politics.

## **3. Politics over NJAC (National Judicial Appointment Commission) – Yes, My Lord!**

In August 2014, Parliament passed the Constitution (99<sup>th</sup> Amendment) Act, 2014, along with the National Judicial Appointments Commission (NJAC) Act, 2014, providing for the creation of an independent commission to appoint judges to the Supreme Court and high courts to replace the collegium system. The two Bills were ratified by the required number of State Legislatures and got the President's assent on December 31<sup>st</sup>, 2014. The composition of NJAC was such that it gave place for the Government's voice in appointing Judges from the higher judiciary. The Act empowered any two members of the NJAC to veto a recommendation if they disagreed with it. In the collegium system, on the other hand, a group of the senior-most judges makes appointments to the higher judiciary. This system has been operational for nearly three decades. Before this, the President's seal appointed judges in consultation with other judges if they deemed fit. The collegium system was born out of years of friction between the judiciary and the executive. This hostility was exceeded by court-packing (the practice of changing the composition of judges in a court), mass transfer of high court judges, and two supersessions to the office of the CJI in the 1970s. This led to the politics of supremacy – who is mightier than the other 'Judiciary' or 'Legislature-Parliament'? In early 2015, the Supreme Court Advocates-on-Record Association (SCAORA) filed a plea challenging the Act and contended that the Act was "unconstitutional" and "invalid." It stated that the Amendment "severely" damaged the basic structure of the Constitution, of which the independence of the judiciary in appointing judges of the higher judiciary was an integral part. In 2015, the five-judge bench ruled, with a 4:1 majority, that the NJAC was "unconstitutional" and violated the "basic structure of the constitution." To conclude, there was politics behind NJAC Legislation.

#### **4. Politics, Corporate Funding and Electoral Bonds; Sale!**

Electoral Bonds would have a life of only 15 days, during which they can be used for donating only to the political parties registered under section 29A of the Representation of the Peoples Act, 1951, and which secured not less than one percent of the votes polled in the last general election. The Electoral Bond Scheme (EBS), announced in the 2017 Union Budget, was notified by the Central Government in 2018. These bonds can be purchased from select SBI branches by any Indian person or corporation incorporated in India under the scheme. Electoral bonds introduced a new form of anonymity to thousands of crores of donations by reducing public and legislative oversight: For example, only the ruling party via the SBI has a complete account of all donations being made via electoral bonds. The impact of anonymity is that it dilutes the one voter-one vote principle because electoral bonds give political power to companies, wealthy individual donors, and foreign entities to influence public policies. This is the worst example of how politics can profoundly impact legislation to mould it for monetary gain.

#### **5. Politics and Triple Talaq – Three Cheers!**

The Muslim Women (Protection of Rights on Marriage) Act 2019 declares the instant divorce granted by the pronouncement of talaq three times as void and illegal. It provides imprisonment for up to 3 years and a fine to the husband who practiced instant Triple Talaq. The said legislation might have taken place in pursuit of SC Judgement in Shayra Banu Vs. UOI has been treated as BJP's masterstroke by placing politics underneath. The BJP got a significant political and ideological victory over forces that the party had dubbed as 'pseudo-secular' and which it has accused of practicing appeasement politics. The opposition to the triple talaq legislation has been couched in technical issues, the main argument being that it brings under criminal law a marital problem, which has otherwise been dealt with in civil law. If the opposition parties opposed the triple talaq bill, they would be branded anti-women and, more importantly, be accused of indulging

in Muslim appeasement. If they backed the law, the opposition would only end up playing into the hands of the government and taking forward the ruling party's ideological agenda. These opposition leaders say that it is also meant to convey the BJP's commitment to bringing in a uniform civil code as the legislative step has implications for the personal laws of the Muslim community. Thus, the landmark triple-talaq legislation certainly has profound political implications.

#### **6. Politics and Shah Bano Judgement – hardliners ki jay ho!**

The Supreme Court upheld the right to alimony to Muslim Women in the case of Shah Bano Vs. Khan, the judgment ignited a political controversy regarding the claim of judicial overreach in the circumstances attached to Muslim personal law. The historic decision did not go well within the Muslim community. Rajiv Gandhi, the then PM of India, succumbed to the pressure of Muslim hardliners. The Muslim hardliners pushed the then Rajiv Gandhi government, elected in 1984, to pass the Muslim Women (Protection on Divorce Act), 1986. This law overturned the Supreme Court's verdict in the Shah Bano case. The Act diluted the Supreme Court judgment and allowed maintenance to a divorced Muslim woman only during iddat or till 90 days after the divorce. The said Act virtually pitted women's rights against the rights of a religious group, and the latter, with their street veto power, was capable of enforcing the law will over a weak, minority-appeasing government led by Rajiv Gandhi. This is the way politics can have a profound impact on legislation.

#### **7. Politics and Women's Reservation: awaited pink Resolution...**

Women's Reservation Bill, awaiting passage for 26 years, must be a joint venture by all political parties to ensure the same. The 108th Constitution Amendment Bill, popularly known as the Women's Reservation Bill, was first introduced in 1996. The Bill pushed

for 33% reservation in all Lok Sabha and stated legislative assemblies for women. – So far, the Bill has managed only to get the assent of the Rajya Sabha while it remains pending in the Lok Sabha. It is pointed out that mandatory reservations for women in Panchayats and Local Bodies facilitated the entry of lakhs of women into the political arena of cities and villages. This positive experience needs to be strengthened and extended further. Opponents argue that it would perpetuate the unequal status of women since they would not be perceived to be competing on merit. They also contend that this policy diverts attention from the more significant issues of electoral reform, such as the criminalization of politics and internal party democracy. One of the convincing arguments placed by the critics is that the Bill if passed as Law, would cause pseudo-women's political representation as the husbands, the pretext that wives would hold ultimate power in politics. Due to politics, there have been four unsuccessful attempts to bring a women's reservation Bill in Parliament; twice the copies of the Bill were snatched and torn in the House. Though the current Central Government has been in the full majority since 2014, no sign of the passing of the Bill is visible, and it shows a lack of political willingness to cause gender equality.

#### **8. Farm Bills, 2020 and Politics – protests ruined profits!**

In September 2020, the President of India gave his assent to the three 'Agriculture Bills' earlier passed by the Indian Parliament. These Farm Acts are as follows:

- A. Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020,
  - B. Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020;
  - C. Essential Commodities (Amendment) Act, 2020
- Farm Bill 2020 provides an alternative platform for farmers to sell their produce in the open market.



They can earn profit from the sale of crop at a higher price. There will be no APMC market fee or cess on transactions for such business areas. APMC will continue its functioning. The Bill empowers farmers to sell their goods directly from the farm to the corporate or exporters in bulk. The MSP-based procurement system will restart, and farmers can sell their crop products in the mandi at the existing MSP. The government has introduced these agricultural bills for structural reforms in the farming sector to boost the farm sector and double the farmers' income. The farmer fears ending the currently running MSP system for his produce as the New Farm Bill 2020 opens the way for farmers to sell their produce in the open market and fix prices based on their understanding between corporate and farmer. Farmers also fear large retail traders and corporate money may dominate the agricultural sector. Thousands of farmers from Punjab, Haryana, and various states had blocked roads to Delhi as their protest against contentious farm laws and agitated for repeal of Farm Laws. Several rounds of talks between farmer unions and the government were in vain. It was alleged by Kisan Morcha more than 400 farmers died during the protests. The Central Government has withdrawn the Farm Laws, but politics ruined farmers' profits.

### **9. Maratha Reservation and Politics in Maharashtra.**

Marathas are 32% in the state population. To please them and to rule on the Vote bank, almost every government in Maharashtra promised Maratha reservation in the educational and employment sector. In 2017, the state government established the Maharashtra State Backward Class Commission, chaired by Justice Gaikwad, which recommended 12% and 13% reservation for Marathas; accordingly, the state passed the Socially and Educationally Backward Classes Act (SEBC Act, 2018). The Act exceeds the recommended quotas, granting 16% reservation for Marathas. The constitutional validity of the Act was challenged. The Bombay High Court upheld the validity of the

Act and held that the Act should not prescribe reservations exceeding the Commission's recommended 12% and 13%. The matter was appealed in SC, and it was held that the 50% limit laid by Indra Sawny on reservations should not be reconsidered. The Gaikwad Commission, the Bombay HC judgment, and the SEBC Act all fail to lay out an 'extraordinary situation' to fall within the exception to this limit. So, the SEBC Act is struck down insofar as it identifies and grants reservations to Marathas. Hence a decisive judgment came from SC to answer the politics and reservations!

#### **10. Politics and Citizenship Amendment Act of 2019**

The CAA amended the Citizenship Act 1955 by providing a pathway to Indian citizenship for persecuted religious minorities from Afghanistan, Bangladesh, and Pakistan who are Hindus, Buddhists, Sikhs, Parsis, Jains, and Jews, arrived in India before the end of December 2014. The law does not grant such eligibility to Muslims from these countries. The act was the first time religion had been overtly used as a criterion for citizenship under Indian Law and attracted global criticism. The amendment has been criticized as discriminating based on religion, notably excluding Muslims. Critics express concerns that the bill would be used, along with the (NRC), to render many Muslim citizens stateless, as they may be unable to meet stringent birth or identity proof requirements. The Indian government said that since Pakistan, Afghanistan, and Bangladesh have Islam as their state religion, it is therefore "unlikely" that Muslims would "face religious persecution." This is highly politicized legislation to date in India.

#### **Conclusion and Suggestions:**

This research paper explores the profound impact of Politics on Legislation in India. The effect could be divided into positive and negative, permanent and temporary, significant and detrimental, constructive and destructive, progressive and regressive, etc. Various Indian

Legislations have been tested and verified on the litmus test of their respective inception, ideological base, religious philosophy, nationalism, and changing societal needs by this research author. While conclusion, it can be stated that the political majority decides the 'Legislations' in a given time and set up of Society. So through all times, societies, and polities, Politics has profoundly impacted Legislation and shaped and reshaped it constantly.

**This research author would like to make following suggestions,**

- It's a myth or illusion to say that the largest elected ruling party in power holds a public mandate and reflects the people's will if we compare the total number of voters and the actual number of people who do cast a vote and even the percentage of votes the winning candidate gets. So, we cannot say that majority in power knows the best public policy and can make the best Laws. The legislation does carry the impact of political ideologies of the political party in the majority.
- We are exercising zero evidence-based legislation method; we need to explore a robust way to avoid the misuse of hastily drafted legislation for political gains.
- It is suggested that the PM and CM and their Council of Ministers are very much executive branches though belonging to a vital part of the Legislature. This could be addressed to get a lesser impact of politics over Legislation.
- We are suffering from the inadequacy of 'pre-legislative thought', we have to institutionalize a uniform framework to assess the impact of laws both before and after their enactment.

- The much-needed framework of Legislative impact assessment shall be placed to look for both desired and ancillary impacts to reduce the political impact on the Legislation in India.

**References:**

***Bibliography***

- Introduction to the Constitution of India by Durga Das Basu
- Law and Social Transformation in India by Malick and Rawal
- Foundations of Political Obligation by Dr. S. R. Myneni

***Webliography***

- [www.wikipedia.org](http://www.wikipedia.org)
- [www.legalserviceindia.com](http://www.legalserviceindia.com)
- [www.ipleadersblog.com](http://www.ipleadersblog.com)
- [www.finologylegal.org](http://www.finologylegal.org)

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