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Viksit Bharat @2047

Governance Transformed

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Chapter 12. The Evolution of the Constitution of India

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Introduction

Breaking the adamantine shackles of slavery, India attained independence on August 15, 1947, and became a sovereign democratic republic on January 26, 1950, with the coming into force of independent India's Constitution. The Constitution was passed, adopted, and enacted by the Constituent Assembly and given to ourselves—"We, the people of India"—on November 26, 1949. The Constitution is the supreme *lex* (law) of the land and the fount of all laws. The organs of the State—the Legislature, the Executive, and the Judiciary—owe their origin to the Constitution, derive their authority from the Constitution, and have to discharge their functions within the framework of the Constitution. However, as "all constitutions are heirs of the past as well as the testators of the future," it would be worthwhile to recall the great republican heritage of India before taking up the evolution of the Indian Constitution.

Republican Traditions in Ancient India

The origin of republics and republican traditions can be traced to the Vedic times, beginning with the *Rig Veda* composed

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before 1000 B.C.E. Ancient India was “dotted with republics, and even where there were monarchies, they were either elected or limited. They were never absolute” (Constituent Assembly Debate [CAD], 1948, November 25; see also Jaiswal, 2023, pp. 86–97). The Buddhist *bhikshu sanghas*—the monastic communities of Buddhists—had rules of parliamentary procedure regarding motions, resolutions, quorum, whip, counting of votes, voting by ballot, censure motion, regularisation, referendum, etc. Many of these rules of parliamentary procedure must have been borrowed from the contemporary assemblies. By 600 B.C.E., many *maha-janpadas*, or republics, dotted India (Jaiswal, 2023, pp. 21–23).

Election of the Vedic King

It appears from many writings that kingship was originally elective. The earliest reference to the election of a ruler is found in the Coronation Hymn of the *Atharva Veda*: “The people elect you to rulership. Be seated on this high point in the body of the State and from there vigorously distribute the natural wealth and material prosperity to the people” (*Atharva Veda*, III. 4.2; also see Jaiswal, 2023, pp. 186–187). In post-Vedic times, “Sovereignty (kingship) was dissolved, and democratic government set up.” There are references that some countries were under kings and some were under the *ganas* (republics) (Jaiswal, 2023, p. 26). Later, it became hereditary due to the evolved rule of primogeniture (Nehru, 2004, p. 111). The king was “the first social servant and ultimately dependent on the suffrage of his subjects” (Basham, 2004, pp. 34, 82). The *Chandogya Upanishad* implores, “Open the door to thy people and let us see thee for the obtaining of the sovereignty” (*Chandogya Upanishad*, 2/24/8; probably composed in the fifth century B.C.E.). The king was not an absolute monarch, and “the ideal king was a paragon of energetic beneficence” (Basham, 2004, p. 89; “*ranjeti iti rajah*” means, one who pleases [the subject] is the king).

Sabha and Samiti

The *Rig Veda* and the *Atharva Veda* contain references to *sabha* and *samiti*. The *samiti* was the general assembly or the house of the people, and the *sabha* was the house of elders, which may be said to have “contained the rudiments of modern Parliament” (Kashyap, 2015, p. 9). The members of the *sabha* were called *sabhasad*. The Speaker, entrusted with the responsibility of maintaining order and regulating business of the *sabha*, was called *sabhapati* or *sabhadhyaksha*, and the Marshall was called *sabhapal*. The *Rig Veda* describes the attributes of the Speaker as well-versed in the matters of the State, experienced, astute, impartial, righteous, and mature in age and learning (Kashyap, 2015, p. 9; also see Altekar, 1949, pp. 95–98). The Vedic *sabha* and *samiti* provided a well-structured forum for discussion and were to aid concurrently in decision-making. Like the prime minister, a true Rig Vedic king “attended the Samiti” (*Rig Veda*, IX. 92.6; see Jaiswal, 2023, pp. 13–14.). The voice of the *samiti* was not to be disregarded or violated. In the *Mahabharata*, the gathering of common people is called *jan sadan*, which was an earlier variant of Parliament or Assembly. Megasthenes chronicles that “sovereignty (Kingship) was dissolved, and democratic governments set up in various places” (Epitome of Megasthenes, as quoted in Jaiswal, 2023, p. 21). The *Ashtadhyayi* of Panini and the *Arthashastra* of Kautilya refer to the role of *sanghas* and *ganas* at length (Basham, 2004, pp. 84, 97; also see Jayaswal, 2023, pp. 21–27, 40–48). The members of the assembly and its president were venerable, as the *Yajur Veda* says, “Salutations to the Assembled and salutations to the Sabhapati” (the presiding officer) (*Yajur Veda*, XVI. 24; *Namah sabhabhyah sabhapatibhyascha*).

Centrality of Deliberations

Democracy is “government by deliberations.” The *Rig Veda* and the Upanishads reflect the long argumentative tradition of India. A hymn of the *Rig Veda* exhorts the assembled to “talk together, walk together so that there is unity and harmony” among them (*Rig Veda*, X-192-2; also see Sen, 2005). A hymn in the *Atharva Veda*—“May the adversary not win the debate and render me superior in the debate”—shows the importance attached to debates (Jaiswal, 2023, p. 14). Women such as Gargi, Maitreyi, and Bharati participated in scholarly debates.⁸⁸ In the Santi Parva in *Mahabharata*, Bheeshma tells King Yudhishtira about the importance of deliberations: “When the members or the ‘gana’ cease to discuss among them on account of uncalled for anger, on account of natural avarice, there is the symptom of discomfiture” (*Mahabharata*, Shanti Parva, CVII: 6–32). *Sabhas* and *samitis* were to meet periodically and make decisions after discussion and consensus. There were many *gana rajyas*, or republics. *Gana* means the multitude or the people. A *gana rajya* denotes government by the people who meet in assembly.

Council of Ministers

The king was to listen to the counsel of his ministers—the *mantri parishad*—who were to speak freely and openly, and the king was to give full consideration to their advice. Often, the *mantri parishad* exerted great influence and could make decisions in the absence of the king (Basham, 2004, p. 100). Public opinion was considered more powerful than the king, as the rope made of many fibres is strong enough to drag a lion.

⁸⁸ Gargi was a great Vedic scholar in the court of King Janaka. She famously engaged in a philosophical debate with sage Yajnavalkya. Maitreyi was another scholar of Advaita philosophy, a contemporary of Gargi in 800 B.C.E. Bharati was wife of Mandan Mishra who challenged Shankaracharya in debate after her husband was defeated by Shankaracharya in 10th century C.E.

The king was enjoined to keep a finger on the public pulse and never to offend it too blatantly. The function of this council was to give advice to the king, not to govern, but it was not a mere rubber-stamping body. Texts proscribed arbitrariness and tyranny, and the ruler was urged to execute his duties in accordance with the *dandaniti*; that is, the penal code (Basham, 2004, pp. 114–115; also see Jaiswal, 2023, pp. 310–318).⁸⁹

Emphasis on Righteous Conduct

Raj dharma, or the righteous conduct of the ruler, was greatly emphasised in the discharge of duty and the conduct of proceedings of the *sabhas*. *Dharma* denotes not religion, but righteous order and conduct. *Raj dharma* is akin to modern constitutional morality or the moral obligation of the ruler. Inside the old Lok Sabha chamber overlooking the Speaker's Chair, the words inscribed are "Dharma Chakra Pravartana," which means "for the rotation of the wheel of righteousness." At the main entrance of the Supreme Court of India, there is an inscription "Yato Dharma Tato Jaya"; that is, where dharma is, there will be victory. According to the *Mahabharata*, "When Raj dharma becomes lifeless, the very basis of civilisation sinks. When the traditional State ethics is departed from, the very basis of civilisation decays" (*Mahabharata*, Shanti Parva, LXIII: 18, 29). The sacred injunction was, "One must either not enter an Assembly Hall, or he must speak there with all the

⁸⁹ In the *Mahabharata*, there is a story of a king, Venu, who was killed because of his wickedness and tyranny, and, Prithu, his son was made the king. He took the oath, "I will constantly protect the earth in thought, words and deed. I will carry out the established laws in accordance with Dandaniti. I will never act arbitrarily." The *Jataka* stories give instances of kings deposed by mass revolt.

righteousness. For one who does not speak or who speaks falsely, does himself in the equal sin involve.”⁹⁰

Nourishing Taxation

Taxes were to be collected by a king like the honeybee, “without plucking the flower.” Just as one plucks ripe fruits from the garden, likewise, revenue was to be collected when due. Collecting tax when not due was prohibited because that would make the people angry and spoil the very source of revenue. The *Mahabharata* says, “as the calf suckles the udders of her mother giving pleasure to the mother and nourishment to the suckling calf, so should the taxation be doubly beneficial” (*Mahabharata*, Shanti Parva, XII: 88.4. Also see Jaiswal, 2023, pp 319–326; Kautilya, *The Arthashastra*, translated by L. N. Rangarajan, 1992, pp. 222–250). Double taxation, tax without forewarning, and repressive taxation were forbidden lest there be a flight of capital.

Raj Dharma and Dandaniti

The ruler was enjoined by the texts to uphold the *raj dharma*, his sacred obligation. The king assumed the title of “Dharmaraja” (righteous ruler) which is also the name of Yama—the mythological god of death. The king carried *danda* or sceptre, a symbol of coercion and punishment, but the *danda* was to be wielded according to the *dandaniti*; that is, according to the penal code of the realm. Justice was to be dispensed according to the established laws and the *dandaniti*, and without

⁹⁰ “That is not an assembly where there are no elders / Those are not elders, who do not speak with righteousness / That’s no righteousness, where there is no truth / That’s not the truth that leads to deceit” (*Mahabharata*, Shanti Parva, V: 35, 58).

delay. The king was administered an oath of loyalty to the law and the Constitution of the realm and to hold the State for achieving the welfare of his people, both material and moral. If the oath proved false at any stage, the title to remain on the throne would stand forfeited—an ancient variant of recalling the chosen one (*Mahabharata*, Shanti Parva, LIX: 106, 107; Anusasan Parva, LXI: 32, 33. Also see Jaiswal, 2023, pp. 216, 220; Sen, 2010, pp. 20–21).

Appointment of Magistrates

There was a system for the appointment of magistrates for the dispensation of justice. The *Jatakas*—the Buddhist tales—speak about a bench of five magistrates. The *Arthashastra* advises a court for every 10 villages and higher courts for *janpadas* and provinces. There were judicial standards set for the judges. They were to be learned, righteous in conduct, devoid of anger, and as impartial as humanly possible. The honesty of the judges was to be tested periodically by agent provocateurs. The *Vishnu Smriti* prescribes banishment and forfeiture of all property for a judge found guilty of corruption or injustice. There were distinct rules of evidence for civil and criminal cases (Basham, 2004, p. 117. Also see Sukranitisara, IV.5.6, quoted in Jaiswal, 2023, pp. 312, 318).

State as Benefactor of the Weak

The ancient texts lay great emphasis on *yogakshema* or the well-being and happiness of the people—the true basis of a

king's happiness.⁹¹ The *Mahabharata* says, "The State was created to protect the weak, the poor, the exploited, the helpless, and the oppressed from the strong. That large class of the weak only survives because of the power of the King (the State) and this is an important aspect of Raja dharma" (Joshi, 2018). A well-governed State is one where there is adequate growth in assets and services, where assets are well distributed and protected, and all citizens get their fair share (Thirukkural, On kingly excellence, p. 79). These lofty ideals resonate through the Preamble and the Directive Principles of the Indian Constitution.

Panchayats or Local Self-Governments

The unbroken tradition of the Panchayat system as grassroots democracy—"the best guarantee of democracy"—is a unique contribution of ancient India. "Panchayat" means the council of five chosen people who performed administrative and judicial functions at the village level. The Panchayat system has been further strengthened by the 73rd and 74th Constitution Amendments, underscoring that a bottom-up democracy is quintessential democracy and always preferable to top-down democracy (Singh, 2021, January 14).

Legal and Constitutional History of India

The British came to India as a trading company—the East India Company, incorporated in December 1600—and it soon spread a

⁹¹ Kautilya, *Arthashastra*, Bk. 1: 19, 16, 27. *Mahabharata*, Shanti Parva: LXIII: 29. Kautilya, *Arthashastra*, Bk.1: 19, 16. It says, "In the happiness of the subjects lies the happiness of the king and in their welfare, his welfare. A king has no personal likes but the likes of the subjects" (Jaiswal, 2023, pp. 337–341).

wide network of military and administrative systems. By the Charter of 1677, the British Sovereign empowered the Company to issue its coins, and the Charter of 1683 granted it full power to make peace and war with any of the “heathen nations.” The Charter of 1726 vested the Governors and the Councils of the Presidencies of Bombay, Madras, and Calcutta with the power to make laws. With the disintegration of the Mughal Empire, the Charters of 1757 and 1758 gave the Company more powers, laying the foundation of British rule in India. The Company acted under the authority of the British Crown and was granted certain legislative and judicial authority (Rao, 2021; also see Kashyap, 2015, p. 19).

Developments Between 1773 and 1857

The Regulating Act of 1773 marks the beginning of control over the government of the Company by the British Parliament. The rules and regulations made by the Governor-General and the Council were not to be repugnant to the laws of England. The Acts of the British Parliament of 1781, 1797, and 1813 further enlarged the powers of the Governor-General and the Governors of the Presidencies. The Charter Act of 1833 provided for a Governor-General who was known as the Government of India and his Council as the Indian Council. The Charter Act of 1853 set up a 12-member Legislative Council, presided over by the Governor-General. It differentiated the legislative and executive functions of the State (Singh, 2015).⁹²

⁹² Questions could be asked, and the policy discussed in the Legislative Council. Legislative business was conducted in public instead of in camera, and reports of the proceedings were officially published.

The Indian Councils Act, 1861

The First War of Independence in 1857 compelled the British to associate Indians and decentralise authority in their own long-term imperial interest. The Indian Councils Act of 1861 expanded the Executive Council and introduced the element of Cabinet Government. Under this Act, the representation of Indians began in the Legislative Councils in the three Presidencies of Bombay, Madras, and Bengal as well as some other provinces.⁹³ The Council was forbidden to transact any business other than through consideration and enactment of legislative measures. The Legislative Council established at the Centre and in the Presidencies and Provinces under the Act of 1861 continued until 1892. The Act caused popular disaffection as it failed to meet the rising aspirations of the people of India. The Indian Councils Act of 1892 reconstituted the Central and Provincial Legislative Councils of India and increased the number of non-official members, but the majority of official members was maintained. The Act of 1892 conceded to the Council the privilege to discuss the budget and ask questions under certain conditions.⁹⁴

Developments Between 1909 and 1919

The Indian Councils Act of 1909 enlarged the Legislative Council and introduced the principle of election and representation. The Act allowed the election of 27 Indians out of a total of 68 members of the Legislative Council and laid the firmer basis for a parliamentary system in India. Since the Act

⁹³ Three Indians, namely, the Raja of Banaras, the Maharaja of Patiala, and Sir Dinakar Rao were nominated to the Legislative Council in 1862 (see Singh, 2016, p. 6).

⁹⁴ The first question was asked in the Legislative Council on February 16, 1893, by the Raja of Bhinga (see Singh, 2015).

also provided for communal representation, it set the political mood on the issue of nationalism. This led to the Montagu–Chelmsford Reforms and the enactment of the Government of India Act, 1919. The Preamble to the Act declared that the objective of the British Government was the gradual introduction of responsible government in India. The Act established a bicameral legislature at the Centre consisting of the Governor-General and the two Houses, the Council of States and the Legislative Assembly. The Council of States comprised 60 members, of which 34 were elected. The Legislative Assembly had 145 members, of which 104 were elected and 41 were nominated which included 26 officials. Both chambers had equal power, except that the Legislative Assembly had the power to grant supplies. Courts had no power to invalidate the laws passed by the legislature. The Governor-General was the keystone of the whole constitutional edifice which was unitary.

The first Central Assembly constituted under the 1919 Act came into being on February 3, 1921. The Assembly was presided over by the President.⁹⁵ The Central Legislative Assembly was reconstituted in the years 1924, 1927, 1931, 1935, and 1945. The new legislatures had greater political powers, which were increased gradually, though reluctantly, with the mounting struggle for independence. The Act of 1919 introduced diarchy in the Governors' provinces, which means rule by two authorities—one accountable and the other not. The Act provided for two lists of subjects—the Central and Provincial. The Provincial list was further divided into the “Reserved” and the “Transferred” subjects. The Reserved subjects were kept under the control of the Governor and his Executive Council. The Transferred subjects were administered by the Ministers appointed by the Governor from among the elected members of the Legislative Council. The system of diarchy worked in the provinces from 1921 to 1937.

⁹⁵ The nomenclature of the President was changed to Speaker after independence in 1947.

Government of India Act, 1935

The rising tide of the Nationalist Movement led to the enactment of the Government of India Act, 1935, which envisaged federal autonomy. The Act came into force with regard to provinces in April 1937, but the Government of India continued to operate according to the provisions of the Government of India Act, 1919, except for the executive and legislative powers assigned to it under the Constitution Act of 1935. The old diarchic system was abolished, and the distinction between Transferred and Reserved Subjects was eliminated, but the Constitution of the Central Government in India remained as it was under the Act of 1919. The Legislative Assembly and the Council of States under the Act of 1919 functioned until 1947.

Developments After 1935

The formation of Congress governments in the provinces under the Government of India Act, 1935, increased communal tension as the Muslim League could not get representation proportionate to their numerical strength. The Muslim League, at their Lahore session, passed a resolution on March 23, 1940, for the formation of an independent state of Pakistan. The Quit India Movement of 1942 shook the foundation of the British Empire. With the Labour Party coming to power in England, Prime Minister Clement Richard Attlee declared in the House of Commons on March 15, 1946, that India should have the freedom to decide her own destiny and the form of government. The British government announced on February 19, 1946, that a mission of three Cabinet Ministers would be sent to India to settle the matter. On March 24, 1946, the Cabinet Mission arrived in Delhi with the proposal for setting up a Constituent Assembly, which was to decide the future of India.⁹⁶ However,

⁹⁶ Sections 1 and 9 of the Indian Independence Act, 1947.

differences arose between the Congress and the Muslim League. Finally, the Congress formed an interim government in September 1946.

Indian Independence Act, 1947

The Muslim League, unyielding in its demand for a separate nation of Pakistan, achieved its objective with the passing of the Indian Independence Act, 1947, which provided for the partition of the country. The Legislative Assembly and the Council of States ceased to exist at midnight on August 14, 1947, after India attained independence. The legislative functions of the Central Legislature were taken over by the Constituent Assembly (Legislative).⁹⁷

Framing of the Constitution

Demand for Home Rule, Dominion, and Constituent Assembly

The demand for self-rule kick-started after the First War of Independence in 1857. At the Bombay session of the Indian National Congress in 1889, a resolution was passed for the Home Rule Scheme (Rao, 2021, pp. 33–34). This was followed by the drafting of the Constitution of India Bill, 1895, under the inspiration of Lokmanya Bal Gangadhar Tilak, as part of the British Empire (Rao, 2021, pp. 5–14). After the outbreak of the First World War, Gopal Krishna Gokhale made a draft scheme in

⁹⁷ The Cabinet Mission, headed by Lord Pethick Lawrence, came to India in March 1946 to discuss the transfer of power from the British Government to Indians.

1914 for a self-governing dominion of India, followed by the passing of a resolution by the Indian National Congress in 1918 for the application of the self-determination principle by India. In 1922, Mahatma Gandhi declared, “Swaraj will not be a free gift of the British Parliament but a declaration of India’s full self-expression through her freely chosen representatives” (Rao, 2021, pp. 33–34). There were inexorable developments as the struggle for freedom gathered momentum. In 1936, Pandit Jawaharlal Nehru made a demand for a Constituent Assembly elected on the basis of adult suffrage, followed by a demand for the withdrawal of the Government of India Act, 1935, and the formation of a Constituent Assembly elected by adult franchise (Rao, 2021, p. 34). Raising the demand for freedom, Satyamurti thundered in the Central Assembly in 1937: “Mr. President, when once a great people make up their mind to obtain their freedom, there is no power on earth, not even Great Britain, which can stand in her way” (Rao, 2021, p. 37). M. N. Roy made a draft Constitution in 1944 articulating a constitutional vision for free India. The Sapru Committee Report prepared a detailed draft Constitution in 1945. A *Gandhian constitution for free India* was prepared by Shriman Narayan Agarwal, a Gandhian economist, in 1946, with a foreword by Gandhi.

Formation of the Constituent Assembly

Labour Prime Minister Clement Attlee declared in the House of Commons on March 15, 1946, that India should have freedom, but “what form of government is to replace the present regime is for India to decide” (Parliamentary Debates, 1946, pp. 1415–1423). The Cabinet Mission, which visited India in March 1946, recommended that the most satisfactory method to form a Constituent Assembly would be by an election based on adult franchise. To avoid delay in conducting elections, it was decided to utilise the recently elected Provincial Legislative Assemblies as electing bodies for the formulation of the

Constituent Assembly (Rao, 2021, pp. 208–218). It was agreed that the strength of the Constitution-making body would be 389. The elections for the 296 seats assigned to British-Indian provinces were completed by July–August 1946. Out of 296 seats, Congress won 208 seats and the Muslim League 73 seats. As the Muslim League, despite having won 73 seats, boycotted the Constituent Assembly, the Congress was apprehensive that the British might dissolve the Assembly. So, the Constituent Assembly made it clear that it could dissolve itself only by passing a resolution “assented to by at least two-thirds of the whole number of members” (Austin, 1999, p. 9). After the partition, the strength of the Constituent Assembly was reduced to 299, and it was dominated by the Indian National Congress. In order to make it representative, the Congress ensured that members with expertise and talent in administration, law, and constitutional law were made members of the Constituent Assembly. Among them were A. K. Ayyar, H. N. Kunzru, N. G. Ayyangar, Dr. B. R. Ambedkar, K. Santhanam, M. R. Jayakar, Sacchidanand Sinha, K. M. Munshi, and Shyama Prasad Mookerjee (Austin, 1999, p. 3).

Objective Resolution of the Constituent Assembly

The Constituent Assembly first met on 9 December 1946, attended by 210 members. On December 13, 1946, Pt. Jawaharlal Nehru moved the Objective Resolution, declaring its firm resolve to proclaim India as an independent sovereign republic and to draw up for her future governance a Constitution “wherein shall be guaranteed and secured to all the people of India justice, social economic and political, equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality” among others (CAD,

1946, December 13). The Resolution was unanimously adopted by the Constituent Assembly on January 22, 1947.

Freedom at Midnight

The Indian Independence Act of 1947 provided for division of India into two dominions, to be known as India and Pakistan, from the appointed date of August 15, 1947.⁹⁸ The Constituent Assembly became a sovereign and representative body on August 15, 1947, as most of the states were represented in the Assembly. The first session of the sovereign Constituent Assembly was held on the night of August 14 and the morning of August 15 when Pt. Nehru made his much-acclaimed “A tryst with destiny” speech and recalled the ambition of Mahatma Gandhi, “the greatest man of our generation” who wanted “to wipe every tear from every eye.” Conscious of the formidable task, Nehru hastened to add, “that may be beyond us but as long as there are tears and sufferings, so long our work will not be over” (CAD, 1947, August 15).

Committees of the Constituent Assembly

The making of the Constitution was a prodigious task. The Constituent Assembly, therefore, set up as many as 17 committees, of which eight major committees were chaired either by Nehru, Sardar Patel, or Dr. Rajendra Prasad. The committee members worked behind the scenes, fostering consensus and unity, and arrived at decisions after extensive

⁹⁸ The GOI Act, 1947, was passed by the British Parliament on July 5, 1947. The Act received royal assent on July 18, 1947. It abolished the title of the “Emperor of India” and provided for a Governor-General to be appointed by His Majesty, the King of England under Section 5 of the Act.

deliberations. The Drafting Committee was chaired by Dr. Ambedkar (Singh, 2016, pp. 15, 16).

Drafting of the Constitution

On August 29, 1947, the Drafting Committee was formed to scrutinise and consider the draft Constitution prepared by the Office of the Assembly. The Drafting Committee, chaired by Dr. Ambedkar, first met on August 30, 1947, and had, in all, 141 sittings. The Draft Constitution, as settled by the Drafting Committee, was submitted to the President of the Constituent Assembly on February 21, 1948, who caused it to be published and circulated. The suggestions, comments, and criticisms of the members and of the provincial governments, legislators, and all stakeholders including the public were considered by the Drafting Committee at their sittings held on March 23, 24, and 27 and October 18, 1948. The Draft Constitution, as finalised by the Drafting Committee, was introduced in the Constituent Assembly on November 4, 1948. Commending the Draft Constitution to the Constituent Assembly, Dr. Ambedkar said: "...all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country" (Rau, 1960, p. 32).

The Draft Constitution contained 315 Articles and eight Schedules. It was debated in the Constituent Assembly and underwent three readings and many amendments between November 4, 1948, when it was introduced, and November 26, 1949, when it was finally passed (CAD, 1949, November 25, quoted by Dr. Ambedkar in his speech). The Draft Constitution was considered in the sessions of the Constituent Assembly over 114 days. A total of 7,365 amendments were tabled, but only 2,473 amendments were actually moved and carried (CAD, 1949, November 25). The Draft Constitution had provisions under

which the Princely States were “free to create their own Constituent Assemblies and to frame their own Constitutions” (CAD, 1948, November 4).⁹⁹ However, these provisions did not find a place in the final Constitution.

Adoption of the Constitution

The Constitution of India was adopted on November 26, 1949. The last session was held on January 24, 1950, the day when the *Jana gana mana* was made the National Anthem, and the song *Vande mataram* was conferred an equal honour as it had “played a historic part in the struggle for Indian freedom.” Thereafter, members signed three copies of the Constitution: one in English, completely handwritten and illuminated by artists; the second copy also in English but printed; and the third copy handwritten in Hindi (CAD, 1950, January 24; also see Lok Sabha Secretariat, 2016, p. 255).

The provisions relating to citizenship, elections, Provisional Parliament, and temporary and transitional provisions were given immediate effect on November 26, 1949, the day the Constitution was adopted. The remaining provisions came into force on January 26, 1950, which is the date of commencement of the Constitution. The Constituent Assembly had 167 sittings over a period of 2 years, 11 months, and 9 days.

Criticism and Adulation

There were members who criticised the Constitution. It was said that “the glamour of our present leaders has dimmed the vision of our experts” (CAD, 1949, November 21, pp. 749–753,

⁹⁹ The suggestions on the Draft Constitution, acceptable to the Drafting Committee, were conveyed by Dr. B. R. Ambedkar to the President of the Assembly through a letter dated October 26, 1948.

quoted by Sardar Hukum Singh in his speech); “we wanted the music of veena or sitar but here we have the music of an English band” (CAD, 1949, November 21, pp. 749–753, quoted by K. Hanumanthaiah in his speech); the Preamble to the Constitution contains moral virtues which are impossible to achieve; the Directive Principles were mere pious platitudes; the Constitution, being bulky, may be a haven for lawyers; the freedom contained in Article 19 has been hedged around with exceptions and reservations (CAD, 1949, November 21); and the provision of equality of status is an empty boaster. There were forebodings that the Governors may misuse Article 356. Some members described it as a blend of idealism and reality. Dr. Ambedkar was hailed as “the main artist” (CAD, 1949, November 25, pp. 963, 964, quoted by Mahavir Tyagi in his speech). It was also said that “we wholeheartedly bequeath it to posterity in the hope that they will forgive our shortcomings, if any, and make up these shortcomings with their wisdom” (CAD, 1949, November 25).

Legislative Assembly and Provisional Parliament

The Constituent Assembly took on the additional work of legislation for the country as the Legislative Assembly of Independent India in the late evening of August 14, 1947. It functioned as the Constituent Assembly where clauses pertaining to the Constitution were discussed, and it transformed itself into the Legislative Assembly to conduct legislative business. The Constituent Assembly of India (Legislative) became the Provisional Parliament immediately before the commencement of the Constitution on January 26, 1950, and it ceased to exist under Article 379 of the Constitution

of India when both Houses of Parliament were constituted on April 17, 1952.¹⁰⁰

Outstanding Features of the Constitution

A Comprehensive Document

The Indian Constitution is the longest constitution of the world. Sir Ivor Jennings criticised it as “too long, rigid and prolix” and “a truly oriental display of occidental constitutional devices” (Nariman, 2023, pp. 9, 10). “Long” it is but “too rigid” certainly not in view of the amendments it has undergone. Dr. Ambedkar justified the inclusion of details to prevent possible perversion of the Constitution (CAD, 1949, November 25, p. 38). The framers, apart from laying down the fundamental principles of governance, also provided a detailed constitutional architecture for the federal and state governments, local self-governments, the Union and State Legislatures, and an independent three-tier judiciary. The legislative, financial, and administrative powers between the Union and the States have been distributed exhaustively.¹⁰¹ There are elaborate provisions governing the imposition, collection, and distribution of taxes

¹⁰⁰ The Constituent Assembly (CA) met in the Constitution Hall, famously known as the Central Hall of old Parliament building and was presided over by Dr. Rajendra Prasad. As CA (Legislative), it met in the Legislative Assembly Hall (now the old Lok Sabha Chamber) to transact legislative business, and it was presided over by P. V. Mavalankar. The CA (Legislative) met from November 17, 1947, to December 24, 1949, and had six sessions. The Constituent Assembly of India (Legislative) became the Provisional Parliament immediately before the commencement of the Constitution on January 26, 1950. The Provisional Parliament ceased to exist under Article 379 of the Constitution of India when both the Houses of Parliament were constituted on April 17, 1952. The Provisional Parliament first met on January 28, 1950, and had last sitting on March 5, 1952. It had five sessions from January 28, 1950, to March 5, 1952.

¹⁰¹ Articles 245–255, read with the 7th Schedule of the Constitution.

between the Union and the States,¹⁰² for dispensing equal justice to, and welfare of, the historically marginalised sections like Scheduled Castes, Scheduled Tribes, and Backward Classes.¹⁰³ The Constitution also provides for the language of the Union, regional languages, and the language of the Supreme Court and the High Courts.¹⁰⁴ The provisions relating to the Comptroller and Auditor General of India,¹⁰⁵ the Election Commission of India,¹⁰⁶ the Union Public Service Commission of India,¹⁰⁷ Commissions for Scheduled Castes and Scheduled Tribes,¹⁰⁸ Special Officer for Linguistic Minorities,¹⁰⁹ and the Finance Commission,¹¹⁰ all aim to nurture institutional democracy.

A Rainbow of Constitutional Ideals

Like the Vedic seers who proclaimed, “Let noble thoughts come to us from all directions,” the makers of the Constitution were receptive to constitutional ideals. They adopted the parliamentary form of government and the concept of single citizenship from the Westminster system of Britain; the Judiciary and the Fundamental rights from the American Constitution; the Federal System with a strong central authority, residual powers, Centre–State relations, and advisory jurisdiction of the Supreme Court from the Canadian Constitution; procedure established by law from the Japanese Constitution; and the Directive Principles of State Policy and the election of the President of India from the Irish Constitution.

¹⁰² Articles 264–300, Constitution of India.

¹⁰³ Articles 330–342, Constitution of India.

¹⁰⁴ Articles 343–351, Constitution of India.

¹⁰⁵ Articles 148–151, Constitution of India.

¹⁰⁶ Articles 324–329, Constitution of India.

¹⁰⁷ Articles 315–323, Constitution of India.

¹⁰⁸ Articles 338–342, Constitution of India.

¹⁰⁹ Articles 350B, Constitution of India.

¹¹⁰ Articles 280, 281, Constitution of India.

The ideals of “Liberty, Equality, and Fraternity,” the war cry of the French Revolution, were taken from the French Constitution. The provisions relating to freedom of trade and intercourse within the territory of the country were taken from the Australian Constitution; the three lists containing the demarcation of legislative powers between the Union and the States and the office of Governor from the Government of India Act, 1935; the Emergency provisions from the Weimar Constitution; impeachment of the President, Vice President, and the judges of the Supreme Court and the High Court from the US Constitution; and the procedure for amendment of the Constitution from the erstwhile South African Constitution.

Dr. Ambedkar responded to the accusation of plagiarism by stating that all constitutions in their main provisions must look similar and that “no body holds any patent rights in the fundamental ideas of a constitution.” It was not a slavish imitation. In fact, the Constituent Assembly “played the alchemist, turning foreign metals into Indian coin” (CAD, 1948, November 4).¹¹¹ The Constitution was drafted according to India’s needs and aspirations, taking note of the facts and realities of history (CAD, 1949, November 26).¹¹²

Parliamentary Democratic Republic

The Constituent Assembly settled on a parliamentary form of government as the country had become familiar with it due to India’s legal and constitutional history and administrative set up. A parliamentary form of government provides effective

¹¹¹ Granville Austin says, “The CA successfully played the alchemist, turning foreign metals into Indian coin” (see Austin, 1999, p. 401).

¹¹² After a review of the provisions of the Constitution of India and the Government of India Act, 1935, Seervai says, “Little could the framers of that Act have dreamt that in the Constitution of free India they would find the greatest monument to their drafting skills and constitutional insight” (see Seervai, 2008, p. 171).

leadership in emergencies as it enjoys parliamentary support. The political executive is drawn from the legislature and is accountable to the legislature collectively and individually (CAD, 1948, November 4, quoted by Dr. Ambedkar in his speech). In the US presidential system, due to the strict separation of powers, it is said that the President and the Congress run on two different clocks. In contrast, under the parliamentary system, the Council of Ministers is, in the words of Walter Bagehot, “a hyphen which joins a buckle which fastens the legislative part of the state with the executive part.” Furthermore, there is a daily assessment of the accountability of the executive by the legislators and periodic accountability by the electorate (CAD, 1948, November 4).

Balance of Powers

The Constitution of India does not envisage an absolute separation of powers between the organs of the State, as enshrined in the US Constitution. However, it does enshrine the principles about which Alexander Hamilton wrote in the *Federalist Papers* in 1778: “Parliament maketh the laws and therefore holds the power of the purse, the Executive holds the sword which executes the laws and the Judiciary which hath judgement.”¹¹³ Under the Indian Constitution, the executive power vests in the President. The President is an integral part of Parliament, without whose assent any legislation passed by Parliament cannot become law. The Council of Ministers, drawn from the legislature, is accountable to the legislature and its survival is contingent upon parliamentary support.¹¹⁴ This, in

¹¹³ Alexander Hamilton, a founding father of the USA, helped draft US Constitution and was one of the key authors of the *Federalist Papers* with James Madison and John Jay. These essays were written under the pseudonym “Publius” in order to get the new American Constitution ratified by the States.

¹¹⁴ Article 75, Constitution of India.

the words of Woodrow Wilson, enables “the ministers to lead the Houses without dictating to them and the ministers themselves be controlled without being misunderstood.” Lord Hailsham described the British Parliament as “Executature”—a legislative body under the control of the executive. When legislations are pushed through in any parliament by a majoritarian government, the description does not appear to be a hyperbole.¹¹⁵ However, in the context of the judiciary, the separation of powers is an integral part of the basic structure of the Constitution.¹¹⁶

A Federal State with Stronger Union

India is a Union of States. However, unlike the United States of America, the constituent States of India can be merged or amalgamated by Parliament through law.¹¹⁷ So, while the Union is indestructible, the States can be merged, amalgamated, or reorganised. Professor Wheare held the view that Indian Constitution “is quasi-federal ... a unitary State with subsidiary Federal features ...” (Wheare, 1952, p. 28; also see Basu, 2018, p. 64). The Constitution envisages a distinct concept of federalism or dual polity, with single citizenship and a single constituent authority which vests in Parliament alone.¹¹⁸ In times of war, other national emergencies, or a failure of constitutional machinery in States, there are distinct provisions which make it unitary.¹¹⁹ It is designed as a model of cooperative federalism, with well demarcated legislative, financial, and administrative powers between the Union and the States. Additionally, the

¹¹⁵ He was Lord Chancellor of Great Britain from 1974 to 1974. See Nariman (2023, pp. 420, 421).

¹¹⁶ *State of Bihar v. Bal Mukund Sah*, (200) 4SCC; AIR 2000 SC.

¹¹⁷ Articles 2, 3, and 4, Constitution of India. A law for merger or amalgamation of a State or States shall not be deemed as amendments to the Constitution.

¹¹⁸ Articles 5–10 and 368, Constitution of India.

¹¹⁹ Articles 352 to 360.

establishment of a single judiciary, uniformity in fundamental laws, a uniform accounting system, and common All India Services, all aim to foster administrative and legislative unity.

Rigid yet Organic

An enduring Constitution must provide the machinery for amendments to suit the changing needs of future generations. According to Jefferson, “We may consider each generation as a distinct nation, with a right, by the will of the majority to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country” (CAD, 1949, November 25, quoted by Dr. Ambedkar in his speech). Article 368 sets out the machinery for constitutional amendments. To quote Dr. Ambedkar, “those dissatisfied with the Constitution have only to obtain a two third majority and if they cannot obtain even a two third majority in the Parliament” their dissatisfaction cannot be deemed to be of the general public (CAD, 1949, November 25). The amendments are subject to judicial review and must not disturb the basic structure of the Constitution.¹²⁰ The Constitution has been amended 106 times up until 2024—that is, up to the tenure of the 17th Lok Sabha—whereas the US Constitution has undergone 27 amendments so far since it came into force in 1789.¹²¹

¹²⁰ *Keshavananda Bharati v. State of Kerala*, SC, AIR (1973); *Indira Nehru Gandhi v. Raj Narain*, SC, AIR (1975); *Minerva Mills Ltd. v. Union of India*, SC, AIR (1980); *S.P. Gupta v. Union of India*, SC, AIR (1981); *Supreme Court Advocates-on-Record Assn. v. Union of India*, SC (2016).

¹²¹ The Constitution (106th Amendment) Act, 2023, passed at the special session of Parliament—by the Lok Sabha on September 20, 2023, and by Rajya Sabha on September 21, 2023—and assented to by the President on September 28, 2023. The Act seeks to provide 33% reservation for women in the directly elected houses; that is, the Lok Sabha and the State Legislative Assemblies. It will come into force on a future date.

Independent Judiciary and the Power of Judicial Review

The Supreme Court can declare any law or amendment to the Constitution ultra vires if it affects or alters any part of the basic structure of the Constitution.¹²² The basic structure test, propounded in the *Keshavananda Bharati* case, has been reiterated by the apex court in *Indira Gandhi v. Raj Narain*, *Minerva Mills*, *Waman Rao*, and *Coelho* cases. In the *Supreme Court Advocates-on-Record v. Union of India* in 2016, the Supreme Court declared the 99th Constitution Amendment as unconstitutional on the ground that it affected the independence of the judiciary. Conspicuously, the judiciary has not interfered with or obstructed socio-economic reforms, as though the Court were partners with the framers of the Constitution (Dworkin, 1986, pp. 61–63).¹²³ In the *Waman Rao* case, the apex court held that the First Amendment, which inserted the Ninth Schedule, strengthened the basic structure because it “made the constitutional ideal of equal justice a living truth.”¹²⁴ But, constitutional amendments which impinged upon the power of judicial review have been declared null and void as unconstitutional by the Supreme Court.¹²⁵ Some jurists have thus described the “Supreme Court of India as the most

¹²² *Keshavananda Bharati v. State of Kerala*, SC, AIR, 1973; *Indira Nehru Gandhi v. Raj Narain*, SC, AIR 1975; *Minerva Mills Ltd. v. Union of India*, SC, AIR, 1980; *S.P. Gupta v. Union of India*, SC, AIR, 1981; *Supreme Court Advocates-on-Record Assn. v. Union of India*, SC, 2016.

¹²³ As referred by Fali S. Nariman in his autobiography, *Before memory fades* (Nariman, 2018, p. 367).

¹²⁴ *Waman Rao v. Union of India*, 1981, SC. Also see *Indira Sahney v. Union of India*, 2000, SC.

¹²⁵ *S.P. Gupta v. Union of India*, SC, AIR, 1981; *Supreme Court Advocates-on-Record Assn. v. Union of India*, SC, 2016; *S.P. Sampath Kumar v. Union of India*, SC, AIR, 1987; *Chandra Kumar v. Union of India*, SC, 1997; *I.R. Coelho v. State of T.N.*, SC, AIR, 1999; *Waman Rao case*, SC, 2007; *Supreme Court Advocates-on-Record Assn. v. Union of India*, SC, 2016. Also see De (2018, p. 3); Singh (2023, February 10).

powerful constitutional court in the world, exercising wide powers of judicial review” (De, 2018, p. 3).

Guaranteed Fundamental Rights

The Constitution guarantees the fundamental rights, or the Bill of Rights, to citizens and certain fundamental rights even to non-citizens.¹²⁶ The guarantees include the right to equality; the freedom of speech and expression; to practise any profession; protection against *ex post facto* criminal legislation and against double jeopardy; the right to life or personal liberty; and freedom of worship, as well as cultural and educational rights. The right to freedom of speech is subject to certain reasonable restrictions. The onus is upon the State to prove to the satisfaction of the court that the restriction is reasonable.¹²⁷ The restriction imposed, or the procedure established by law, “must not be arbitrary, unfair or unreasonable.”¹²⁸ In fact, through a catena of judgments, the Supreme Court has expanded the horizon of life and liberty and the fundamental freedoms.

The guarantees of Fundamental Rights are not an abstract declaration but are backed by the power to move the apex court to enforce their observance. Article 13 declares that the State shall not make any law which takes away or abridges Fundamental Rights and that, to the extent of such inconsistency, such laws shall be void. Under Article 32, the Supreme Court can declare any executive or legislative action violative of the Constitution if it takes away or abridges Fundamental Rights. In *Association for Democratic Reforms &*

¹²⁶ Part III, Articles 12–35, Constitution of India.

¹²⁷ *Dwarka Prasad Laxmi Narain v. State of U.P.*, SC, AIR, 1954; *Khyerbari Tea Co. Ltd. v. State of Assam*, SC, AIR, 1964; *Nawabkhan Abhaskhan v. State of Gujarat*, SC, AIR, 1974; *Modern Dental College & Research Centre v. State of M.P.*, SC, 2016, SCC 353.

¹²⁸ *Maneka v. UOI*, SC, AIR, 1978. Justice Krishna Iyer Said, “No Passport Officer shall be a mini-Caesar nor a minister an incarnate Caesar.”

Another v. Union of India, the apex court held the Electoral Bond Scheme as violative of Article 19(1)(a) and Article 14 of the Constitution.¹²⁹ The Supreme Court, as the guardian of Fundamental Rights, can issue appropriate prerogative writs, namely, Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto, or any appropriate order or direction on a prayer by the aggrieved person, *suo motu*, or on a PIL. Under Article 226, wide powers have been conferred on the High Courts not only for the enforcement of Fundamental Rights but also for the redressal of any injury or illegality.

Directive Principles of State Policy

The Directive Principles, though not justiciable, contain instruments of instructions for law-making to attain the constitutional goals of justice—social, economic, and political.¹³⁰ The legislature, through various enactments, and the judiciary, by giving harmonious interpretation, have added a new thrust and momentum to the Directive Principles of State Policy. The Directive Principles are a reminder that “The State was created to protect the weak, the poor, the exploited, the helpless, and the oppressed from the strong” (Joshi, 2018). There can be no well-governed State without the fundamental principles of governance. The Fundamental Rights and the Directive Principles of State Policy are “the conscience of the Constitution.”¹³¹

¹²⁹ *Supreme Court Advocates-on-Record Assn. v. Union of India*, SC, 2016.

¹³⁰ Articles 36–51, Constitution of India.

¹³¹ Austin, Granville, *supra*, p. 63. Austin further says, “It is very doubtful, however, if in any other constitution the expression of positive and negative rights has provided so much impetus towards changing and building society for the common good” (Austin, *supra*, p. 144).

Fundamental Duties

As a correlative of the Fundamental Rights the Fundamental Duties enjoin that citizens should abide by the Constitution and respect its ideals and institutions, and develop scientific temper, spirit of humanism, enquiry, and reform, among others. The Fundamental Duties were inserted by the 42nd Amendment via Article 51A. The Fundamental Duties cannot be enforced by writs, but the courts may consider them while interpreting equivocal statutes (Bakshi, 2023, pp. 92–93). In appropriate cases, if the non-observance of duty by one citizen can be established as a violation of the rights of another, an appropriate remedy may be provided by the Court.¹³²

Basic Structure Unalterable

In *Keshavananda Bharati v. State of Kerala* (1973), the Supreme Court declared that Parliament cannot alter the basic structure or framework of the Constitution.¹³³ The basic structure doctrine was reiterated in *Indira Gandhi v. Raj Narain* (1975) by declaring the 39th Amendment unconstitutional insofar as it placed the election of the President, Vice President, Prime Minister, and the Speaker of the Lok Sabha beyond the jurisdiction of the courts. Article 31C, inserted by 25th Amendment and further amended by 42nd Amendment, was quashed by the apex court in *Minerva Mills v. Union of India* (1980) for being violative of the basic structure. In *Waman Rao v.*

¹³² *Vishakha v. State of Rajasthan*, SC, AIR, 1987. P. V. Kane, the author of *History of dharmashastra*, was critical of the Constitution being devoid of duties of citizens while guaranteeing Fundamental Rights. On the contrary, after inclusion of Fundamental Duties, Trimbak Krishna Tope wondered whether it is the revival of Hindu jurisprudence (see Shukla, 2022, pp. A45, 392–393).

¹³³ *Keshavananda Bharati v. State of Kerala*, SC, AIR, 1973. By a majority judgment, the Supreme Court overruled the *Golaknath v. State of Punjab*, 1967.

Union of India (1981),¹³⁴ *Coelho v. State of Tamil Nadu* (2007),¹³⁵ and also in the *Fourth Judges Case* (2015),¹³⁶ the Supreme Court has reiterated that the basic structure test did not exclude a consideration of the fundamental rights, “the immutable heart of the Constitution” (Mathew, 2023, p. 34; Chandrachud, 2020).

There are other outstanding features of the Constitution, such as provisions for affirmative action by the State to achieve the constitutional ideals of equality, the rule of law, and the supremacy of the Constitution over all organs of the State.

The Working of the Constitution

The Armour of the Republic

There was scepticism about the success of the Constitution as early as 1951 when Sir Ivor Jennings termed it as “Too long, too rigid, too prolix” (Nariman, 2023, pp. 10, 11). While the Constitution of Sri Lanka, drafted by Jennings, lasted barely 14 years, India has witnessed 18 general elections leading to the willing surrender or sharing of power according to the popular mandate (Nariman, 2023, p. 11). The true import of the Constitution was thus described by Justice Vivian Bose in 1954: “We have upon us the whole armour of the Constitution ...” (Nariman, 2018, p. 369). The Constitution is the breast plate not only of the judges but also of the citizens, as evident from the constitutional narrative forged by the ordinary people.

¹³⁴ *Waman Rao case*, SC, 2007.

¹³⁵ *I.R. Coelho v. State of T.N.*, SC, AIR, 1999.

¹³⁶ *Supreme Court Advocates-on-Record Assn. v. Union of India*, SC, 2016; 2017, pp. 37–64.

A People's Constitution

The Constitution, which enfranchised the people of India without any discrimination based on caste, gender, or religion, has instilled in ordinary citizens an abiding faith in the guarantees it provides. The functioning of the Constitution has demonstrated beyond any measure of doubt that it is “not for the exclusive benefit of governments and States. It is not only for lawyers and politicians and officials and those who are highly placed. It also exists for the common man, for the poor and the humble, for those who had businesses at stake, for the butcher, the baker and the candlestick makers” and “the pavement dwellers.”¹³⁷ Professor Rohit De, in his painstaking and fascinating study of some of the landmark judgments of the Supreme Court, has documented how constitutional litigation is not limited to elites but is accessible to a cross-section of people, including the marginalised individuals, who have become “virtuous constitutional actors” by taking recourse to the Constitution and seeking constitutional remedies (De, 2018).¹³⁸

The Lodestar of Democratic Politics

The democratic journey of India since 1950 eloquently demonstrates that the Constitution has effective checks and balances and that it is the lodestar of our democratic politics. It is robust and flexible enough to meet the challenges of both war and peace. No constitution on its own fails or succeeds. Dr. Ambedkar was spot on when he said, “if things go wrong under the new Constitution, the reason will not be that we had a bad

¹³⁷ Justice Vivian Bose in the judgment *Bidi Supply Company v. Union of India*, AIR 2956 SC, and Justice Krishna Iyer in *Moti Ram v. State of M.P.*, AIR 1978 SC.

¹³⁸ In the words of Justice Krishna Iyer, “our Constitution, enacted by ‘We, the people of India,’ is meant for the butcher, the baker and the candlestick maker—shall we add the bonded labourer and the pavement dweller.”

Constitution. What we will have to say is, that Man was vile” (CAD, 1948, November 4, quoted by Dr. Ambedkar in his speech). When things went wrong, or there were aberrations, the wrongs were perpetrated by the perversion of the Constitution by the very people enjoined to uphold it. Yet, it is due to the periodic reaffirmation of the unwavering faith of the people and political parties in the philosophy of the Constitution that India surmounted periodic challenges and aberrations and emerged victorious “as the traditions of the republic lie at the core of India.”¹³⁹

An Instrument of Empowerment

The Constitution, framed in the spirit of consensus and accommodation, is a charter of national unity and “first and foremost, a social document” and has “worked beneficial changes in Indian society” (Austin, pp. 386–387). The Constitution resolves to secure to all citizens: social economic, and political Justice; Liberty of thought, expression, belief, faith, and worship; Equality of status and opportunity; and to promote Fraternity among them all. No popular government can be impervious to the forewarning of Dr. Ambedkar: “Without fraternity, equality and liberty will be no deeper than coats of paint” (CAD, 1949, November 25). In fact, an overarching view of competitive democratic politics testifies that India has been constantly striving to attain the constitutional goals. A whole range of transformative legislation or schematic interventions in the areas of land reforms, labour reforms, gender justice, social empowerment and financial inclusion, food safety, minimum wages, right to education, direct benefit transfer, right to information, minimum employment guarantee, health, etc. have been enacted or

¹³⁹ President Draupadi Murmu, address to both the Houses of Parliament on June 26, 2024.

approved by successive Parliaments. The Judiciary, through interpretive functions, has partnered with the framers of the Constitution by expanding the horizon of life, liberty, and social empowerment.

Future of Democracy

The Constitution bequeathed by the founding fathers has transformed the lives of generations of citizens in a profound way. Yet there remains some democratic disquiet and dissatisfaction which is inevitable in a liberal democracy. In the words of Francis Fukuyama, “those who are dissatisfied have the potential to restart history. No regime, no socio-economic system, no democracy is able to satisfy all people at a given point of time” (Fukuyama, 2006, p. 334). Free, fair, and periodic elections, the *sine qua non* of a competitive democracy, bear the promise and potential to transform the lives of those who are dissatisfied. The Indian Constitution has stood clear and firm on its philosophy and upheld the belief and faith of its makers and “We, the People.” The erosion of democracy, argue Levitsky and Ziblatt, can be checkmated only by defending the Constitution through political parties and organised citizens by democratic norms (see Levitsky and Ziblatt, 2018, pp. 6–8). On occasions when India passed through the winter of despair, the people heralded the spring of democracy yet again by exercising their franchise with wisdom and foresight. In the words of American judge Learned Hand, “Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it” (quoted in Nariman, 2023, p. 450.)¹⁴⁰ Deeply ingrained in the popular psyche, the Constitution is a beacon of hope and a gospel of governance. The Constitution has given momentum to the rule of law, civil liberties, and

¹⁴⁰ Learned Hand was one of the greatest federal judges of the United States. The quote is from his “The Spirit of Liberty” speech delivered in 1944.

strengthened the democratic ideals it stands for. Any threat to the Constitution, real or perceived, becomes a subject of fierce and wider public debate and electoral campaigns as people rise peaceably to defend and uphold their Constitution.¹⁴¹

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¹⁴¹ Street protesters display and swear by the Constitution, draw inspiration from, and invoke it for redressal of their demands. Leaders caress the Constitution and bow before it to signal that the Constitution is sacrosanct and immutable.

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