



Constitutional Commitment and Present Day Challenges:

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ABSTRACT

If the passing mark in a subject is thirty out of hundred, forty five for second division and sixty for first division, than what should be the target to be achieved by an ideal student ? Me-thinks it is hundred. It doesn't matter a lot if the desired target is not fully achieved. There will hardly be any difference in essence, between two figures in between sixty and hundred; forty five and sixty or thirty and forty five in view of class. But it matters a lot if the target is thirty and the same is not achieved because there is a significant difference between thirty and twenty-nine, that we all know. Till now we are struggling for guaranteed fundamental rights. We become overwhelmed with joy if, at times, directive principles are implemented as fundamental rights. But we don't have time to think that we are lagging far behind so long as we keep on treading firmly on the ongoing habitual path being content with the fundamental rights and the directive principles. After all, enforceability of law is a question regarding the minimum standard and not about the optimum. Unless we raise our level of quenching the thirst of the fundamental rights and directive principles and internalize the value of the fundamental duties, the true meaning of independence will, for ever, remain a will o' the wisp.

KEYWORDS

Commitment, constitution, challenge, deliberation, independent, democracy, writs.

Introduction:

A constitution means a document having a special legal sanctity which sets out the frame-work and the principal functions of the organs of the government of a state and declares the principles governing the operation of those organs.

All constitutions are the heirs of the past as well as the testators of the future. The constitution of the Indian Republic is the product not of a political revolution but of the research and deliberation of a body of eminent representatives of the people who sought to improve upon the existing systems of administration.

The Indian Independence Act, 1947 : Basing upon the recommendations made by the Cabinet Mission, 1946, the provisions of the Independence Act, 1947 were as follows:-

- i. The Act provided for the creation of two independent dominions, India and Pakistan from 15th Aug, 1947.
- ii. Each of Dominion was to have a Governor-General who was to be appointed by the King.
- iii. The constituent Assemblies of both Dominions were empowered to frame laws for their respective territories till the new constitution came into force.
- iv. After Aug. 15th, 1947, the British Government was not to control the dominion or the Provinces.
- v. For the time being, till the new constitutions were framed, each of the Dominions or Provinces was to be governed by the government of India Act, 1935.
- vi. The post of Secretary of the State for India was to be abolished and was taken over by Secretary of the Common wealth Nations.
- vii. The Act proclaimed lapse of British paramountcy over Indian States.

The Indian Constitution Act, 1947 came into force on August 15, 1947 when the British rule in India came to an end.

This is, of course, the most remarkable turning point in the history of India. People of India, though, were ecstatic with the novel feeling of independence, they were well aware of the fact that that independence was achieved at the cost of the invaluable lives of the brave freedom fighters who had sacrificed their lives for the very purpose of independence. By their deeds, they epitomized themselves to be the real heroes, and leaders of the nation in stricto sensu. They, in fact, inspire us to live a life with a sense of oneness among all nationals.

1947 to 1950- the Dawn and the Dusk:

The coming to an end of the struggle for independence brought with it a new struggle- the struggle to live meaningfully as an independent nation and at the same time establish a democracy based on the ideas of justice, liberty, equality, and fraternity. The need of a new constitution forming the basic law of the land for the realization of these ideas is paramount. Therefore, one of the first tasks undertaken by independent India was framing of a new constitution.

The formative stage of the constitution was much eventful. However, the Draft Commission was published in January 1948. The people of India were given 8 months to discuss the draft and propose amendments. The constituent Assembly held 11 sessions. The Draft constitution was considered for 114 days. In all, the Constituent Assembly sat for two years, 11 months 18 days. The new constitution of India was adopted by the Constituent Assembly on 26th November, 1949 and signed by the President, Dr. Rajendra Prasad. Arts 5, 6, 7, 8, 9, 60, 324, 367, 367, 372, 380, 388, 391 and 393 came into force at once. The remaining provisions of the constitution came into force on 26th January, 1950, which is the date of the commencement of our constitution.

The gestation period of the formation of the novel constitution has undergone so much debate and discussion replete with thoughts touching minutely every aspect of the lives of the people from every corners of the nation so that all can make the best use of himself in nation building.

It is needless to say that the far sight of the eminent members of the constituent Assembly was based on the ideas of justice, liberty, equality and fraternity, which were less subjective and more objective in their nature.

Nature of the Indian Constitution:

Dr. Ambedkar, the Chairman of the Drafting Committee has stated, "I think it is agreed that our constitution notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces (states) nonetheless, is a federal constitution".

The existence of co-ordinate authorities independent of each other is the gist of the federal principle.

Characteristics of a Federal Constitution:

A federal constitution usually has the following essential characteristics:-

i. Distribution of Powers: Federation means the distribution of powers of the state among a number of co-ordinate bodies originating in and controlled by constitution. The basis of such distribution of powers is that in matters of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to the union, and matters of local concern remain with the states.

ii. Supremacy of Constitution: Every power, executive, legislative or judicial whether it belongs to the nation or to the individual, state is subordinate to and controlled by the constitution. The constitution in a federal state constitutes the supreme law of the land.

iii. A Written Constitution: The foundations of a federal state are complicated contracts. To base an arrangement of this kind upon understandings or conventions would certainly generate misunderstanding and disarrangements unless the terms of the constitution are reduced into writing.

iv. Rigidity: A constitution of a country considered to be a permanent document. It is the supreme law of the land. This supremacy can only be maintained if the method of amendment is rigid.

v. Authority of Courts: The Judiciary, being an independent wing, has, in a federal polity, the final power to interpret the constitution and guard the entrenched provisions of the constitution.

There are certain provisions where the Indian constitution contains the modification of the federal principles:-

1. Appointment of Governors:- The Governor of the states are appointed by the President (Art.155 & 156) and answerable to him. But they are only the constitutional head of the state and normally act on the advice of his ministers.

2. Parliament's Power to legislate in the National Interest: Under Art. 249, Parliament is empowered to make laws with respect to every matter enumerated in the state list if the Rajya Sabha passed a resolution by 2/3 majority that it is necessary in the national interest.

3. Parliament's power to form new States and alter boundaries of existing state: The provisions in Art.3 take into account the fact that the Constitution contemplated readjustment of the territories of constituent states which might arise in future.

4. Emergency Provisions: During emergency, the normal distribution of powers between the Centre and the States is completely suspended.

The Preamble:

The Preamble sets out the main objectives which the legislation is intended to achieve. It expresses what we had thought or dreamt for so long. It embodies in a solemn form all the ideals and aspirations for which the country had struggled during the British regime. It is a key to open the mind of the makers, and shows the general purpose for which they made the several provisions in the Constitution.

Significance of Fundamental rights: The Fundamental Rights are prohibitions against the state. The state cannot make a law which takes away or abridge any of the rights of the citizens guaranteed in the Part- III of the constitution. Power is conferred on the Supreme Court and the High Courts to grant remedies in the nature of writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari etc. whenever these rights are violated. However, these rights are not absolute rights. The State is empowered to impose reasonable restriction and curtail these

rights in the interest of society. Restrictions may sometimes amount to prohibition.

Directive Principles of State Policies:

The directive principles of state policies contained in Part-iv of the constitution set out the aims and objectives to be taken up by the state in the governance of the country. Unlike fundamental rights, those rights are not justiciable. The idea of a welfare state envisaged in our constitution can only be achieved if the state strives to implement them with a high sense of moral duty.

In the modern day context, the judiciary has now taken itself the responsibility of implementing the Directive Principles as fundamental rights. To name a few, Equal pay for equal work, Protection of children from exploitation, and abolition of child labour in hazardous works, Free and compulsory education of children below the age of fourteen years, Protection of working women from sexual harassment, Free legal aid to poor and speedy trial of under trial prisoners, Right to work and medical assistance to workers and protection of ecology and Environmental Pollution.

Fundamental Duties:

The most important area in the Constitution in my view is the area of Fundamental duties. If all persons perform their duties properly, nobody will have to bother about their rights. It is so, for the reason that rights of them may be the duties of others who will take care of them. Part IV-A which consists of only one Article 51-A was added to the Constitution by the 42nd Amendment, 1976. This Article says that it shall be the duty of every citizen of India-

- a. To abide by Constitution and respect its ideal and institutions, the National Flag and the National Anthem;
- b. To cherish and follow the noble ideals which inspired our national struggle for freedom;
- c. To uphold and protect the sovereignty, unity and integrity of India;
- d. To defend the country and render national service when called upon to do so;
- e. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- f. To value and preserve the rich heritage of our composite culture;
- g. To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creature;
- h. To develop the scientific temper, humanism and the spirit of inquiry and reform;
- i. To safeguard public property and to abjure violence;
- j. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements;
- k. Who is parent or guardian to provide opportunities for education to his child or as the case be, ward between the age of six and fourteen years.

It is mention-worthy here that the Constitutions of the western countries not only specifically lay down duties of the people, they also guarantee the "right to work" to every citizen. This is an important omission in the Indian Constitution even today. Poverty is a curse, Necessity knows no law. A poor and unemployed cannot be expected to perform his duties towards the society if the society fails to discharge its obligation towards individuals. The right to work should, therefore, be guaranteed to every citizen, who is expected to do certain duties to the Nation.

Importance of Fundamental Duties:

In the name of Ramarajya, people thrust to usurp power but forget the sacrifice that King Ram had undergone for the sake of his State and subjects. Mahatma Gandhi had once said, "the best right for me is the right to perform my duty". It is thought provoking. His life was a reflection of this ideology. Dr. A.P.J. Abdul Kalam said about simplicity but his own life per se was the quintessence of simplicity.

It is said that acts and conduct speak louder than words. If Abu Bakr al-Baghdadi, the worst of the worst, one of the world's most enigmatic bloodthirsty terrorists, preaches non-violence, it can hardly be acceptable by anyone. If the law-makers are the law-breakers, that the State has to undergo a state of lawlessness, is a natural consequence. People in power must realize that power must be exercised with a sense of responsibility so that the proverb "power corrupts and absolute power corrupts absolutely" may not come true. It is with that very idea of 'check and balance' with which the Constitution is framed. Things like power are vested in one, with a purpose. If power is exercised and the very purpose is vitiated, then the power in question is of no meaning for its being a mockery of the same.

Administrative Apathy or Judicial Overreach:

It is interesting note that it had taken 2 years, 11 months and 18 days in making our Constitution. But it took 16 years to make legislation on sexual harassment of women at work place notwithstanding the fact that the guidelines for the same had already been laid down by the Supreme Court. No pretext in such undue delay in urgent matters can appeal to common sense. Is the stature of politicians at par with the corrupt bureaucrats who take pleasure in seeing files unremoved from their respective tables for an unreasonable period of time with an ulterior motive of being gratified? Justice Thakur claimed that the faith of common man is depreciating in the institution as cases are piling up and the number of judges to hear the matter is pathetically low. He also recalled how successive governments have been showing apathy towards the judiciary's demand of increasing infrastructure. A teary-eyed justice Thakur requested the (PM Modi's) government to address the issue. As the question still remains unanswered, it poses yet another big a question against the camouflage commitment on the part of the present government also. After all, the judiciary doesn't require interfering in the administrative policy matters. But if the government's inaction is detrimental to the interest of the common man, then the judiciary has an obvious reason to become proactive, as it is directly accountable to the common man of the country.

Conclusion:

The Preamble, the Fundamental Rights and the Directive Principles of the State Policies, taken together, constitute the conscience of the Indian Constitution. In this context it can be said that brain is something which is related to mind whereas conscience is something which is related to heart. A thing related to mind is understood but a thing related to heart is rather felt or perceived. The Constitution of India is a perfect document replete with philosophy, ideology, morality, religious values and objectives of widest possible amplitude reduced into writing for the purpose of making various moral duties enforceable under color of certain legal duties. A conjoint perusal of the preamble and the fundamental duties leaves with a deep reminiscence of our past along with the consciousness of the present to make us duty bound for the future. For leadership, people usurp power but forget about their responsibility. While being in leadership people forget about the struggle-some period of independence and don't hesitate to be corrupt. They don't take time to realize that they are enthroned on the heap of the corpses of martyrdom. Needless to say, if the protector becomes the predator, the common man becomes the scapegoat. The provisions in the Constitution are interwoven so nicely that there should not be misuse of power but the persons with strong propensity of corruption, somehow or other, make ways out for gratification of their greed at the cost of the interest of the nation. It is high time that we should regain consciousness in matters of our Constitutional commitments and strive to overcome the present day challenges, before it is too late.

Suggestions:

1. The top level Ministers and other officials have to be role models for their subordinates in particular and the common people in general.
2. Antecedent of a person should be analyzed before choosing him as a representative.
3. Every system of governance should be people friendly for the

simple reason that the nation belongs to the common people.

4. Common men should be educated in matter of his being an integral part of nation building. They should be made aware of their rights and duties so that they will be in a position to remain vigilant in their normal course of actions.
5. People should be made aware of their role in election instead of beguiled. They should be transformed from "note for vote" to "note as a ground for no-vote".
6. India has a strong judiciary. Men in the Judiciary must be of high moral character. No lenient view should be taken in matter of alleged judicial misconduct.
7. The Justices of the Supreme Court and High Courts shouldn't make lavish use of government facilities or else such mind set in particular may tarnish the image of the judiciary in general.
8. Corruption in any manner should not be tolerated at all because why must we tolerate an irresponsible corrupt official while the honest, who could serve the nation better, stray, for want of opportunity.
9. Most importantly, provisions should be made whereby the public officers will be made duty bound to pay respect, in accordance with the general or local custom, to a common man who visits a public office so that the ego of their being superior and the common man inferior, will be falsified.

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