

PARLIAMENTARY CANNIBALISM

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The intriguing story of Eve eating the fruit of the forbidden tree against the several and severe advice of her counterpart was an act of irreversible sorrow and doom brought upon the Garden of Eden. An act which introduced 'Death' onto the World and took away the merriment to which all the beings were acquainted with; it was Adam who had known the unbecoming effect which the taste of that apple could bring upon and had extensively exhorted Eve to not to savour its taste.

Interestingly, Eve too knew the misery she was unravelling upon this world. But it was her strong disposition which un-hurdled each impediment that came in her way –let alone the advice of his counterpart, the towering height of the tree and the command of their Father.

The same can be reiterated for the Indian Constitution, which was a generous gift of the Constituent Assembly to the people of India. It has gone through, several changes but, the Indian Constitution has endeavoured to safeguard its pristine quality, which took more than two years in the making. In order to safeguard this pristine qualities of the Indian constitution, the Indian Supreme Court came up with the principle of basic structure, in which basic qualities, such as federalism, rule of law, secularism and many more were regarded as the fundamentals of the constitution and therefore they cannot be taken away by any legislative power. Rather than inviting death in, the Indian Parliamentarian is forced to adapt to a changing scenario to prevent their precious document from becoming moribund. The contrast between the stories lies in the fact that the eating of the forbidden fruit brought in death, whereas, amending the constitution blew life into the lifeless document and gave it to an organic growth.

The Author compares two acts guided by necessity and inclination, however, both draw criticism and both are necessary. If the apple was not eaten by Eve there would not have been any control on the population as death becomes the only measure to control it; it was arguably introduced as a cleanser.

Similarly, making an amendment may seem an act of sovereignty and one which cannot be regarded as cherishing the pristine nature of the constitution. Steadily the Indian Parliament is eating its original work and supplementing it with that of a new phenomenon, it is the substitution of a new constitution for the old one. This is why the concept of Parliamentary Cannibalism befits modern day democracy; the argument seems in line with the thought process of late U.S Supreme Court judge Antonio Scalia, who favored original text of the Constitution and was ardently against giving liberal interpretation to the text of the constitution, this is what he called as the principle of Dead Constitution.¹ However, the very concept that the Parliament; an offspring of the Constitution was amending its own architect and almost changing its original character is nothing short than cannibalism by Parliament.

The most appropriate example that can be quoted is that of Latin American Countries; wherein an average 41 new constitutions has been introduced hitherto with the Dominican Republic heading the list with 32 constitutions being replaced until now, with Venezuela coming into second position with its 26th Constitution drafted in 1999.²

However, the other side of the boundary; the American Constitution has not been changed ever since the inception in the 1776's but has gone through major constitutional amendment so that the text of the constitution can stay in harmony with the sentiments of the people of America.³ Further, the text of it has been seen in different hues with the help of the judicial interpretation; which has worked in the favor of the American Constitution which is changing without changing its text but rather its context as per society's demands.

The same cannot truly be regarded as the case with the Indian Constitution wherein almost two new constitutions have been generated with more than 100 amendments taking place. Additionally with the use of judicial interpretation, the state of Indian progress is witness to a tussle between the Judiciary and the Legislation rather than meeting of the demand of the society.

¹ Richard A. Brisbin Jr., *The Conservatism of Antonin Scalia*, Political Science Quarterly, Vol. 105, No. 1 spring 1990

² Planchart Manrique, Gustavo. "Constituciones de Venezuela" in *Diccionario de Historia de Venezuela*. Caracas: Fundación Polar, 1997. ISBN 980-6397-37-1

³ The first ten amendment of the American Constitution are popularly known as the 'Bill of rights', most of which are the ingenuity of James Madison, who was inspired by the essay "The Rights of Men" written by Thomas Paine in 1789. The Bill of Rights was impressed in American constitution to recognize the basic human rights of the American Citizens.