

CONSTITUTIONAL VALUES

(Full Text of the Constitution Day Lecture, delivered by Justice R.C.Lahoti,
Former Chief Justice of India, selectively read at the Constitution Day
Function on 26th November, 2017 at Vigyan Bhawan, New Delhi.)

Celebrating Constitution Day is an occasion to remind ourselves of our rights, duties and obligations, as citizens of Independent India. It is our sacred obligation to recall with reverence Mahatma Gandhi, the Father of the Nation and several martyrs who have laid their lives to earn freedom for us, and to take a vow that we shall not betray their sacrifices done for earning freedom for us and enabling us in giving to ourselves our own Constitution. This can be best done by learning and revisiting the Values underlying the Constitution, the Constitutional Values.

Values are principles or standards of human behaviour for universal good. Values can also be defined as principles or standards of ethics and morals. According to Webster values are the measure of how strongly something is desired for its moral beauty! Values are the tenets which make us rise from what is low, extend a supporting hand when we falter and show us the path if lost in confusion. Values also warn us: if we do not behave then possibly we do not deserve what we have been given. Compromising with values leads to chaos and confusion. Constitutionalism without values is like a ship sailing on a dark night without the North Star. Adherence to values makes easier the task of taking decisions.

What is a Constitution? Speaking generally, the constitution of a country seeks to establish its fundamental and apex organs of Government and administration, describe their structure, composition, powers and principal functions, define the inter-relationship of these organs with one another and regulate their relationship with the people.¹ It lays the foundation for its social values. It determines its commitments and orientations.²

Qualities and virtues vesting in a human being ascribe him with his character, also enable his being distinguished from others. Similarly, they are the values inhering in any constitution which give it a place of distinction from others. These are called Constitutional Values.

Aharon Barak, the President of Supreme Court of Israel says - there are three types of fundamental principles: ethical values (such as justice, morality, and human rights), social purposes (such as the existence of the State and Public safety within it, certainty and stability

¹ Wade & Phillips, *Constitution and Administrative Law*, 1.5

² Rameshwar Prasad (VI) v. Union of India (2006) 2, SCC 1, 167

in the interpersonal arrangements, and human rights), and proper ways of behaviour (such as reasonableness, fairness, and good faith).³ There is a considerable over-lap between the three; the Constitutional Values are the central element thereof.

Constitution is distinguished from Constitutionalism which operates to limit the powers of the Government and is anti-thesis of arbitrariness in exercise of powers and despotism. It enables the citizens and individuals to control the Government and to enforce governmental obligations. Constitutionalism preserves democratic values. Control over the exercise of governmental powers is needed to ensure that the government does not destroy the democratic values which include the protection of fundamental rights. Constitutionalism advocates checks and balances in separation of powers necessitating different independent centres of decision making. It is the constitutionalism on which is founded the difference between parliamentary and constitutional sovereignty.

Our Constitution is framed by a Constituent Assembly, not the Parliament; rather the Parliament itself is a creature of Constitution.⁴ From this it follows that the Parliamentary Sovereignty, which may chance to be controlled by the political party in power, and all the laws enacted by it are subordinate to Constitutional Sovereignty, which vests in the people of India, who gave the Constitution unto themselves. Ours is a written constitution, the longest of such documents of the world of today. On account of being written, it is capable of being interpreted and also being amended except for its basic structure. Thus, the rigidity given to it by the written text has been softened by the qualities that it remains a dynamic document which can grow, has flexibility to expand and can also cure itself, if need be. It is most appropriately suited for a multi-cultural polity.

It is interesting to learn that the first copies of our Constitution are hand written in Hindi and English. The writing is in calligraphy. Each part of such written Constitution has been decorated with drawings depicting historic events and memoirs from our great epics. These artistic drawings speak aloud of our values handed down by traditions flowing from 5000 years old history of ours. People of India having written the Constitution in hand, have created a higher sense of commitment and relationship between the Constitution and the people. There are 15 women signatories. When the Constitution was adopted it was raining heavily outside the Parliament considered as divine blessings being showered. It was considered to be a good omen. That day became truly an auspicious day!

³ Aharon Barak, *The Judge in a Democracy*, p. 58

⁴ IR Coelho v. State of TN (2007) 2 SCC, 1

Constitutional Values, in the context of Constitution of India, have two dimensions. One is, the values enshrined in our constitution itself, which are justice, liberty, equality and fraternity. The other is, those fundamentals which enable its being distinguished from others. It is supreme. It provides for republican and democratic form of Government. It assigns sovereign power to belong to people of India. It has secular and federal character. It divides power between the legislature, the executive and the judiciary and strikes a balance in such division by providing checks and balances. It aims at ensuring dignity of individual and unity and integrity of the Nation as the ultimate goals. If only these values are translated into reality, there would be no better place to live on earth except India.

The concept of justice is three dimensional: social, economic and political. Dr. Ambedkar's closing speech on the draft constitution delivered on 25th November, 1949 stated that – 'we do not seek to attain a mere political democracy; our political democracy has to be a social democracy as well; for, political democracy cannot last unless it is based on a social democracy.' The Supreme Court of India has emphasized the social democracy to mean 'a way of life which recognizes liberty, equality and fraternity as principles of life.' These are not separate items in a trinity, but form a union of trinity; to divorce one from the other would be to defeat the very purpose of democracy.⁵

Liberty is not a synonym of freedom. Freedom is liberation, which we have achieved on 15.08.1947. Liberty is yet to be achieved in its true sense. Liberty is freedom from arbitrary, undue and illegal external restraint even if it is by Government. Liberty would cease to be virtue if it does not co-exist with morality, justice, common good, discipline and order. Liberty is not an absolute license. Unless restraint is exercised as laid by law, and more as exercised by self, it would result in oppression of others and result in lawlessness and anarchy.

Our Founding Fathers were men blessed with vision and wisdom. In the Preamble they did not use the term 'equality' as bare equality and hastened to qualify it as 'equality of status' and 'of opportunity'. Article 14 of the Constitution prohibits equals being treated as unequal and unequal being treated as equals. Our Constitution seeks to achieve the virtue of equality by guaranteeing 'equality of status' and ensuring 'equality of opportunity'.

It will be futile to attempt creating equals by cutting to size those whom the God himself or the Nature itself has created as unequal. Eminent Jurist Nani Palkhivala who has been described as 'the most intelligent of all intellectuals' by none else than Justice H.R. Khanna has stated – 'equality before the law is the very foundation of a Republic. Equal opportunity

⁵ Valsamma Paul (1996)3 SCC, 545, para 6

is the very foundation of social justice. But equality (unqualified) is achieved only in the graveyard.’⁶ It is only in the graveyard where all are buried as equals.

Fraternity was explained by Dr. Ambedkar as meaning a sense of common brotherhood of all Indians. He indicated regionalism, communalism and linguism as forces disruptive of unity and integrity of India, and emphasized the need of egalitarian fraternity standing tall above such forces. The object of achieving fraternity is to ensure the dignity of the individual and the unity and integrity of the nation. It will be a sad day indeed if fractional fraternities start gaining strength resulting in damaging the dignity of the individual and threatening the unity and integrity of the nation.

The most potent expression with which the big book of Constitution of India opens is - “We, the people of India.” “We the people – the common men should not hesitate in claiming with pride – “we have created this Constitution”, and reciprocate the claim by dutifully dedicating ourselves to preserve its values. A constant assertion of this authority and continuing performing of this obligation would give life and liver to the Constitution; and, in turn, the Constitution would continue to save and serve ‘We, the people of India’. In *Srimad Bhagvat Gita*, Lord Krishna has said –

*Yada Yada hi dharmasya glanirbhavati bharata,
abhyutthanamadharmasya tadatmanam srjamyaham*

*[Whenever there is decline of righteousness, and rise of
unrighteousness, I reincarnate myself to protect the virtuous, and to
destroy the wicked, from Age to Age]*

Adapting this *shloka* to the Constitution, which is the religion of all the religions, it would then exhort us and say, ‘with whomsoever injustice is done, come to Me, the Constitution, and I shall protect thou’. Every next interpretation given to Constitution by the knowledgeable and learned members of judiciary gives a new dimension to Constitution which tantamounts to its re-incarnation !

It is note-worthy that in the Constitution which the people of India gave unto themselves contemplating to constitute India into a Sovereign Democratic Republic, the 42nd Amendment (w.e.f. 03.01.1977) substituted this expression consisting of three words by another expression consisting of five words - ‘Sovereign Socialist Secular Democratic Republic’. A comparative reading shows that ‘socialist’ and ‘secular’ are the two concepts which were

⁶ Nani Palkhivala, *Selected Writings*, p. 76

introduced into the original philosophy of Constitutional Values. The implications need consideration. According to a jurist-critic this amendment was uncalled for. This is for two reasons. So far as the term ‘socialist’ is concerned, it is note-worthy that our constitution did not recognize any *ism*; possibly the only *ism* recognized by our Founding Fathers was *Nationalism*. Forty-second Amendment gave recognition to Socialism, a politically and economically controversial concept.

So far as ‘Secularism’ is concerned, two significant historic events need to be noticed by this august audience.

There was an interesting debate centering around the drafting of the present Article 25 of the Constitution dealing with Right to Freedom of Religion.⁷ This Article guarantees freedom of conscience and the right freely to ‘profess’ ‘practice’ and ‘propagate’ religion. Much of the controversy centred around the right to *propagate* religion. It was urged that religion was a private affair between oneself and one’s creator and it has nothing to do with others, and therefore, the right to propagate religion was wholly unnecessary; all that the individual needed was the right ‘to profess and practice religion privately’. The assembly was told that propagation of religion had proved a nuisance in the country; by and large it had been responsible for the unfortunate partition of the country. In no Constitution of the world was the right to propagate religion recognized as fundamental and justiciable right. Propagation of religion could possibly be impliedly covered by Right to Freedom of Expression, but putting it as an independent Fundamental Right was wholly unjustified. ‘The dangerous implications’, the expression as the Constituent Assembly Debates record, did not appeal to the wisdom of the Assembly and the Article was enacted in the present form giving the right to propagate religion status of fundamental right!.

The other event is associated with the Hindi translation of the term ‘Secular’. The translation, placed before the cabinet for its approval, used *Dharma Nirpeksh* as Hindi equivalent of ‘Secular’. The then Prime Minister invited the eminent jurist late (Dr.) L.M. Singhvi to go through the translation. Dr. Singhvi was of the opinion that the Hindi expression was neither proper nor accurate and suggested *Sampradhay Nirpeksh* in place of *Dharma Nirpeksh* being used. The suggestion was agreed to with no resistance and, I am told that at the request of the Hon’ble Prime Minister, Dr. L.M. Singhvi carried out the correction in his own hand in the text of Hindi translation.

These two events have their far-reaching implications which this august audience can easily appreciate in the light of what has transpired since then.

⁷ Dr. Subhash C. Kashyap, *The Framing of India’s Constitution – A study*, vol. 5, pp. 266-267

As already indicated, the load of governance under the Constitution is shared by three pillars – the Legislature, the Executive and the Judiciary. A few thoughts about each of these. Legislature consists of politicians, the Executive of knowledgeable bureaucrats and judiciary of Judges.

In politics we need leaders. ‘True leadership is the exact opposite of the concentration of all power and decision-making authority in one individual. To be a true leader is to unleash the full power of the organization and to release the potential and energy in the rank and file by means of personal impact. ... (The Constitutionalism calls for) a selfless and dedicated leadership to motivate the people so that they put the national interest above the sectional interest’.⁸

A leader is one who knows the way, shows the way and goes the way.⁹ No leader should be chosen by birth, instead of merit¹⁰. One of the tests of leadership is the ability to recognize a problem before it becomes an emergency¹¹. It is a biting paradox to see – that under this very Constitution, at times we have leaders - ‘ *Woh raah dikhate hain hamen hazrat-e-rahbar, jis raah par unko kabhi chalte nahin dekha*. [They ask us to walk the way which they themselves have never trodden.]

The Constitution has entrusted the judiciary with the task of upholding the Constitution and its values in letter and spirit. While other wings of governance may fail and falter, the judicial wing shall not. It has to preserve and protect the separation of powers, and while doing so, more importantly it should not itself in its zeal transgresses its own boundaries. The primary task of a Judge is to interpret and enforce the constitution and the laws. Unconsciously, and at times proactively, the judiciary embarks upon making the law and also executing its directives. Weakness of other wings of governance may for the time being justify assumption of such role by the judiciary, but the judiciary should never assume the role of a super-legislature or a super-executive. If it does so, it would irreparably weaken the other wings, which would be counter-productive of the Constitutional Values.

There is constant tension in the relationship between the courts and the other branches of the state, a tension that stems from the different roles of the branches; such tension is not unwelcome as it protects the values of democracy.¹² All that is needed is that a Judge should

⁸ Nani Palkhivala, *Selected Writings*, p 57

⁹ A quote

¹⁰ Jigme Singye Wangchuck

¹¹ Arnold Glasgow

¹² Aharon Barak, *The Judge In a Democracy*, p. 215

never forget that he is always in public gaze. A judge when he sits on trial, he himself is on trial.

Judges are philologists of the Highest Order, said Pollock¹³. A good judge does his best to bridge the gap between law and social realities and best protects the Constitution and its Values. Yet, he knows the bounds of his legitimate possibilities.¹⁴ His every word and every action should answer the question what the society needs and not what the judge wants.

It is said that the Constitution of India is 'By the People, Of the People and For the People'. An obligation is cast on the people of India to continue to exert upholding of the constitutional values. What they should do¹⁵:

First and foremost, the people of this country should volunteer to be disciplined. Morality, decency and development are the dictates of discipline. A democracy without discipline is a democracy without a future.

Secondly, the voters have to organize themselves and resolve to choose, rising above pure political considerations - and certainly rising above the fractional considerations of caste, community etc., - to elect such representatives as would really serve the people and the nation.

Thirdly, learning of the history of our struggle for freedom as also the enlightening chapters of Constituent Assembly Debates be made compulsory for the candidates aspiring to contest election and also be popularized for reading amongst the youth of the nation.

Fourthly, the propagation of divisive thoughts such as caste and community should be curbed at any cost.

Fifthly, political feudalism must be cast off which is almost as bad as the shackles of colonialism or slavery.

Sixthly, the concept of reciprocity in 'controlling' should evolve. While the Government shall control the society for maintaining law and order, the people shall control the Government for good governance, rather than being dominated and dragooned by the Government.

Last, but not the least, the philosophy of life of every Indian should be inspired by clause (g) of Article 51A of the Constitution that everyone shall strive towards

¹³ Advance Law Lexicon, Book 3, p. 2501

¹⁴ Aharon Barak, *The Judge in a Democracy*, p. 306-7

¹⁵ Some ideas borrowed from Nani Palkhivala, *Selected Writings*, pp 52-53

excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. If we wish India to emerge as a prosperous and powerful nation, merit cannot be compromised, much less sacrificed. Somerset Maugham has observed – “it is a funny thing about life, if you refuse to accept anything but the best, you often get it”.

A word about the Media, which is a self-generated fourth pillar of the democracy, having voluntarily assumed such role.to guide the nation and make every citizen conscious of his / her Fundamental Duties enshrined in the Constitution’.¹⁶ ‘Democracy without free media is a contradiction. Media should constantly educate people that Sovereignty could only be preserved by the public spirit and vigilance of its citizens. It has to make special effort to highlight programs which support and promote activities related to national integration, culture and values, and environment.¹⁷ Any departure from such values will be detrimental of public interest, and sub-version of the faith which the people of India repose in Press.

68 years ago, Dr. Rajendra Prasad, the First President of India, had stated while speaking to the Constituent Assembly that the Constitution would acquire life or be lifeless depending on the quality of persons who would control and operate it. “It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences. We can only hope that the country will throw up such men in abundance.” What he said decades ago, to his colleagues on the day of the completion of our Constitution holds good even today. If the people who control the Constitution stay true to its values and walk on the path enlightened by the Constitution, we as a country would continue our upward journey. Be it Legislature, Judiciary or Executive, to uphold the Constitution and Constitutional Values we need men with backbone, competence and character: such as is the sterling gold. They should be such, as Krishna Behari ‘Noor’ has said – *Kharidne aate to kharidaar khud hi bik jate, tape huye khare sone ka bhav aisa tha, [Those who indulge into misadventure of purchasing the unsellables - the sterling gold, often end up by selling themselves).*

I would end this lecture by summing up in these words – values are caught and not taught. It is no use conversing about Constitutional Values unless we have the people who value the values, and value versed leaders who can be role models capable of transmitting values.

¹⁶ Report of the Committee on Fundamental Duties of Citizens, *Constitution Making Since 1950, An Overview*, p. 603.

¹⁷ *Supra*, p. 604