

THE CONSTITUTIONAL VALUES — ROLE OF SUPREME COURT OF INDIA

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Historical Background and Relevance of Law Day:

It is on this day that the drafting of the Constitution by the Constituent Assembly which started functioning on 09 December 1946 under the Chairmanship of Dr. B. R. Ambedkar was completed after a span of 2 years, 11 months and 17 days.

However, it was decided that the Constitution would come into force only on 26 January 1950 as 26 January had been chosen by the Indian National Congress as Independence Day in 1930. Therefore, it was to ensure that 26 January remained significant in India's history that the adoption of the Constitution was postponed from 26 November 1949 to 26 November 1950.

The evolutionary stages of the Constitution started from Minto Morley Reforms resulting in The Indian Councils Act 1909 followed by Montagu Chelmsford Reforms resulting in the Government of India Act 1919, the 1927 Simon Commission and Round Table Conferences (1930 - 1932) leading to the Government of India Act 1935, the 1946 cabinet Mission Plan and the subsequent formation of the Constituent Assembly.

Our founding fathers have provided our democracy with an extremely strong foundation through an exhaustive Constitution, with focus on social, economic and political rights.

The objective behind celebrating Law Day is to rededicate ourselves to two cardinal principles which formed the solid foundation on which this grand constitutional edifice is erected: (i) the rule of law, (ii) Independence of the Judiciary.

Fundamental Features of our Constitution:

Our Constitution contains some 'values' which are indispensable and which cannot be compromised by any entity in the country, Some of these principles are:

- Democracy Secularism Socialism Equality Social Justice
- Life and Personal Liberty Rights of Minorities
- Free speech
- Federal Structure Fundamental Duties
- Directive Principles of State Policy - Judicial review

Role of the Supreme Court in Upholding Constitutional Values

Several countries that became independent post Second World War provided these features in their constitution. However, India is one of the few countries where democracy has survived.

A large part of the credit for this goes to the judiciary, which has upheld democratic principles during critical moments in Indian history, when powerful leaders attempted to impose autocracy on the nation .

The Supreme Court of India through its interpretative role has upheld the constitutional values and has emerged as one of the most powerful institutions of the world.

The Court has always remained responsive to the changes in the Indian society. This is evident from the interpretation of Article 21 of the Constitution, which was broadened by the Court in *Maneka Gandhi's*² given the exigencies of the circumstances that prevailed at that time.

In expanding the ambit of right to life and personal liberty, the Court has evolved compensatory jurisprudence, implemented international conventions and treaties, and issued directions for environmental justice.

¹Sitting Judge, Supreme Court of India.

²AIR 1978 SC 597.

As an independent judiciary, under the scheme of the Constitution, the Court has played its role effectively in acting as a watchdog through judicial review over the acts of the legislature and the executive. The major contribution of the Supreme Court has been to uphold the Constitution by delineating the role of the three organs of the State. When two organs of the State fail to perform their duties, the judiciary cannot remain a mute spectator. While acting within the bounds of law, the Supreme Court has always risen to the occasion as one of the guardians of the Constitution, criticism of “judicial activism” notwithstanding.

Justice R.C. Lahoti in 2005 said:

Working under considerable handicaps such as inadequate funds, budgetary allocations for law and justice not being part of plan expenditure, lack of resources, shortage of staff and infrastructure, the Indian judiciary can still claim a better standing with the other wings of governance in performance. When one considers the immensity of our country, the diversity of its conditions, its huge population and the range of cases and volume of litigation in our courts throughout the country, the Indian judiciary has carried a phenomenal burden which perhaps no other judiciary in the world has had to shoulder. In this task, we must acknowledge the exacting burden the subordinate judiciary has carried. The subordinate courts have with small recognition rendered justice to the common man in villages and towns. Too often we tend to forget their invaluable contribution to our judicial system. At times we have unjustly condemned them as a whole for failings of a few of their members; failings which are attributable to a few individuals only, not to the system and certainly not to the members as a class.

Constitutional Values of Democracy: Its Upliftment by the Supreme Court

Time and again, the Supreme Court has reiterated the importance of this concept within the scheme of the Indian Constitution. The most vociferous of such pronouncements highlighting the role of democracy came in the 1970s, when an ugly attempt at changing the

government of the nation into a de facto monarchy by Indira Gandhi was thwarted by the Apex Court of the country.

For instance, in *Kesavananda Bharti³ Vs. State of Kerala*, Hegde and Mukherjee JJ. said:

“the Parliament has no power to abrogate or emasculate the basic elements or fundamental features of the Constitution such as the democratic character of our polity ...”.

Subsequently, in *Indira Gandhi Vs. Raj Narain⁴*, Supp. see I, the Court discussed the meaning of democracy and noted:

“Democracy postulates that there should be periodical elections, so that people may be in a position either to re-elect the old representatives or, if they so choose, to change the representatives and elect in their place other representatives. Democracy further contemplates that the elections should be free and fair, so that the voters may be in a position to vote for candidates of their choice. Democracy can indeed function only upon the faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of deference to mass opinion.”

Dr. B. R. Ambedkar, in his closing speech in the Constituent Assembly on November 25, 1949, had lucidly elucidated thus:

“What does social democracy mean? It means way of life which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty, would kill individual initiative – we

³AIR 1973 SC 1461.

⁴AIF 1975 SC 2299.

have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. We cannot afford to have equality in political life and inequality in economic life. How long shall we continue to live this life of contradiction? How long shall we continue to deny equality in our social and economic life? We must remove this contradiction at the earliest possible moment or else those who suffered from inequality will blow up the structure of political democracy which this Assembly has laboriously built up.”⁵

Secularism:

In the aftermath of the Babri Masjid demolition, the Supreme Court has upheld the secular values of the Constitution. The Supreme Court in *S.R. Bommai Vs. Union of India* [(1994) 3 SCC 1], the leading case on secularism, discussed the meaning of the term ‘secularism’ at some length and stated:

“... whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited. This is evident from the provisions of the Constitution to which we have made reference above. The State’s tolerance of religion or religions does not make it either a religious or a theocratic State. When the State allows citizens to practice and profess their religions, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life.” (para 39).

Socialism:

The constitutional concern of social justice is to provide justice to all sections of the society by providing

facilities and opportunities to remove disabilities and handicaps with which the poor are languishing, and secure the dignity of the person. Although the term ‘socialist’ was included in the Preamble to the Constitution in 1976, the mode of governance post-independence was always based on the model of socialism. This is best demonstrated through the land reform measures undertaken by introducing Article 31A of Constitution and the abolition of the Zamindari system.

As the Supreme Court held in *Nakara D.S. Vs. Union of India*,⁷ “the principal aim of a socialist State is to eliminate inequality in income and status and standards of life”.

Equality:

The principle of equality has been laid down in the Preamble as well as Article 14 of the Constitution. The concept of equality has witnessed two important stages of development. First, a 7-judge bench of the Supreme Court in *State of West Bengal Vs. Anwar Ali Sarkar*⁸ laid down a two-step test to determine the validity of an act on grounds of violation of Article:

- Whether the legislation creates a reasonable classification between the various groups of people?
- Secondly, whether the basis of classification has a rational nexus with the object sought to be achieved by the legislation?

Subsequently, Bhagwati J. in his celebrated judgment in *F.P. Royappa Vs. State of Tamil Nadu*⁹ added a third element to the principle of equality - that of arbitrariness. He noted (para 85):

“What is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., “a way of life”, and it must not be subjected to a narrow pedantic or lexicographic approach.

⁵(Vide B. Shiva Rao’s, ‘The Framing of India’ Constitution: Select Documents. Vol. IV, p.944.)

⁷AIR 1983 SC 130.

⁸AIR 1952 SC 75 - para 9.

⁹AIR 1974 SC 555.

We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to Violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14.”

Social Justice:

The meaning and significance of the concept of social justice can best be described through the words of Justice Gajendragadkar in his decision in *State of Mysore Vs. Workers of Gold Mines*¹⁰ where he said: “the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State”. Recently, the Court in *Harjinder Singh Vs. Punjab State Warehousing Corporation*¹¹ noted:

“The preamble and various Articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrajted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section

of the society. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice.”

Judicial Review:

The power of judicial review of courts has been held to be a part of the basic structure of the Constitution (*L Chandra Kumar Vs. Union of India*,¹². The law on judicial review in the context of the Parliament’s power to amend the Constitution has been settled only after the decision of the Supreme Court in *Kesavananda Bharti’s case*¹³. The evolution of the law prior to this landmark judgment is as follows:

In 1951, the Supreme Court in *Sankari Prasad Deo Vs. Unton of India*¹⁴, for the first time examined the issue of whether the Parliament in exercise of its powers under Article 368 of the Constitution may amend Part III of the Constitution. A Constitution bench of the Court held that ‘law’ under Article 13(2) meant only ordinary laws and did not include a constitutional amendment brought under Article 368. Thus, the Parliament’s power to abrogate the provisions of Part III was held to be unchallenged. In this case the apex court held that:

“Although “law” must ordinarily include Constitutional law there is a clear demarcation between ordinary law which is made in the exercise of legislative power and Constitutional law, which is made in the exercise of constituent power. In the context of Article 13, “law” must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power with the result that Article 13(2) does not affect amendments made under Article 368.” (page 106)

This was affirmed by another Constitution bench decision of the Supreme Court in *Sajjan Singh Vs. State of Rajasthan*¹⁵.

¹⁰ AIR 1958 SC 923.

¹¹ 2010 (1) SCR 591.

¹² 1997 3 see 261 (para 7).

¹³ *Ibid.*

¹⁴ 1952 SCR 89.

¹⁵ 1965 SCR (1) 933.

The correctness of the decisions in *Sankari Prasad's case* and *Sajjan Singh's case* was examined by an 11-judge bench of the Supreme Court in *I.C. Golak Nath Vs. State of Punjab*¹⁶. Subba Rao C.J. stated the conclusion of the majority as follows:

The power of the Parliament to amend the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 368 thereof which only deals with procedure. Amendment is a legislative process. Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part 11/ thereat, it is void. We declare that the Parliament will have no power from the date of this decision to amend any of the provisions of Part 11/ of the Constitution 50 as to take away or abridge the fundamental rights enshrined therein.

*Golaknath's*¹⁷ was subsequently overruled by the Supreme Court in *Kesavananda Bharti's*¹⁸. As is well-known, the majority in that case held that while the Parliament may amend the provisions of Part III, it cannot amend the basic features of the Constitution.

It is pertinent to mention here that an attempt to overrule the *Kesavananda Bharti case* was made by Indira Gandhi. A fifteen-judge bench was set up to examine the validity of the judgment. However, the remarkable eloquence of Nani Palkhivala ensured that the bench was dissolved and the decision was ultimately not reviewed.

Another attempt was made by the Parliament to overcome the consequence of the judgment in *Kesavananda Bharti's case*. Through the 42nd amendment in 1976, the Parliament added clauses (4) and (5) to Article 368 of the Constitution which said that no amendment of the Parliament to the Constitution, including any amendment to Part III could be called into question. However, this was struck down by a consti-

tion bench decision of the Supreme Court in *Minerva Mills Vs. Union of India*¹⁹. Most recently, a nine-judge bench decision of the Supreme Court in *I.R. Coelho Vs. State of Tamil Nadu*²⁰ upheld the decision in *Minerva Mills' case*²¹ and held that judicial review is a part of basic structure of the Constitution,

Unruly Criticism of Judicial System

In the recent past, there have been several kinds of criticisms which have been levelled against the judiciary: corruption, extraordinary delays in disposing off cases, increasing backlog of cases etc. However, these criticisms cannot be used to malign the entire judicial system.

Judiciary has proactively taken up measures to expedite the adjudication of disputes, and that is evident from the increase in frequency of cases which have been finalised by the subordinate courts, high courts and the Supreme Court.

It is imperative that the independence of judiciary continues to remain secured, as any interference by the legislature/executive upon its powers would be detrimental to the values enshrined in our Constitution.

The viability of judicial institutions also, to a certain extent, depends upon its acceptability to the public. Therefore, it is also important that the judiciary while exercising its functions does not impinge upon the domains of the executive or the legislature.

At the same time, it is the duty of the other organs of the State to ensure that the appointment of judges remains free from any interference of the executive. Therefore, the Judicial Appointments Commission Bill should ensure that necessary safeguards are put in place for a transparent procedure for appointment of judges.

¹⁶1967 (2) SCR 762.

¹⁷supra 2.

¹⁸*Ibid.*

¹⁹(1980) 2 SCC 591.

²⁰supra 4.

²¹AIR 1980 SC 1789.

Reforms Required in the Judicial System

Judicial academies for training judges have not been set up in some states. These academies must be set up efficiently. Such academies assist judges in several ways, including by keeping them abreast of emerging areas of law.

Courts at all levels should be modernized. This can be done in several ways. For instance, computerization would help in saving paper and increasing the efficiency at administrative level.

High courts have the power of superintendence over subordinate courts in states. It is necessary to provide High Courts with more powers to manage the administrative aspects of subordinate courts in a better way.

Conclusion

The fulfilment of dreams of our founding fathers requires the participation of every citizen of the nation.

Therefore, it is important that citizens are made aware of their fundamental rights and duties as enshrined in the Constitution.

The most effective way of doing so is to impart such education at the school level, so that such habits are inculcated in citizens during the initial phase of their lives.

Further, the institutions providing legal education must plan their curriculum to mould its pupil, into to professionals, who would embark on the constitutional values.