

EVOLUTION OF CONSTITUTION OF JAPAN-A HISTORICAL PERSPECTIVE

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ABSTRACT

Japan is a progressive conservative country. It feels proud on their age-old customs and traditions. Simultaneously, it adjusts its governance with the growing requirements of the time. The constitutional history of the country is clear manifestation of these facts. The topic is important because firstly it unearths the development of the constitution along with history of the monarchy of Japan on one side and attracts the researchers, scholars and readers to take benefit of this research. Primary and secondary sources of research methodology were adopted to accomplish the task. Interviews of the experts on topic were conducted for seeking their valuable opinion on the topic. Moreover, books and internet sources were also referred for surveying the evolution of constitution in Japan. The research has disclosed that institution of empire has roots in BC period. This empire travelled to constitutional monarchy when the country received its first constitution in 1889. The constitutional development began due to contact between the country and the foreigners, which was not intentional. The U.S. nuclear attacks set new direction of history of Japan, which also left imprint on constitutional aspect. Thus, constitutional monarchical democracy replaced constitutional monarchy and emperor became ceremonial head of the country. He mostly enjoys powers, which the president of Islamic Republic of Pakistan possesses as per the constitution, 1973. Pacifist aspect of the constitution of Japan paved the way for emergence of the country as an economic power. However, this pacifist provision is under discussion in the country to amend it.

Keywords: *Allied Forces, Constitution, Organs of State, Pacifism, Political Scandals, Parliamentary.*

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INTRODUCTION

The constitution of Japan has developed gradually despite the presence of the institution of the Emperor since the B.C. period. The people of Japan attach great importance to their emperor. During the Meiji period, the country received its first formal constitution enforced in 1889 (Keene, 2005). It provided for the parliamentary form of Government. The Institution of Emperor continued under the constitutional mechanism of the country.

The world experienced flames of the Second World War, which started in 1939. The forces of Japan attacked Pearl Harbour, naval base of the U.S. and destroyed it in 1941. The member of the Allied Forces, the U.S. dropped nuclear bombs on Japanese cities of Hiroshima and Nagasaki in August 1945. It compelled Japan to surrender before the Allied Forces. The Commander of the Forces, General Douglas MacArthur designed the terms and conditions of the surrender. The representatives of the Allied Forces prepared draft of the new constitution and handed over to Japanese administration, thus, the country received new constitution, which was effected from May 1947 (Maki, 1967).

The new constitution provided for the establishment of parliamentary form of government. It divided the state into three organs i.e. Executive, Legislature and Judicature based on the principles of separation of powers and checks and balances. The emperor is symbolic head of the country with ceremonial powers. Being nuclear victim country, its constitution provided for pacifist policy under article 9 of the constitution. The Force was raised for self-defence and not for offensive purposes. However, global conditions and internal situation compelled the country to deploy forces outside its border for peace-keeping purposes.

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There is a thinking and discussion in the country to change the pacifist feature of the constitution but it does not have momentum yet because there is constitutionalism in Japan. The people of the country love their traditions and values. They oppose to change basics of the constitution. This paper discusses the historical perspective of political and constitutional administration of Japan and traces out the conditions, which transmitted the country from emperorship to constitutional monarchy and finally culminated into constitutional monarchical democracy having parliamentary form of Government. It also compares the powers of the emperor of Japan with the president of Pakistan. Thus, two hypothesis discussed in the paper are: the monarchy of Japan converted into constitutional monarchy; and the constitution of Japan is not only a product of Post-World War Era.

This paper attempts to discuss the following questions.

1. Did the constitution of Japan evolve through different phases?
2. Whether the constitution of Japan promotes pacifism?
3. Whether pacifist nature of the constitution caused emergence of Japan as economic power?

LITERATURE REVIEW

In a book, *Postures for Democracy: Crafting the New Japanese State under the MacArthur*, the authors, Ray A. Moore & Donald L. Robinson (2002), have covered the important topics such as Surrender of Japan, Goals of the U.S. occupation of Japan and the circumstances leading to Drafting of the current constitution. The book reflects the thinking of a country, which wins the war-laying road for enduring constitutional occupation of a country surrendered. Toyokichi Iyenoga (1891) has written *The Constitutional Development of Japan:*

1853-1881, which is Ninth series of Johns Hopkins University Studies in Historical and Political Science edited by Herbert B. Adams. The author has surveyed the conditions of Japan before and after advent of foreigners in 1853, constitutional changes from restoration of government to the promulgation of new constitution. The book helps to understand the conditions and circumstances in which constitutional history of Japan progressed. *The Political Development of Japan:1867-1909* written by George Etsujiro Uyehara (1910), contains account of divine Right of the Emperor, concept of Sovereign, post 1867 constitutional movement and comparison of throne between Japan and England. The author has also made comparison of Japanese Parliamentary system with that of England, France and the U.S.

RESEARCH METHODOLOGY

The topic requires comprehensive survey of literature and exploration of various phases, which contributed in the evolution of the constitution of Japan. Thus, qualitative method of research was instrumented while writing the article. Both sources of research i.e. Primary and Secondary were applied for making the topic rich. Interviews of the prominent scholars and experts were conducted and local and foreign literature was referred for achieving the goal. In order to get input from the scholars and experts, a brief open-ended questionnaire was devised and sent to the selected expert via WhatsApp. Following questions were asked from the experts:

1. It is said that current constitution of Japan was drafted and imposed by the occupying power i.e. the U.S. Please comment.
2. The Emperor of Japan enjoys same powers as vested in the President of a country having parliamentary form of Government. Please favour with your opinion.
3. Article 9 of the constitution of Japan contains provision of pacifism. Whether this constitutional provision left impact on defence and foreign policy of Japan?

4. Has pacifist nature of the constitution helped Japan to emerge as Economic power of the world?
5. Whether the constitution of Japan has played role in seizing political corruption scandals of Japan?

DISCUSSION AND ANALYSIS

Japan, the land of rising sun, possesses rich history of constitutional development. It is caretaker of old age institution of monarchy of the world, which gradually converted into constitutional monarchy. No doubt, the present constitution of the country gets roots from the U.S. occupation of the country after the Second World War, it proved blessing in disguise as Japan emerged as economic power of the world and its products are being used in the power corridors of the occupying country.

The two chronicles: The Kojiki (Records of Ancient Matters-古事記) and the Nihon Shoki (The Chronicles of Japan-日本書記), written in 711-712 and 720 CE, contain the history of Japan's monarchy. These written accounts identify as the first emperor (Tennō-天皇, heavenly sovereign) of Japan Jinmu, a descendant of the Sun Goddess Amaterasu Ōmikami. The writer of the second chronicle mentions 660-585 BC as period of his reign, thus telling the foundation of the Empire of Japan on 11th February 660 BC (Bertolini, 2018). Gradually the monarchy evolved as the constitutional monarchy. The monarch Jinmu was civil ruler, military leader and spiritual head of the state.

The throne of the emperor was bequeathed to his descendants who are still part of Japan's Imperial family (George, 1979). The author writes that the emperor headed the state directly up-to 1156 A.D. and there was centralised system of government.

The constitutional movement began not in planned condition but when Japan got irritated by its sudden contact with the foreigners. This agitation got momentum due to the sense of national weakness (Joyokichi, 1973). The country received first constitution in 1889 popularly known as Meiji Constitution. The name Meiji means

enlightened leader was the *nengo* who ruled over Japan from 1868 to 1912 as a full sovereign emperor (Keene, 2005). At that time, the emperor's family enjoyed sovereignty with claim to rule by a divine right (Hook & McCormack, 2004).

First constitution of the modern Japan was promulgated on 11th February 1889, which paved the way for the establishment of absolutist form of monarchy having concept of imperial sovereignty. The absolutist features of the constitutional system caused emergence of the authoritarianism period from 1930-1945 (Maki, 1967). The constitution provided for the establishment of a state with constitutional monarchical democratic state. It consisted of three organs of the state Executive, Legislature and Judicature as contained in the modern democratic state system.

According to the constitution, the country was to be reined and governed by unbroken line of the Emperors for ages eternal (Mayoji, n.d.). The emperor was head of the empire combining in himself the rights of sovereignty to be exercised in accordance with the law. Exercising the legislative powers by the emperor was restricted to the consent of the Imperial Diet. The emperor was the supreme commander of Army and Navy.

The constitution established imperial constitutional parliamentary system with sovereign emperor and independent legislature to be known as Diet. The bicameral legislative system was introduced in the country. The legislature consisted of House of Peers comprising the members of the Imperial Family, orders of the nobility and the persons to be nominated by the emperor. The members of the House of Representatives were to be elected by the people. The Ministers of the State were to give advice to the emperor for which they were made responsible.

The chapter II of the constitution dealt with the Rights and Duties of the Subjects. It included appointment of civil, military officers, filling other public offices, payment of taxes, liberty of abode, arrestation, detention and punishment according to law, right of property,

freedom of religious belief, liberty of public meetings and associations, speech, publication and writing and observing the proper forms of respect and by complying with the rules specially provided in this regard etc.

The chapter V of the constitution contained provisions for the establishment of the Judicature. Its organisation was to be determined by law. The courts of law were to exercise the jurisdiction in accordance with the law in the name of the emperor. The constitution 1889 continued until the new constitution was enforced in 1947. It is necessary to have background of making the new constitution.

The World War-II began in 1939 between the Allied Powers and the Axis Powers. The U.S. joined former whereas Japan was the part of the latter. Japan attacked Pearl Harbour, a naval base of the US located in Honolulu, Hawai, on 7th December 1941. The US dropped atomic bombs on Hiroshima and Nagasaki on 6th and 9th August, 1945 respectively. It compelled Japan to surrender before the Allied Powers and the country was occupied. In its simplest form, the main goals of the occupation were (1) to ensure as far as possible that Japan would never again become a menace to peace and security of the world and (2) to encourage the establishment in Japan of a peaceful, democratic government (Moore & Robinson, 2002). General Douglas MacArthur, the supreme commander of the Allied Powers instructed his staff to prepare a draft of new constitution of Japan, which was done within ten days and then it was presented to the Government of Japan for adoption (Kyoko, 1991). *'The draft was prepared by a team of American lawyers led by Charles Kades and Courteny Whiteny under the supervision of General Douglas MacArthur'* (Interviewee No. 4, Sep. 10, 2024). Legal input was taken from Japanese scholar "Joji Matsumoto known as "Matsumoto Draft Proposal" which was also included in the said draft. *'The said Government held intense discussion for eight months and after making new changes it presented to the people of Japan as their own creation'* (Interviewee No. 2, Aug, 21, 2024). The constitution was promulgated on 3rd November 1946 and was given effect on 3rd May, 1947. It consists of Eleven Chapters and 103 articles. It creates

democratic parliamentary state with three organs i.e. Executive, Legislative and Judicature. *'It is called Unitary Parliamentary Constitutional Monarchy. In 1952 occupied forces left Japan and made it complete sovereign'* (Interviewee No. 4, Sep. 10, 2024)

The people of Japan pledge through the constitution to secure the fruits of peaceful cooperation with all nations and the blessings of liberty. The constitution recognises the Government as a sacred trust of the people and it derives authority from the people; and representatives of the people shall exercise powers ((Japan.kentai).

The constitution provides that the people of Japan trusts in justice. It contains that the global relations of Japan is based on faith of the peace loving peoples of the world and to occupy honourable place in international society for the preservation of peace and remove tyranny and slavery, oppression and intolerance for all time from the earth. It recognises the right of people to live peacefully and free of fear. The people of Japan also pledges through the constitution to accomplish the ideals and purposes, mentioned above, with all their resources.

The sufferings of nuclear bombardment by the U.S. and humiliated surrender to the Allied Powers developed among the people hatred to war as it left impact on their honour, prestige, peace and power etc. Thus, through article 9 of the constitution, the people of Japan renounced war for ever as the sovereign right of the nation and using of force or threat as sources of settling international disputes.

The constitution contains institution of emperor as a symbol of unification of the Japanese nation. It was based on the principle of succession. *'The emperor of Japan under the new constitution remained a ceremonial head like the British monarch and all the executive powers are enjoyed by the prime minister of the country like in parliamentary form of governments around the globe'*(Interviewee No. 3, Aug. 22, 2024) *The emperor is inviolable but not above the law. The constitution assigns the responsibilities to the emperor to perform ceremonial and ritual duties. He appoints the Prime Minister, the Chief Justice of the Supreme Court,*

dissolves the House of Representative and proclaims laws and treaties
(Interviewee No. 4, Sep. 10, 2024)

The emperor is symbol head of the country as president performs in non-monarchical parliamentary form of government such as Pakistan. The functions of the president provided in the constitution of Pakistan are almost the same as envisaged in the emperor of Japan. Approval of constitutional amendment after passing by the central legislature, summoning the session of the legislature, commutation of punishment, conferring honours on the dignitaries, receiving foreign ambassadors and performance of ceremonial functions are some similar powers, which the emperor of Japan and the president of Pakistan perform within the mandate extended by their respective constitution.

The Chapter-IV provides for bicameral legislature as contained in the Meiji constitution. The name of the legislature is Diet. The name of upper House of the legislature in the present constitution is the House of the Councillors whereas the lower was named the House of Representatives of which period is fixed for four years whereas tenure of the House of Councillors is six years.

The Chapter V deals with the formation of cabinet and its control and functions. Principle of collective responsibility of the cabinet has also been included in the constitution. According to this principle, a decision taken by a cabinet is its collective responsibility. The Prime Minister heads the cabinet and is chief executive of the country. The constitution lays down the process of law for the election and the removal of the prime minister from his office. There are strict laws such as section 197 and 198 of the Penal Code. The National Public Service Ethics Act and other acts are aimed at curbing the corruption in the country. Talking about the strict law and harsh punishment one of the interviewees said that:

Despite the harsh punishments the political corruption scandals are surfacing from time to time like recent allegations on prime minister Fumio Kishida's LDP MPs are under criticism for

corrupt practices of collecting money beyond the prescribed limits through ticket sales of party fund raising event known as the slush funds, which is used to increase or maintain power (Interviewee No. 3, Aug. 22, 2024)

However, another respondent questioned the strict punishment for political corruption and said that *'the Japanese constitution does not explicitly outline punishments for corruption, however, it provides a framework for addressing corruption by providing provisions to frame laws aimed at preventing and punishing corruption, ensuring accountability and transparency in government and society'* (Interviewee No. 4, Sep. 10, 2024). The various other political corruption scandals emerged in Japan in the past, however, the dignitaries involved in such cases had to leave their offices.

The Chapters VI and VIII contain the provisions regarding Judiciary and Local Self-Government respectively. The Articles 92 to 95 make it obligatory to have local self-governance based on the principle of local autonomy having their own properties and for managing their affairs and running their administration through enactment of regulations within law. The members of the assemblies of the local government to be elected through direct popular vote. Article 95 of the constitution restrains the central legislature i.e. Diet from making special law applicable to one local public entity without consent to be obtained through majority of the voters of that entity on the parameters provided in the law.

The democratic constitution may either provide for the establishment of Presidential Form of Government or Parliamentary Form of Government. The status, functions and powers etc. of the president remains different in both the forms of Government. Both governance systems work on the basis of the separation of powers and checks and balances.

The political authors, since Aristotle's period, have accepted three-fold distribution of governmental functions of powers. These include (1) the law making or legislative power (2) the law enforcing or

executive power and (3) judicial power or law adjudicating (Chaudahry, 2019). Montesquieu, the French author of eighteenth century was first writer who expounded theory of Separation of Powers. Since the French Revolution and design of the constitution of the United States, the separation of powers is constitution's central text. Probably the most prominent defence of the principle has been that preventing the concentration of power in any one political institution to guard against abuse of the power (Bilchitz, 2018). In very basic term, a strict separation of powers requires that arms of executive, legislative and judicial be separated from each other in respect of their functions and personnel (Masterman, 2010).

While separating powers among organs of a state it was equally important to keep watch on their actions for confining them to their respective jurisdiction. It was also momentous to give each other under each ones control to avoid democratic fascism. Thus, the principle of checks and balances was formed during 1780s when the U.S. broke away from the Great Britain and obtained its own separate entity. The U.S. founding fathers thought it essential to have a system, which could help it to avoid becoming a monarchy such as Great Britain (Lawton, 2021).

The article 11 of the constitution of Japan has granted human rights to be enjoyed by its subjects. They have been refrained from abusing freedoms and rights guaranteed by it. The articles 15 to 39 broadly deal with the rights, freedoms and duties of the citizens except article 30 which makes people liable to taxation as per law. The article 40 authorises a person to sue a state for redress as per law if he is acquitted after arrest or detention.

There are two types of constitution i.e. flexible and rigid. The constitution of Japan is even more rigid than that of the United States. Amendment to the U.S. constitution requires proposal and approval by two-third majority in both houses of the Congress and then ratification by three-fourth states (Duigan, 2013). Article 96 of the constitution of Japan provides for two-thirds or more of all members of each house for passing a referendum (Tsuji, 2015). After passing

amendment bill by the Diet, the same is presented for ascertaining approval of the people of Japan through referendum. Due to this rigid nature the constitution of Japan, still safe from any amendment.

The pacifist feature of the constitution of Japan has been discussed somewhere else in these pages. The situation in the 1950s was changed due to Sino-Soviet growing influence in the region and the Korean war of 1950s, which threatened the Japanese sovereignty. Consequently, idea of Self Defence Forces (SDF) was adopted in 1954 to protect the Japanese homeland. In 1954, Self Defence Force replaced National Safety Force. During the regime of the former prime minister, Shinzo Abe discussion initiated to consider amending the article 9. In his policy speech at 195th session of the Diet on 17th November 2017, Shinzo Abe stated that currently security environment surrounding Japan is more hostile than post war history and expressed his firm determination that...discussions on constitutional reform will be able to move forward" (ISDP, 2018). The pacifist nature of the constitution has helped Japan's image as the peace-loving nation around the globe, which denounced wars and proliferation of nuclear weapons. *This policy caused Japan to focus towards the economic building as a result the industrialisation and technological innovation led Japanese to emerge as the second largest economy of the world during the cold war until the new millennia* (Interviewee No. 3, Aug. 22, 2024). Due to minimal military expenditures Japan invested more in economic and human resources development instead investing in defence. Japan focused on industrial and technological innovations and achieved unprecedented successes. *Due to pacifist approach in foreign policy behaviour, Japan got tremendous economics benefits by joining economic institutions* (Interviewee No. 4, Sep. 10, 2024)

In foreign policy, Japan started discussing the bilateral relations between the countries under new constitution and they got success. They worked hard to make Japan big commercial power. Their foreign policy is economic instead of military based. The people of Japan renounced war so there is no military expenditure, thus, entire

money was diverted to development of a country. Pacifism did help Japan in emerging as economic power of the world (Interviewee No. 1, Sep. 9, 2024).

There were certain causes, which compelled Japan to move from pacifism to activism. Firstly, though Japan contributed 13 billion US dollars to the Persian Gulf War in 1990 but absence of its active role and taking timely decision in the war caused criticism for Japan. For the first time, Japan sent its forces as part of the U.N. Peace Keeping Force to Cambodia in 1992. It was for the first time when the Japanese forces were stationed outside Japan in post war history. First non-UN. associated deployment of Japanese forces was in 2003 to Iraq to provide reconstruction and humanitarian support to coalition forces. Secondly, Japan remained victim of terrorism in shape of activities of Sekihotai group and Japanese Red Army etc. Japanese were killed in terrorist attacks on World Trade Center, New York. Thus, it joined coalition of more than 27 countries on War on Terror. The country also sustained economic loss. Thirdly, increasing tension in Korean peninsula is also a reason. The North Korea is enhancing its nuclear capability, which Japan considers as threat to its security and territory. First missile of North Korea flew over Japan in 1998. Fourthly, in shore terrorism is getting momentum day by day. Japan depends on outside world for importing its energy requirements including oil. The traffic of Japanese ships needs safe passages. Lastly, Japan considers China as threat to its interests inside and outside the country. Sixthly, increasing responsibilities of Japan as a country of the world community began convincing Japan to rethink on its pacifist feature of its constitution.

Despite the fact that there is a long history of failed attempts to revise article 9, the hands of all successive governments in Japan are tied behind their backs by the public opinion. *'Even today less than forty percent of Japanese adults support revision of the article'* (Interviewee No. 2, Aug. 21, 2024). However, it seems that it may take long time to make amendment in article 9 because ultimately the people of the country to make decision even after passing amendment by the Diet.

CONCLUSION

The constitution of Japan has evolved from monarchical constitutional democracy to constitutional monarchical democracy as in the current constitution the monarch surrendered his powers enjoyed in the Meiji constitution. The pacifist feature of the constitution has caused emergence of Japan as an Economic power as saving from defence was utilised in other fields including economic development. It also helped Japan to perform its international role effectively by providing financial and economic assistance to the developed and the developing countries.

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