

LAW DAY AND THE EVOLUTION OF OUR CONSTITUTION

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ABSTARCT

The Constitution of India was adopted by the Constituent Assembly on “November 26”, 1949. Thirty years after, under the leadership of Dr. L. M. Singhvi, the Supreme Court Bar Association declared November 26th as the National Law Day. Thereafter, every year, this day is celebrated as the Law Day, all over India, especially by members of the legal fraternity. This day is celebrated to honour the 207 eminent members of the Constituent Assembly who are considered the founding fathers of the Constitution of India. Through this article, I wish to emphasis the significance and essence of ‘Law Day’, its place in our deep legal history and the evolution of our constitution, by way of analysing our great constituent assembly debates.

1. INTRODUCTION

As members of the Legal Fraternity, we have been celebrating the day called as ‘Law Day’, which is supposed to symbolize and epitomise the emergence and evolution of our marvellous Constitution. I have been a part of this wonderful tradition where various luminaries and doyens from both the Bench and Bar, join hands in celebrating this auspicious day, with great vigour and enthusiasm. But at the same time, I have also observed, that the majority of us, have not truly understood the real essence and significance behind the celebration of this day or its place in our great constitutional history. This made me introspect and ask myself, “What is this ‘Law Day’?” “Why should there be a celebration at all calling itself as ‘Law Day’?” This uncertainty has been looming large in my mind for quite some time. To provide clarity and to find out the reasons for its celebrations, I had an occasion to probe into the history of the making of our Constitution, with an intent and purpose of understanding the significance of celebrating such a special day, rather than just conducting it as a ritualistic process. This took me inevitably, to the Debates of our Constituent Assembly.

2. LET US REMINISCE: A STEP-BY-STEP JOURNEY THROUGH OUR AMAZING CONSTITUENT ASSEMBLY DEBATES

My experience while going through the Constituent Assembly debates was a very scintillating one. The debates run for pages, but I have, through this article, narrowed the scope and provided a concise, yet extensive analysis, on the glorious moments behind the framing of our wonderful Constitution.

While perusing through the Constituent Assembly Debates, I found that it consists of Twelve Volumes, the Debates commencing on the 9th of December, 1946 and continuing till the 24th of January, 1950. The Constitution of India was officially adopted on the 26th of November, 1949 and signed by the Members of the Assembly on 24th of January,

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1950. Thereafter, the Constituent Assembly having accomplished the task of framing the Constitution assigned to it, adjourned *sine die* and became *functus officio*.

From what I learnt, the First Meeting was held on the 9th of December, 1946 in the Constituent Hall, New Delhi, where the proceedings commenced at 11.00 a.m., which was initiated by Shri Acharya J.B.Kripalani² who requested Dr.Sachidananda Sinha, the oldest Parliamentarian in India, as a Member of the Imperial Legislative Council from 1910 to 1920, to take the Chair as its Temporary Chairman. Apart from his credentials as the oldest Parliamentarian, he entered the Central Legislative Assembly in 1921, not only as an average member, but as its Deputy President. He was entrusted with the task of functioning as an Executive Councillor and Finance Member of the Government of Bihar and Orissa and was also the Vice-Chancellor of the Patna University for eight years, while also being the oldest Congress Member. The first thing he did, while speaking to the assembly, was to read three messages received from the United States of America, China and the Government of Australia. Through his inaugural address, he traced the history of other ancient constitutions and while referring to the British Constitution in particular, stated that it had an unwritten constitution, since the British Parliament as the Supreme Authority, used to make and unmake all laws and hence, there was no such thing as a Constitutional Law in Britain. Having stated this, to gain more insight, he then drew the attention of the Members, to the various other Constitutions by stating that France was the only State in Europe, which had a National Assembly in 1789³, but they largely followed the Constitutional Convention held at Philadelphia by American Constitution-makers in 1787⁴. Ultimately, the Temporary Chairman suggested that the Philadelphia Convention and the American Constitution can be taken as a model for a Federal set up. In fact, it was stated that the American Convention held in Philadelphia in 1787 had been accepted by the World as a model, for framing independent federal constitutions for various countries. The basic principle was "*a series of agreements as well as a series of compromises*".⁵ Therefore, the Temporary Chairman, by virtue of his long experience, advised;

² I would like to refer to a famous quote of his – "*For an unarmed people to fight Great Britain at a time when all its armed might was mobilised, when the inexhaustible resources of America were at its disposal, appeared sheer folly. But then these men forgot that when the Congress under Gandhiji's lead took to revolutionary politics, it abandoned conventional political wisdom. It dared to risk and achieve. Was the Congress wise when it made the Khilafat issue, which it scarcely understood, its own? Was it again wise to resort to Salt Satyagraha to achieve independence? There was apparently no connection between salt and Independence. And what wisdom could there have been in Gandhiji walking with a flock of unarmed followers for 21 days to pick up a pinch of salt on the sea-shore? What political or any other wisdom could there be in Pandit Motilal Nehru manufacturing salt in his study in a laboratory test tube on a spirit lamp from a lamp of clay? What wisdom was there in selecting individual satyagrahis to walk from place to place shouting anti-war slogans till they were arrested? The fact is, the Congress under Gandhiji's lead has never done the conventionally obvious thing, and if it does so before the freedom fight is over and complete independence won, it will have missed its revolutionary role.*" - *From the Presidential Address - J.B. Kripalani, I.N.C. Session, 1946, Meerut.*

³St. Rosemary Educational Institution."The French National Assembly: 1789–1791." <http://schoolworkhelper.net/>. St. Rosemary Educational Institution

⁴"[T]he [American] political theory of a second chamber was first formulated in the constitutional convention held in Philadelphia in 1787 and more systematically developed later in the *Federalist*." Carroll, The Background of Unicameralism and Bicameralism, in *Unicameral Legislatures*, The Eleventh Annual Debate Handbook, 1937-38, 42 (Aly ed. 1938).

⁵<http://parliamentofindia.nic.in/ls/debates/vol1p1.html>

*"That reasonable agreements and judicious compromises are nowhere more called for than in framing a constitution for a country like India."*⁶

His ultimate request was that;

*"The Constitution that you are going to plan may similarly be reared for 'Immortality', if the work of man may justly aspire to such a title, and it may be a structure of 'adamantine strength, which will outlast and overcome all present and future destructive forces."*⁷

With these lofty ideas, the basic fabric was mooted. The Temporary Chairman traced how only in November 1939, the Congress Working Committee passed a resolution⁸ to frame a Constitution through a Constituent Assembly. In fact, apart from the Congress Party, as far as the Muslim League was concerned, after the adoption of a resolution on Pakistan in March, 1940, the Muslim League had also agreed to have a Constituent Assembly and they wanted to frame the Constitution, one, for a separate Muslim State and the other, for Rest of India.⁹ In fact, the present Constituent Assembly was constituted under the Scheme propounded by the British Cabinet Assembly. This although, was not to the liking of the Congress Party, as could be seen from Pandit Jawaharlal Nehru's speech when he moved the first resolution before the Constituent Assembly, where he expressed the view of the Congress Party in not reposing full agreement with the Scheme propounded by the British Cabinet Mission.¹⁰

The Temporary Chairman in his inaugural address ultimately concluded the same by summing up with the words of Great Indian Poet, Iqbal, thus;

*"Yunan-o-Misr-o-Roma sab mit gaye jahan se, Baqi abhi talak hai nam-o-nishan hamara. Kuch bat hai ke hasti mit-ti nahi hamari, Sadio raha hai dusman daur-e-zaman hamara."*¹¹

He further went on to state; *"It means that Greece, Egypt, and Rome have all disappeared from the surface of the Earth, but the name and fame of India, our country, has survived the ravages of Time and the cataclysms of ages. Surely, surely, there is an eternal element in us which had frustrated all attempts at our obliteration, in spite of the fact that the heavens themselves had rolled and revolved for centuries, in a spirit of hostility and enmity towards us."*¹²

⁶Supra n.5

⁷Supra n.5

⁸ Congress National Committee Resolution, October 22, 1939, Gandhi writing in Harijan, 28, October 1939, pp. 419-420, 292, CWMG, 71:1

⁹ Address by Quaid-i-Azam Mohammad Ali Jinnah at Lahore Session of Muslim League, March, 1940 (Islamabad: Directorate of Films and Publishing, Ministry of Information and Broadcasting, Government of Pakistan, Islamabad, 1983), pp. 5-23.

¹⁰<http://www.hindu.com/af/india60/stories/2007081550990300.htm>

¹¹ English Translation - Greek, Egyptians and Romans have all vanished, but we are still here. There must be something special that we still exist despite the whole world against us. - Muhammad Iqbal (1873-1938)

¹²Supra n.5

After this, the Temporary Chairman called upon the Members of the Constituent Assembly to present their credentials and sign the Register. There were in total 207 Members. The Madras Presidency was represented by 43 Members, which included the Hon'ble Sri C.Rajagopalachariar, Dr.B.Pattabhi Sitaramayya, the Hon'ble Dewan Bahadur Sir Gopaldaswami Ayyangar, Diwan Bahadur Sir Alladi Krishnaswami Ayyar, Shrimati Ammu Swaminathan, Sri K.Kamaraja Nadar, Shri T.T.Krishnamachari, Rev.Jerome D'Souza, Dr.V.Subrahmanyam and others. Our Sarvepalli Sir S.Radhakrishnan, who was also a Member, was representing the United Provinces. The Hon'ble Sardar Vallabhbhai J.Patel was representing Bombay, while Dr.B.R.Ambedkar was from among the Members of Bengal. Hon'ble Pandit Jawaharlal Nehru and Hon'ble Mr.Rafi Ahmad Kidwai were representing the United Provinces, Hon'ble Dr.Rajendra Prasad, was from among the Members of Bihar, while Maulana Abul Kalam Azad and Khan Abdul Ghaffar Khan and others were representing North West Frontier Province. The proceedings were then adjourned to the 10th of December, 1946.

On the 10th of December, 1946, nothing of great significance, transpired, except the presentation of nominations for the post of Permanent Chairman of the Constituent Assembly. The proceedings were then adjourned till the 11th of December, 1946.

On the 11th of December, 1946, there were certain other nominations, which were also seconded, but they also related to the nomination of Dr.Rajendra Prasad, who was declared and elected as the Permanent Chairman of the Constituent assembly¹³, there being no serious threat to challenging that position. Closely after the declaration of the said election, he was led to as Chairman by Acharya J.Kriplani and Maulana Abul Kalam Azad Sahib. Then Sir S.Radhakrishnan was called upon to be the First Speaker. A grand speech was made by Sir S.Radhakrishnan, then by the Hon'ble Diwan Bahadur, Sir N.Gopaldaswami Ayyangar and others.¹⁴ As there was nothing of significance on the 12th of December, 1946, the House was adjourned to the 13th of December, 1946. This day was a very memorable day, *i.e.*, when the first Resolution towards the framing of the Constitution was moved by the Great Pandit Jawaharlal Nehru who in his speech, pointed out that the resolution moved by him stated that "*it is our firm and solemn resolve to have a Sovereign Indian Republic*" and he made a specific mention that the word '*Republic*' was not mentioned so far, but it would

¹³ Dr. Sachithananda Sinha: The next item of today's agenda is the election of the permanent Chairman. I have received the following nomination papers:

"I propose the name of Dr. Rajendra Prasad, Member Constituent Assembly, the Chairmanship of the Constituent Assembly. I have secured the consent of the nominee.

Proposer.-J. B. Kripalani.

Secunder.-Vallabhbhai Patel.

I agree to the nomination. Rajendra Prasad."

¹⁴ Full Speech - <http://parliamentofindia.nic.in/ls/debates/vol1p3.htm>

have to be understood that “a free India can be nothing but a Republic”.¹⁵ After this, he went on to read the Resolution, which consisted of eight points¹⁶. It read as under:

“This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;

WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a "Union of them all; and

WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

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; and

WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to Justice and the law of civilised nations; and

This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind." (Emphasis Supplied)

¹⁵ Excerpt from his speech on the 13th of December, 1946 - “We say that it is our firm and solemn resolve to have an Independent sovereign republic. India is- bound to be sovereign, it is bound to be independent and it, is bound to be a republic.....Now, some friends have raised the question: "Why have you not put in the word “democratic” here.....Obviously we are aiming at democracy and nothing less than a democracy. What form of democracy, what shape it might take is another matter?..... The democracies of the present day, many of them in Europe and elsewhere, have played a great part in the world's progress... We are not going just to copy, I hope, a certain democratic procedure or an institution of a so-called democratic country. We may improve upon it. In any event whatever system of Government we may establish here must fit in with the temper of our people and be acceptable to them....We stand for democracy, It will be for this House to determine what shape to give to that democracy, the fullest democracy, I hope....”

¹⁶Supra n. 5

A reading of the entire speech of Panditji would indicate and disclose that there were certain significant absentees from these constructive, yet significant discussions. He only wished that when a tremendous task was undertaken, it should be done with the cooperation of all people, as the future of India that was envisaged, was not confined to any group, section, province or other, but comprised of all the four hundred million people of India, who were present then. In fact, he regretted that some benches were empty and some colleagues, who might have been there, were absent. What he hoped for, was that in the future stages of implementation of these principles, all of them would come and join him, thereby leading to the benefit of the Assembly. Besides this, he also outlined the duty cast on each of the Members to always remember that they were not there to function for one party or one group, but always to think of the country as a whole and always to think of the welfare of the citizens of the country. He also made a specific reference to the absence of our Great Mahatma Gandhi. To quote,

*"There is another person who is absent here and who must be in the minds of many of us today- the great leader of our people, the father of our Nation- who has been the architect of this Assembly and all that has gone before it and possibly of much that will follow. He is not here because, in pursuit of his ideals, he is ceaselessly working in a far corner of India. But I have no doubt that his spirit hovers over this place and blesses our undertaking."*¹⁷

This Resolution was seconded by the Hon'ble Shri Purushottam Das Tandon. After his brief speech, the Resolution was moved and the Chairman brought to the notice of the Assembly, the receipt of 40 amendments¹⁸ received by then and as the time was 1 O' Clock and it was a Friday, it was decided to adjourn the Assembly to Monday, the 16th December, 1946.

On the 16th of December, 1946, the First Amendment proposed by the Hon'ble Dr.M.R.Jayakar, who was an Ex. Judge of the Federal Court and the then sitting Member of Superior Tribunal, namely, the Judicial Committee of Privy Council. His Amendment to the Resolution was to the following effect:

*"This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly."*¹⁹

He was very particular and wanted the Assembly proceedings to be adjourned, in order to make sure that Muslim League is given an opportunity to participate in the deliberations, sit by the side of every individual, make speeches, not ex post facto, but before and during the passing of the First Resolution. According to him, this would be the real

¹⁷ Words of Freedom, Ideas of A Nation, by Jawaharlal Nehru, p. 33

¹⁸Supra n. 5

¹⁹<http://parliamentofindia.nic.in/ls/debates/vol1p6.htm>

cooperation shown by the members and not get their opinion, once everything is over and done with. He continued that it was his duty to tell the august body that the course it proposes to adopt is wrong, illegal, premature, disastrous and dangerous, and that it would lead them to trouble, should it be avoided. The Meeting went on up to 5 O' Clock and was adjourned to the 17th of December, 1946.

On the 17th of December, 1946, the Hon'ble Mrs. Vijayalakshmi Pandit, Sister of Pandit Jawaharlal Nehru also joined the Assembly.

The Chairman then called upon Dr. B. R. Ambedkar to join the discussion. Dr. Ambedkar, though initially stated that he was not well prepared, went on to make one of the most memorable and eloquent speeches of the debates.²⁰ In that, he pointed out what Dr. Jayakar stated on the previous day that in the absence of the Muslim League and the Indian States (*the Raja's*) it would not be proper for the Assembly to deal with the Resolution. He stated as follows-

"So far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have to-day take a decision in common and march on the way, which leads us to unity. Our difficulty is not with regard to the ultimate, our difficulty is with regard to the beginning. Mr. Chairman, therefore, I should have thought that in order to make us willing friends, in order to induce every party, every Section in this country to take on to the road it would be an act of greatest statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together and it is for that, that I propose to make this appeal. Let us leave aside slogans let us leave aside words, which frighten people. Let us even make a concession to the prejudices of our opponents, bring them in, so that they may willingly join with us on marching upon that road, which as I said, if we walk long enough, must necessarily lead us to unity. If I, therefore, from this place support Dr. Jayakar's amendment, it is because I want all of us to realise that whether we are right or wrong, whether that agrees with the Statement of May the 16th or December 6th, leave all that aside. This is too big a question to be treated as a matter of legal rights. It is not a legal question at all. We should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal."²¹

Thereafter, some other Speakers made their speeches. The House was adjourned to the 18th of December, 1946.

²⁰ A very inspiring excerpt from the speech – “Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realisation of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indian place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our Independence will be put in jeopardy a second time and probably be lost forever. This eventuality we must all resolutely guard against. We must be determined to defend our Independence with the last drop of our blood.”

²¹<http://parliamentofindia.nic.in/ls/debates/vol1p7.htm>

On the 18th of December, 1946, some other Speakers including the Hon'ble Diwan Bahadur Sir N. Gopalaswami Ayyangar made his point of view. The House was then adjourned to the 19th of December, 1946.

On the 19th of December, 1946, when the discussion on the resolution continued, Mr. Somanath Lahiri was making his speech. There were certain interruptions. One Member wanted to know whether Mr. Somanath Lahiri was supporting the Resolution or supporting the amendment. The Chairman got up and stated that the Members would draw their own inferences, as to whether he was supporting the Resolution or opposing it or doing neither. Thus, there were some lighter moments also in the Assembly. Mr. Alladi Krishnaswami Ayyar, later in his speech, said that without embarking upon a meticulous examination of the different parts of the Resolution, what was important was that at this session, the Assembly must be in a position to proclaim to our people and to the civilised world, what we are after. He concluded by saying that the Resolution before the House received the blessings and support of Mahatma Gandhi, the architect of India's political destiny, from the distant village in Eastern Bengal and that it would be carried with acclamation by the whole House without dissent and that Hon'ble Dr. Jayakar would prefer to withdraw his amendment, unless he had strong conscientious objection to the course suggested.²²

Opportunities were also presented for certain others to speak, after which the Assembly was adjourned to the 21st of December, 1946. On 21st of December, 1946, the Assembly met and discussed about the Rules of the Assembly, after which it was adjourned to the 23rd of December, 1946, on which day the Rules were adopted.

On the 23rd of December, 1946, the various Committees were constituted. The Assembly again met on 20th of January, 1947. By virtue of the Rules, which came to be adopted, the post of Chairman was re-designated as '*President*'.

Ultimately on 22nd of January, 1947, all members of the Assembly adopted the Resolution. A proposal to constitute an Advisory Committee consisting initially of 52 Members, out of which, 12 would be representing the general Sections, and others to be represented by minorities and the tribal and excluded areas was mooted. The names of the Members were also suggested and moved, which included among others, Mr. Jagjivan Ram, Dr. B. R. Ambedkar, Shri V. I. Muniswami Pillai, Maulana Abul Kalam Azad, Khan Abdul Gaffar Khan, Sardar Vallabhbhai Patel, Sri C. Rajagopalachariar and Alladi Krishnaswami Ayyar.

On the 25th of January, 1947, after the Election of the Business Committee was adopted, thereafter, Sri Rajagopalachariar moved a resolution for the constitution of a Committee consisting of 12 Members including, Pandit Jawaharlal Nehru and Alladi Krishnaswami Ayyar the object of the Resolution being, to help the Assembly in framing the Constitution, so as to not to leave for the future, any overlapping or conflicts that might occur if various proceedings took place without the correlation in different Sections of the Assembly or otherwise.

²²<http://parliamentofindia.nic.in/ls/debates/vol4p14.htm>

The Resolution was then put to vote and adopted. After this, the Assembly was adjourned till April, 1947. Between the 22nd of April and 2nd of May 1947, the Report of States Committee, Committee on Union subjects, Interim Report on Fundamental Rights were put to discussion. The Assembly met again on the 14th of July, 1947 and held its meetings till the 31st of July, 1947. The various reports submitted by different committees were discussed and appropriate decisions were taken.

On the 21st of July, 1947, the Resolution relating to the present form of our National Flag was moved and adopted. The Assembly was adjourned to 14th of August, 1947.

On 14th of August, 1947, after the last stroke of mid night, the President and all the Members stood up and took the Pledge as below:

*"At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I....., a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind."*²³

Thereafter, the decision to intimate to the Viceroy about the assumption of power by the Constituent Assembly and the Assembly's endorsement of Lord Mountbatten's appointment as Governor-General of India was conveyed forthwith to him by the President and Pandit Jawaharlal Nehru. The House also approved it by adopting a motion.

Thereafter, the National Flag was presented by the Flag Presentation Committee headed by Smt. Sorijini Naidu, Smt. Vijayalakshmi Pandit and others. After this, the National Songs '*Sare Jahan se Achcha*' and the first verse of '*Janaganamana Adhinayaka Jaya He*' were sung.²⁴ Then the Assembly resumed at 10.00 a.m. on the 15th of August, 1947. His Excellency, the Governor-General on this occasion, made his Address. The Assembly was then adjourned to the 20th of August, 1947. The Report of the Union Powers Committee was then submitted by its Chairman Pandit Jawaharlal Nehru, in which it was stated that the Committee had come to a conclusion, *i.e.*, a conclusion, which was also reached by the Union Constitution Committee that the soundest framework for our constitution is a federation, with a strong Centre and in the matter of distributing powers between the Centre and the Units, the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act of 1935, *viz.*, the federal, the provincial and the concurrent.²⁵ These three lists prepared were also submitted as an Appendix. On the Report of the Union Power Committee, discussions were held on 21st, 22nd, 25th, 26th and on the 29th of August, 1947, a Committee to scrutinize the Draft Constitution was constituted consisting of Shri Alladi KrishnaswamiAyyar, Shiri N.Gopaldaswami Ayyangar, The Hon'ble Dr.B.R.Ambedkar and four others.²⁶ The proceedings thus, continued on the consideration of various motions, passed month after month, till the 26th of November, 1949.

²³<http://164.100.47.132/LssNew/cadebatefiles/C14081947.html>

²⁴*Supra* n. 23

²⁵ Introduction to the Constitution of India, 3rd ed., By Brij Kishore Sharma, pg. 25

²⁶*Supra* n.25, pg. 24

On the 26th of November, 1949, it was decided, and the President in his address pointed out the various provisions in the Draft Constitution and when he talked about the Judiciary, he stated as under:

*"We have provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Court's independent of the influence of the Executive. There is an attempt made in the Constitution to make even the lower judiciary independent of any outside or extraneous influence. One of our articles makes it easy for the State Governments to introduce separation of Executive from Judicial functions and placing the magistracy which deals with criminal cases on similar footing as Civil Courts. I can only express the hope that this long overdue reform will soon be introduced in the States."*²⁷

After this, the motion was moved by Dr. Ambedkar, for the vote of the House. The motion was *'that the Constitution as settled by the Assembly be passed'*²⁸. The motion was adopted amidst cheers.

Finally, the President authenticated the Constitution. The Constituent Assembly then stood adjourned till the 26th of January, 1950. However, on the 24th of January, 1950, the Song *'Jana Gana Mana'*²⁹ was adopted as the *'National Anthem'*. Dr. Rajendra Prasad was elected as the First President of India, unopposed. All the members then signed the Constitution. Then the Constituent Assembly was adjourned, *sine die*.

This is how 26th January assumes greater significance in the Indian History, i.e. the Day on which the Indian Constitution in its un-amended form came to be adopted by the Constituent Assembly and dedicated and delivered to our Nation and its people. In total at its commencement, there were 395 Articles in 22 parts and 8 schedules. Subsequently, so far 98 amendments³⁰ came to be made as between 1951 and 2013.

Thus, the *SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC*³¹ India came into being and the Constitution with its Preamble³², ensured that it would secure to all its citizens;

JUSTICE, Social, economic and Political;

LIBERTY of thought, expression, belief faith and

²⁷Dr. Rajendra Prasad: Correspondence and Select Documents, by Valmiki Choudhary – 1984, pg. 242

²⁸<http://parliamentofindia.nic.in/ls/debates/vol11p12.htm>

²⁹<http://parliamentofindia.nic.in/ls/debates/vol12p1.htm>

³⁰98th Amendment to insert Article 371J in the Constitution on the 2 January 2013. The objective of the amendment was To empower the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka Region.

³¹Subs. By the Constitution (42nd Amendment) Act, 1976, sec. 2, for *"SOVEREIGN, DEMOCRATIC, REPUBLIC"* (w.e.f. 3-1-1977)

³² This particular extract from this judgement would worthwhile to note – *"Constitution is not to be construed as a mere law, but as the machinery by which laws are made. A Constitution is a living organic thing which, of all instruments has the greatest claim to be construed broadly and liberally"*; *Goodyear India v. State of Haryana*, AIR 1990 SC 781: (1990) 2 SCC 712, para 17

Worship;

EQUALITY of status and of opportunity; and to

Promote among them all;

FRATERNITY assuring the dignity of the individual

And the unity and integrity of the Nation.

3. SALIENT FEATURES OF OUR CONSTITUTION

The salient features of the Constitution can be gathered from certain relevant Articles. Under Part-III, the Fundamental Rights and the Safeguard of it are provided. Article 14 deals with '*Equality before Law*'³³. Article 19 provides for protection of '*Freedom of Speech, etc.*'³⁴ Article 21 provides for protection of '*Life and Personal liberty*'³⁵. Article 25 provides the freedom to practice any religion³⁶. Article 30 prescribes the right of minorities to establish and administer educational institutions³⁷ and as a crown to all these Articles; Article 32 provides the remedies for enforcement of the Rights conferred under Part III³⁸. The significance of Article 32 can be better stated by quoting the Speech of Dr.B.R.Ambedkar made in the Constituent Assembly, which I shall refer to shortly³⁹.

Part-IV deals with Directive Principles of State Policy. The various Articles contained in this Part are obligations of the State towards the fulfilment of which, every state can be directed and interpreted. A reading of the Articles 38 to 51 would show that conscious, honest and sincere enforcement of the State machinery in its attempt to achieve the above directives would ensure the finest society for a human being to lead a peaceful and harmonious living.

Part IV-A⁴⁰ deals with the Fundamental Duties that every citizen of India is expected to follow in order to achieve the goals set out in our Indian Constitution.

Part V deals with the Union, namely, the Central Government Organisation about the Executive set up, the Council of Ministers, the pivotal post of the Attorney General of India⁴¹,

³³ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

³⁴ 1) All citizens shall have the right- (a) to freedom of speech and expression;(b) to assemble peaceably and without arms;(c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (f) omitted (g) to practice any profession, or to carry on any occupation, trade or business.....

³⁵ No person shall be deprived of his life or personal liberty except according to procedure established by law.

³⁶ (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.....

³⁷ (1)All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.....

³⁸ (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.....

³⁹*Infra*, n. 68

⁴⁰ Added by the Constitution (42nd Amendment) Act, 1976, sec. 11 (w.e.f. 3-1-1977)

⁴¹ Article 76

the conduct of the Government business⁴², the Parliament set up⁴³, the Legislative Powers of the President⁴⁴, the Judiciary⁴⁵ and the Office of the Comptroller and Auditor General of India⁴⁶. Provisions have been made under this Chapter in Articles 52 to 151.

Part VI⁴⁷ deals with the 'States' with identical set up like that of the 'Union'. In that, I would like to state that Article 235 of the Constitution invests '*the control*'⁴⁸ with the respective High Courts. Thereby making it clear that the independence of Judiciary is maintained at all levels and to ensure that justice remains supreme and available to the common man at times of need.

Part VII⁴⁹ consists of one single Article 238 which concerns with the States in Part III of the First Schedule and the said Article was omitted by the 7th Constitution Amendment Act 1956 since the entire First Schedule was substituted and the division of States into Part A and B was done away with.

Part VIII⁵⁰ deals with '*Union Territories*'. Part IX⁵¹ deals with the '*Panchayats*'. Part IX-A⁵² deals with the '*Municipalities*'. Part X deals with the Scheduled and Tribal Areas⁵³, Part XI consisting of Articles 245 to 263 deals with the Relations between the Union and the States which prescribes the distribution of Legislative Powers and Administrative Relations.

Part XII deals with '*Finance, Property, Contract and Suits*'⁵⁴. Part XIII deals with Trade, Commerce, and Intercourse within the Territory of India⁵⁵.

Part XIV deals with the Services under the Union and the States. In this Part, Article 315⁵⁶ concerns with Public Service Commission for the Union and for the States, its functions and other related matters. Part XIV-A is introduced by the Constitutional 42nd Amendment Act 1976 with effect from 3-1-1977, under which, the Administrative Tribunals came to be set up.

⁴² Article 77

⁴³ Article 79

⁴⁴ Article 123

⁴⁵ Article 124

⁴⁶ Article 148

⁴⁷ The words "*IN PART A OF THE FIRST SCHEDULE*" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and sch. (w.e.f. 1-11-1956)

⁴⁸ High Court of Judicature at *Bombay v. Shirish Rangrao Patil*, AIR 1997 SC 2631: (1997) 6 SCC 339: (1997) 4 SLR 321: 1997 SCC (L&S) 1486

⁴⁹ Rep. By the Constitution (7th Amendment) Act, 1956, sec. 29, and sch. (w.e.f. 1-11-1956)

⁵⁰ Subs. By the Constitution (7th Amendment) Act, 1956, sec. 17, for article 239 (w.e.f. 1-11-1956)

⁵¹ The territories in Part D of the 1st Sch. And other territories not specified in that sch. Was rep. by the Constitution (7th Amendment) Act, 1956, sec. 29 and sch. And ins. By the Constitution (73rd Amendment) Act, 1992, sec.2 (w.e.f. 24-4-1993)

⁵² Ins. By the Constitution (64th Amendment) Act, 1992, sec. 2 (w.e.f. 1-6-1993)

⁵³ Articles 244 - 244A

⁵⁴ Articles 264 – 300A

⁵⁵ Articles 301 - 307

⁵⁶ (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.....

Part XV deals with '*Elections*', of which Article 324⁵⁷ which comes under the said Part provides enormous powers to the 'Election Commission' and Article 329⁵⁸ prescribes bar of interference by Courts in electoral matters. Part XVI deals with special provisions relating to certain classes, such as, Reservation of Seats for SC and ST in the House of People⁵⁹, and similar such provisions for Anglo Indians and Backward Classes⁶⁰. Part XVII⁶¹ deals with the '*Official Language*'.

Part XVIII contains '*Emergency Provisions*' which includes Article 356⁶² of the Constitution. The provision whereunder in case of failure of constitutional machinery in States, the President can proclaim and assume to himself all or any of the functions of the Government of the State⁶³.

Part XIX contains miscellaneous Articles such as Protection of President and Governor⁶⁴, etc. and under Part XX, Article 368 is provided which prescribes the power of Parliament to amend the Constitution and the procedure therefore⁶⁵. Part XXI deals with '*Temporary, Transitional and Special Provisions*'⁶⁶. While, the last Part XXII⁶⁷ contains Articles 393 to 395 of the Constitution.

4. SIGNIFICANT ROLE PLAYED BY THE JUDICIARY IN EVOLVING OUR CONSTITUTION

As far as the successful working of our Constitution was concerned, we all can proudly proclaim as members of the legal fraternity that when it came to the question of either implementation of the constitutional protection or safeguarding the interest of the State, or for that matter, the continued existence of our independent India when there was much turmoil, Judiciary played a pivotal role. In fact, as I pointed out earlier, Dr. Rajendra Prasad as the President of the Constituent Assembly was pleased to remark that in the constitution itself, they have provided for a '*Judiciary*' which would be independent in its

⁵⁷ (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).....

⁵⁸ (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any Court;.....

⁵⁹ Article 330

⁶⁰ Article 331

⁶¹ Articles 343 - 351

⁶² (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, made a declaration to that effect [in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation].....

⁶³ Article 356 - (1) If the President, on receipt of report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with 'he provisions of this Constitution, the President may be Proclamation.....

⁶⁴ Article 361

⁶⁵ Subs. By the Constitution (24th Amendment) Act, 1971, sec. 3, for "*procedure for amendment of the constitution.*"

⁶⁶ Subs. By the Constitution (13th Amendment) Act, 1962, sec. 2, for "Temporary and Transitional Provisions" (w.e.f. 1-12-1963)

⁶⁷ Ins. By the Constitution (58th Amendment) Act, 1987, sec. 2 (w.e.f. 9-12-1987)

function. Even, the Hon'ble President remarked that it was difficult to suggest anything more to make the Supreme Court and High Courts independent of the influence of the Executive. Thus, great confidence was reposed. While placing the judiciary as one of the pivotal pillars of our Constitution, the Members of the Constituent Assembly ensured that the ideals of the Constitutional provisions are maintained and no stone was left unturned, in the pursuit of the said goal. I would like to state that when we talk of the judiciary, it does not refer to Judges alone, but would definitely include, the joint effort of both the Bench and the Bar together and also the assistance of everyone connected with the judiciary, whose contribution in the functions of the judicial forum are essential. With that view, when we trace out the five decades of our experience after the framing of our Constitution, I can proudly state that at every stage of any crisis, it was the judiciary which came to the rescue and saw that things were kept in order. In light of this context, it will not be out of place to quote what the Father of our Nation, the Great *Mahatma Gandhi* said-

*"I shall strive for a constitution, which will release India from all thralldom and patronage, and give her, if need be, the right to see. I shall work for an India, in which the poorest shall feel that it is their country in whose making they have an effective voice and India in which there shall be no higher class and low class people an India in which all communities shall live in perfect harmony. There can be no room in such India for curse of untouchability women shall enjoy the same rights as men. All interests not in conflict with the interests of the dumb millions will be scrupulously respected."*⁶⁸

From a plain reading of the above excerpt, we could sense his broad vision, the high amount of magnanimity and the keen interest for maintaining justice for the fellow citizens of our country, irrespective of their caste, creed, colour or gender. The words spoken by him, were at a time when we were about to achieve independence *i.e.* when a sovereign India was about to be born.

It will also be appropriate to refer to The Rt.Hon'ble Lord Bingham of Cornhill, Lord Chief Justice of England and Wales, in his '*Law Day Lecture*' on the occasion of the Golden Jubilee Celebrations of the Supreme Court of India on 26-11-1999 at Vigyan Bhavan, New Delhi, when he quoted as to what Dr.B.R.Ambedkar said in the Constituent Assembly about the central importance of Article 32 of the Constitution:

*"I am very glad that the majority of those who spoke on this article have realised the importance and significance of this article. If I was asked to name any particular article in this Constitution as the most important - an article without which the Constitution would be a nullity - I could not refer to any other article except this one. It is the very essence of the Constitution and the very heart of it and I am glad that the House has realised its importance."*⁶⁹

The Lord Chief Justice concluded his lecture by quoting what the then President of Bar Association of India, Mr. Fali Nariman⁷⁰ said in his speech, to quote-

⁶⁸The Selected Works of Mahatma Gandhi , Vol. V - The Voice of Truth, Young India, 10-9-31, p. 255

⁶⁹ (2000) 1 SCC (Jour) 29

⁷⁰ President during 1991

"I leave the last word to the President of the Bar Association of India who, of all people, is well placed to pass judgment⁷¹:

".... I believe that the Judges of the nineties and the Judges of today are somehow more important than the Judges of yesteryears simply because they have been called upon to discharge and have readily assumed, far greater responsibilities than their predecessors ever did. Over recent years 'judging' is no longer what it used to be. Judges have now a dominant role in society - and because of this they are more often criticised for what they do and what they say - and yet today, the highest Judiciary is also held in highest public esteem. This may sound paradoxical, but it is not. The public turns to the Judiciary, and ultimately to the highest Judiciary, more and more for the resolution of its problems - more than it ever did in the past."⁷²

Then, the question that would arise for consideration is how far have we been able to achieve the objectives and realize the goals as set in our Constitution? The implementation of the above said objectives would depend upon the performance of the three wings of the State, namely the Legislature, the Execution and the Judiciary. The Legislature is the organ of the Government in a democracy, which gives shape and direction to national policies and programmes. The numerous legislative measures in the field of personal laws, marriage, position of woman, children and down-trodden, labour welfare, health and land reforms, industrialisation, taxation, etc., have been enacted by the Parliament and the State Legislatures, to cherish the goal of the paramount objective, namely, to secure to all the citizens, justice, social, economic and political. Very many legislations such as, Land Reforms Act⁷³, Untouchability Act⁷⁴, Children Labour (Prohibition and Regulation) Act⁷⁵, the Factories Act⁷⁶, Motor Transport Workers Act⁷⁷, Plantation Labour Act⁷⁸, Mines Act⁷⁹, Industrial Disputes Act⁸⁰, Women Welfare Legislations and other welfare legislations came to be enacted. Apart from these legislations, several other Planning Schemes such as, the Five Year Plans⁸¹ came to be introduced with the above object, to achieve the constitutional goals. The various aforementioned legislations and the plans formulated by the Legislative Wing of the State, were put into effect with a view to achieve the objectives of our freedom fighters, whose goals were for a free India, to feed the starving millions, to clothe the naked masses, and to afford to every Indian, of any income, high or low, the fullest opportunity to develop himself according to his capacity. The spirit contained in the Objective Resolution makes it amply clear that our final aim after obtaining freedom from the British yoke was to establish a classless society with equal social, economic and political justice to all. It was with this objective, the Legislative Wing of our State brought into effect numerous legislative

⁷¹The Business of Judging: Selected Essays and Speeches: 1985-1999, By Tom Bingham, pg. 127

⁷²Nariman, op, cit., at 27 (Supra, n. 70)

⁷³ Act No. 2 of 1977

⁷⁴ Act No.22 OF 1955. [8th May, 1955]

⁷⁵Act, 1986 of [61 of 1986]

⁷⁶ Act No. 63 of 1948

⁷⁷ Act 27 of 1961

⁷⁸ Act LXIX of 1951

⁷⁹ Act No. 35 of 1952

⁸⁰ Act No. 14 OF 1947

⁸¹<http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html>

measures in the field of personal laws, marriage, position of woman, children and down-trodden, labour welfare, health and land reforms. The Executive Wing of the State had also made an effective beginning soon after attaining independence to execute policies and programmes designed by the legislative wing from time to time with regard to the actualization of the goal of distributive justice. Thus, the Executive Wing of the State also plays a vital role in aiding the other Wings of the State to achieve the constitutional goal. Then comes the other important component trinity of the State namely, 'The Judiciary'.

In our Constitution Scheme, the Judiciary has been assigned the role of ensuring and enforcing distributive justice in accordance with the commitment envisaged in the Preamble. The Judiciary has been put under the constitutional obligation to hold the scale of justice in any legal conflict between the rich and the poor, the mighty and the weak, and function without fear or favour, by keeping all authorities legislative, executive, administrative, judicial and quasi-judicial within their respective bounds. Therefore, the need of the hour is that the Judiciary in India must capture the imagination of the lawmakers because of its special responsibility for safeguarding the spirit of distributive justice contained in our national Charter. It is for this reason, the Indian public, by and large or on the side of the Judges hold the higher Judiciary today, in the highest esteem. Large Sections of the people increasingly turn to the Judiciary, the penultimate forum in the land, for the resolution of their problems, more than they have ever done in the past. In the words of Justice V.R.Krishna Iyer;

*"Pragmatically speaking, Justice is what Justice does, and Justice, says Justinian, 'is the earnest and constant will to render to every man his due'. And so, in a just society, what is due to an individual or group or the collective community, shall be rendered."*⁸²

I also happened to read the book of Justice Krishna Iyer, titled- "*Law versus Justice*", where he quoted the following beautiful passage of Robert Ingersol, who puts it as thus:

*"A Government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities, and all the nations that have passed away--all are a warning that no nation founded upon injustice can stand. From the sand-enshrouded Egypt, from the marble wilderness of Athens, and from every fallen, crumbling stone of the once mighty Rome, comes a wail as it were, the cry that no nation founded on injustice can permanently stand"*⁸³

To quote another passage in the same book of Mr.Justice Krishna Iyer-

"In a country where executive and legislative excesses are an obsession with the people where social inequalities and power misuse are writ large, the judiciary should be not only above board--are they?--but also committed to fire-fighting operations wherever people suffer injustice. Not umpires in a boxing bout in a strictly adversary system but activist dispensers of all constitutional means to do justice, individual and collective, by affirmative action, community education in right and justice through the forensic process, mobilisation of

⁸² 1977 AIR 2328, 1978 SCR (1) 423

⁸³Liberty and the Great Libertarians, By Sprading, Charles T., pg. 273

the people to join the administration of justice."⁸⁴

Nowadays litigating in Court has become an indispensable part of social behaviour. Judicial intervention is invariably solicited to run day-to-day administration in most of the fields. There has been a growing tendency to make strategic use of the Judiciary and to exploit procedural niceties. At this juncture, I would like to clarify one misconception about the Judges and the Judiciary. People equate judiciary with judicial system and they treat both as one and the same. There I should state, is a misnomer. The Judicial system is a mechanism of dispensation of justice, whereas judiciary is an institution, which operates the system. Judges, lawyers, litigants, witnesses, they being the components of judiciary, are the operators.

There is also another misnomer, which is often referred to and quoted as, '*judicial activism*'. Through the catena of celebrated decisions, which are published, the society was given an impression about the concept of Judicial Activism. In most cases, judiciary has activated the law, which was lying idle. By revamping or stimulating the process of law, the regime of law has become more bright and effective. Through certain decisions, they have put life in the law. Hence, the activism is only of law, and not of the judiciary.

While we are on this subject, I would also like to trace the history of the Judiciary. At least, in so far as the state of Tamil Nadu was concerned, I could gather from the Report of the First National Judicial Pay Commission⁸⁵. It was originally known as '*Madras Patnam*' and the present site of '*Fort St. George*', was a grant made by the Hindu Raja of Chandragiri called '*Chinnappa Naickar*' for the East India Company. The history of the Courts of Law in Madras falls into three distinct periods. The first period was from 1600 to 1800; the second period was from 1801 to 1862 and the third period stated to have synchronized with the history of the present High Court. In the first period, there were Choultry Courts, which tried petty cases, Civil or Criminal. The important cases, where English subjects were involved, were remitted to England, while they persuaded the local Naik to deal with cases in which Indians were the parties. It was only the Charter dated 9th August, 1683⁸⁶, granted by Charles (*the*) II, were the qualifications of the persons to preside in the Court, emphasized. It is stated that on 22nd July, 1687, the First legally qualified person, Sir John Biggs, entered upon his duties as Judge-Advocate. Then came Mayors Court and the Charter constituted the Mayor and Aldermen into a Court of Record. The Mayor's Court was constituted in Madras in 1688. An appeal was provided from the Mayor's Court to the Governor and Council. In 1726, the Old Mayors Court was removed and New Mayors Court was established. A New Court of Small Causes called the '*Sheriff's Court*'⁸⁷ was created. Again on the 21st July, of 1729, the Sheriff's Court was abolished⁸⁸. In 1763, the Mayor's Courts were re-established under the revised Letters Patent. Then came the Court of Recorder of Madras on 1-11-1778 and thereafter, on 26-12-1800, the Letters Patent

⁸⁴ Justice Krishna Iyer, *Law Versus Justice*, 1981.

⁸⁵<http://www.manupatra.com/downloads/shetty%20commission%2019.04.02/shetty%20commission%2019.04.02/chapters/chapter%20toc.htm>

⁸⁶Annals of the Honorable East-India Company, Volume 2, By John Bruce, pg. 495

⁸⁷Madras: Chennai a 400-year Record of the First City of Modern India, edited by Subbiah Muthiah, pg. 484

⁸⁸*Supra*, n. 86

establishing a Supreme Court of Judicature at Fort St. George, was issued. The new Supreme Court was to be a Court of record. It was invested with a Jurisdiction similar to the Jurisdiction of the Kings Bench in England. Between 1801 and 1862, Courts of two distinct descriptions existed in the Presidency of Madras. One was presided over by the Judges appointed by the Monarch of England, and the other one presided over by the Judges appointed by the East India Company. Pursuant to the powers vested with the Queen of England, in an enactment passed on 6th August, 1861, the High Court of Judicature at Madras came to be established on 16-6-1862 by virtue of Letters Patent published in the Fort. St. George Gazette of 19th August, 1862⁸⁹. The New High Court was opened on Friday, the 15th August, 1862. The High Court was also conferred with the powers of Superintendence over Subordinate Courts and to frame Rules. On the emergence of the High Court of Judicature at Madras, the Supreme Court of Madras and other Courts were abolished.

5. INSTANCES OF JUDICIAL SUPREMACY

In the context of the predominant role played by the Judiciary, which includes both the Bench and Bar, I feel it appropriate to refer to an anecdote mentioned in one of the articles of a *'Festschrift'*⁹⁰. Festschrift on Nani Palkhivala, a renowned Jurist who appeared in the landmark case in the year 1972, popularly known as "*Kesavananda Bharati Versus State of Kerala*"⁹¹, was a case challenging the 24th, 25th and 29th Amendments to the Indian Constitution, which in fact, sought to further increase the States bar to abridge fundamental rights in the name of social justice. That case came to be heard by 13 Judges of the Honourable Supreme Court, the largest Bench ever convened, in the history of the Supreme Court of India.

Through this case, the doctrine of basic structure of the Constitution was formulated. This doctrine has been much acclaimed by those who shared the views of Nani Palkhivala's concern over the progressive civil bar in India. Through this doctrine, although the Parliament was free to amend any part of the Constitution, (including the fundamental rights) they could not alter the "*basic structure*" or framework of the Constitution. However, in 1975, during the state of emergency, when there was a move to review the decision of the Kesavananda Bharati case, by convening yet another Bench of 13 Judges for that purpose, Mr. Palkhivala, strongly opposed the move, arguing against the review for two full days and on the third day, the Bench was dissolved and the review was dropped. It is one of the more memorable instances to be quoted to proclaim the supremacy of the Judiciary in its endeavour to establish justice. Why I referred to this instance was to highlight the initiative and concern of a Member of the Bar to see that the basic structure of the Constitution is not touched by all means.

In the field of Agrarian Reforms, the Judiciary showed its considerable response. To be true, the Right to property has always been the bone of contention between the Supreme Court and the Parliament. The first challenge to the Constitution came when the Supreme Court held the abolition of Zamindari as void on the ground that it discriminated

⁸⁹Glimpses of The Justice System Of Presidency Towns (1687-1973), Mina Choudhuri, pg. 196

⁹⁰"a collection of writings published in honour of a Scholar"

⁹¹ AIR 1973 S.C.1461

between the rich and the poor in determining the compensation for the acquired property⁹². Subsequently, in various judgments ending with *R.C.Cooper v. Union of India*⁹³, the Court rejected the view of the Constituent Assembly that on adequacy of compensation the field of judicial review is narrow. The difficulties arose because the Court had given a very wide connotation to clauses (1) and (2) of Article 31 regarding the limitations against compulsory acquisition of the property. The Judicial decisions interpreting fundamental rights raised serious difficulties in the implementation of the social revolution programmes, such as, fixing the limits on agricultural holdings, conferment of rights on tenant, property planning of urban and rural area, clearance of slums, acquisition of property for commercial or industrial undertaking in public interest. Certain similar enactments like that of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 were struck down by the Judiciary. In the famous Judgment *Golak Nath v. State of Punjab*⁹⁴, the Court construed the term "compensation" to mean "just" and "equivalent" compensation for the property acquired. Following this standard, the Court held the statutory provisions on compensation *ultra-vires* on the ground that it was arbitrary and had no relation to the market value of the land on the date of acquisition, which might be much more than on the earlier date prescribed. The Judiciary's emphasis on the payment of full market value really created a great hurdle for the State. This resulted in certain constituent amendments including the introduction of a major change in Article 31(2). The amendment withdrew the powers of the Court to determine the adequacy of the compensation. It was made the sole business of the legislature to determine the amount of compensation or to lay down the principles or the manner in which it will be paid. Ultimately, by the 25th Amendment Act 1971, the Parliament was empowered to determine the quantum of compensation for property for public purpose and sought to protect laws giving effect to the policies of the State, towards securing the object of the directive specified in Article 39(b) and (c). It was on that juncture, it is claimed that in the famous *Kesavananda Bharti's* case, the Court echoed a novel philosophy by holding that the entire concept of the Fundamental Rights and specially that of property Rights should have social utility and be social service oriented. The Court said that property could justifiably be conditioned in the context of demand of the society at large if a community of equals is to be established, which is an elaboration of the ideal of justice-economic, social and political. Thus, the Court upheld the validity of Twenty-Fifth Amendment Act, 1971 and allowed precedence to the Directive Principles contained in Article 39(b) and (c) over Fundamental Rights to discourage concentration of the ownership of material resources and the means of production. In the words of Mr.Justice S.M. Sikri, former Chief Justice of India;

"Perhaps the best way of describing the relationship between the Fundamental Rights of individual citizens, which imposes corresponding obligations upon the State and Directive Principles, would be to look upon the Directive Principles as laying down the part of the country's progress towards its allied objective and aims stated in the Preamble, with Fundamental Rights as the limits of that path, like the banks of a flowing river which could be

⁹² A.I.R.1954 S.C.392 (*Kameshwar Singh vs State of Bihar*)

⁹³ A.I.R. 1970 S.C.564

⁹⁴ A.I.R.1967 S.C.1643

mended or amended by the displacement, replacement or curtailment or enlargements of any part according to the needs of those who had to use the path."⁹⁵

His Lordship Mr.K.K. Mathew, on his part, went upon saying;

*"if the state fails to create conditions in which the Fundamental Freedom could be enjoyed by all, the freedom of the few will be at the mercy of many and then all the freedom will vanish. In order, therefore, to preserve their freedom, the privileged few must part with a portion of it."*⁹⁶

The Court held that in an organized society, no right can be absolute; right of one must be consistent with the right of the others. When it is not so, the state has to step in and correct the imbalance and disharmony. In fact, *Justice Mathews*, in the course of his Judgment, said, *"Trust in the elected representative is the cornerstone of the democracy, when that trust fails everything else fails."*

It was revealed that great attention was paid by the apex Court with regard to these amendments and it in turn avoided major direct confrontation between the Parliament and the Judiciary. The Judicial approach to the agrarian reforms became quite clear in the case of *Minerva Mills v. Union of India*⁹⁷, wherein the Forty-second Amendment Act, 1976 was challenged. The Act was an attempt to make the Directive Principles more comprehensive and give them precedence over those Fundamental Rights which had been allowed to be relied upon to frustrate socio-economic reforms for implementing the Directive Principles. The text of the amendment was that no law giving effect to the policy of the State, towards securing all or any of the principles laid down in part IV, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14, 19 and 31. Similarly Article 368 of the Constitution was amended to the effect that after clause (3) the following words were added *"No amendment of this constitution (including the provision of Part III) made or purporting to have been made under this Article (whether before or after the commencement of Section 55 of the Constitution (Forty-Second Amendment) Act, 1976) shall be called in question in any Court on any ground."* The after effects of these amendments were that all the Directive Principles of State Policy were given primacy over the Fundamental Rights, and the Parliament was given ultimate power to amend the constitution with the objective in mind that there was an urgent need to accomplish the goal of distributive justice without further loss of time to avoid frustration and provide timely relief to the poverty-ridden people. The Court, however, did not agree with these amendments and held Section 55 of Forty-second Amendment Act, 1976 as void and being beyond amending powers of the Parliament. The Parliament cannot, under Article 368 expand its amending power as to acquire for itself the right to repeal or abrogate the constitution or to destroy its basic structure. The Judicial trend reflected in the *Minerva Mill's* case discloses that the Court made a sincere attempt to harmonize Parts III and IV by importing the Directive Principles in the construction of Fundamental Rights. The Supreme

⁹⁵*Supra*, n. 90

⁹⁶*Supra*, n. 90

⁹⁷ A.I.R. 1980 S.C.1789

Court thus, held that where two judicial choices were available, the Court must give preference to social philosophy contained in part IV of constitution. The Court has shown a great sense of responsibility to uphold agrarian reforms and its legislation in its subsequent cases, with a zeal and to bring a balance between the individual and social interest.

6. CONCLUSION

If we take a close look at the Constitution, we will find that the rule of law runs through the entire fabric of the Constitution like a golden thread. Whatever change we wish to bring about in the socio-economic structure, the same has to be through the process of law and in order to achieve the new socio-economic structure where the little Indian will be able to enjoy the fruits of freedom; law has to play a definitive and positive role. It is, therefore, in the fitness of things that on the day on which the Constitution was adopted and enacted, we should emphasize and highlight the fundamental role of law in society and remind ourselves of the great and sublime purpose which law is intended to serve in a republic governed by the rule of law. We must realize that the end of law must be justice. Law and justice cannot afford to remain distant neighbours. There must be harmony between law and justice. We must, in all seriousness, ask ourselves the question as to how far we have been able to fulfil the mission of law to deliver justice and to what extent we have succeeded in using law as a vehicle for ensuring social justice to the large masses of people in the country. If we look to the balance sheet of the functioning of the judiciary after the Constitution of India came into force, we can see that there are several achievements. At the same time, there are some serious problems which need our urgent attention. Our justice delivery system in spite of innumerable drawbacks and failings, still commands high esteem and the citizens have placed the judiciary on a high pedestal. We have to ensure that we come up to their expectations; we have to preserve the trust, confidence and faith reposed by the people of this country. As *Jan Hus*, a reformer and a national hero of the Czech people, wrote in a prayer, "*Seek the truth, listen to the truth, teach the truth, live the truth, abide the truth and defend the truth - unto death!*" Hence, "*Let justice rule though the heavens fall*" is the credo by which we decry tyranny and preserve our freedoms under law, which is the system of law we celebrate as, '*Law Day*'.
