

CONSTITUTION – THEN AND NOW*

Hon'ble Mr. P. P. Rao**

To understand the Constitution, and what it stands for, we should go back to the Constituent Assembly which consisted of a galaxy of eminent leaders of all sections of the people. The inaugural session of the Constituent Assembly was a memorable event. In his address, Dr. Sachindananda Sinha, the temporary Chairman, who and conducted the proceedings, recalled the words of Joseph Story, an American Jurist about the American Constitution: “The structure has been erected by architect of consummate skill and fidelity; its foundations are solid; its compartments are beautiful, as well as useful; its arrangements are full of wisdom and order, and its defences are impregnable from without it has been reared for immortality It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created by the virtue, public spirit and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest”. Chairman Dr. S. Radhakrishnan was the first member to be call upon to felicitate. In his inspiring speech, he highlighted the unity of India. He said: “Indian is a symphony where there are, as in an orchestra, different instruments, each with its particular sonority, each with its special sound, all combining to interpret one particular score. It is this kind of combination that this Country has stood for”. N. Gopalswami Iyengar, Frank Anthony- the Anglo-Indian leader, Sardar Jjjal Singh, Khan Abdul Gaffar Khan- known as the Frontier Gandhi, and other spoke about the qualities of Dr. Rajendra Prasad. Sarojini Naidu, who was also a poet, started like this: “I was asked to say a line about Rajendra Prasad, and I said that I could only do so if I had a pen of gold dipped in a pot of honey because all the ink in the world would not suffice to explain his qualities.” Dr. Rajendra Prasad in his reply to the felicitations hoped that: “The members of the Assembly would place before the world a model of a Constitution that will satisfy all our people, all groups all communities, all religions inhabiting this vast land, and which will ensure to everyone freedom of action, freedom of thought, freedom of belief and freedom of worship, which will guarantee to everyone opportunities for rising to his highest, and which will guarantee to everyone freedom in all respects.”

At the stroke of midnight of August 14, 1947 India became free. Prime Minister Jawaharlal Nehru made a stirring speech in the Constituent Assembly. He said: “Long years ago, we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and

* Abstract of the Speech delivered by Hon'ble Mr. P. P. Rao, Senior Advocate, Supreme Court of India at Bharati Vidyapeeth Deemed University, New Law College, Pune.

** Senior Advocate, Supreme Court of India.

when the soul of a nation, long suppressed, finds utterance. It is fitting that at

The framers of the Constitution never imagined that the Executive, the Legislature and the Judiciary each will understand the Constitution in a different way and pull in different directions. On September 10, 1949, while moving an amendment to Article 24 of the Draft Constitution (corresponding to Article 31) in the Constituent Assembly, Prime Minister Jawaharlal Nehru had observed: "The policy of the abolition of big estates is not a new policy but one that was laid down by the National Congress year's age. So far as we are concerned, we, who are connected with the Congress, shall, naturally, give effect to that pledge completely-one hundred percent and no legal subtlety, no change, is going to come in our way. That is quite clear. We will honour our pledges. Within limits, no judge and no Supreme Court will be allowed to constitute themselves into a third chamber. No supreme court and no judiciary will sit in judgment over the sovereign will of Parliament which represents the will of the entire community." The Judiciary did not subscribe to this view. On 12 March 1951 the Bihar Land Reforms Act, 1950 was struck down by the Patna High Court as violative of Article 14 because it provided for payment of compensation depending upon the slab. The High Court did not pay due attention to the Directive Principles of State Policy in construing the Fundamental Rights. Parliament rushed in to insert Article's 31A and 31B with Schedule IX to save the Zamindari Abolition Act of all States moving the First Amendment to the Constitution. The Prime Minister observed: "The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something's static; their object is to preserve certain rights which already exist... There is a certain conflict between the two approaches..... when the courts of the land have to consider these matters; they have to lay stress more on the Fundamental Rights than on the Directive Principles of the State Policy. The result is that the whole purpose behind the Constitution, which was meant to be a dynamic constitution, leading to a certain goal step by step, is hampered and hindered by the static element which has been emphasized a little more than the dynamic element; and we have to find a way out of the difficulty." Initially, the 9th Schedule consisted only 13 State Acts, all of them relating to Land Reforms. They could not be challenged on the ground of violation of Part III. Today, the total number of Acts inserted in the 9th Schedule has swelled to 284. Some of the 271 Acts that have been added do not relate to Land Reforms at all, *e.g.*, Sl. No. 257A the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993.

On 27 July 1950, the Madras High Court struck down the communal G. O. which reserved seats in engineering and medical colleges caste-wise and community-wise by rotation out of a set of 14 seats:

- Non-Brahmins (Hindus) 6
- Backward Hindus 2

- Brahmins 2
- Harijans 2
- Anglo Indians and Indian Christians 1
- Muslims 1

The High Court held the G. O. violative of Article 15(1) and 29(2). The Supreme Court while upholding the Judgment, incidentally, observed that in Article 15, there was no provision like Clause (4) of Article 16 permitting reservation in favour of backward classes. Parliament amended the Constitution and inserted Clause (4) in Article 15. The Judiciary rightly frowned upon reservations based on caste and community. It is a matter of regret that subsequently, the Supreme Court approved lists of castes labeled as 'backward classes' resulting in perpetuation of caste system.

The Constitution (Fourth Amendment) Act, 1955 became necessary to get over *inter alia* judicial interpretation of Article 31. In *State of West Bengal v. Bela Banerjee*¹, the Supreme Court declared that compensation in Article 31(2) meant market value of the property on the date of acquisition, little realizing that such an interpretation would obstruct the long awaited land reforms. The amendment made it clear that the obligation to pay compensation will not arise unless either the ownership or the right to possession of the individual is transferred to the state or a corporation owned by the State. Clause (2) of Article 31 was amended declaring that the question of adequacy of compensation was not justiciable, Article 31A was expanded to cover laws providing for taking over the management of any property by the State for limited period or amalgamation of two or more corporations and the extinguishment or modification of rights of persons in corporations or rights accruing under any agreement, lease or licence relating to minerals. In *P. Vajravelu Mudalir v. Special Deputy Collector*², the Supreme Court took the view that if a law lays down principles which are relevant to valuation of the property for payment of compensation, the question of adequacy will not be gone into. On the other hand, if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, the Court will strike down the principles. This interpretation frustrated the time it is acquired, the Court will strike down the principles. This interpretation frustrated the object of the Fourth Amendment. The judges' obsession with the right to property with which they were familiar as S. 299 of the Government of India Act, 1935 contained a similar right and their lack of appreciation of the dynamic nature of the Directive Principles of State Policy which being part of the same Constitution, ought to have been given due consideration while interpreting the fundamental rights, made Article 31 a stumbling block for effectuating agrarian reforms.

The Constitution (Seventeenth Amendment) Act, 1963, was enacted to

1. AIR 1954 SC 170.
2. AIR 1965 SC 1017.

amend Article 31A and in particular the definition of 'estate' and also to add to the Ninth Schedule, 44 additional State enactments relating to Land Reforms. The Constitution (Twenty-Fifth Amendment) Act, 1971 became necessary in order to get over the judgment in *the Bank Nationalisation case- R.C.Cooper v. Union of India*³. The word 'compensation' in Article 31 was substituted by the word 'amount' and it was made clear that inadequacy of the amount fixed could not be called in question. In addition, Art. 31C was granting Universal Adult Franchise was a leap in the dark (Art. 326). Lord Bryce had cautioned long ago: "Do not give to a people institutions for which it is unripe in the simple faith that the tool will give skill to the workman's hand". Dr. Alladi Krishnaswamy Aiyar, in his *Srinivas Sastri Memorial Lecture* explained the reason for adopting Universal Adult Franchise in the Constitution. He said: "If democracy is to be broad-based and the system of government that is to function is to have the ultimate sanction of the people as a whole, in a Country where a large mass of people are illiterate, where the people owning property are few, the introduction of any property or educational qualification for the exercise of the franchise would be a negation of the principles of democracy. If any such qualification were introduced, that would have disenfranchised a large number of the depressed and laboring classes. It cannot, after all, be assumed that a person with a bare elementary education and with a knowledge of the three R's is in a better position to exercise the franchise than a labourer or a cultivator who may be expected to know what his interests are and choose his representatives. Possibly a large scale suffrage may also have the effect of rooting out corruption in election".

I am inclined to think that we should have made a provision for filling up 50% of seats in Parliament and State Legislatures by nomination of eminent persons and the remaining 50% by direct election. The manner in which we have been practicing democracy in India, is not helping capable men and women of integrity to get elected. Without competent ministers, there cannot be effective governance.

It is necessary that a minister should be honest and have special knowledge and/or practical experience in the subject concerned. It is not easy to persuade person of eminence and integrity to seek election to Parliament or State Legislature delinking membership of Legislature from ministership is necessary in order to utilize their services as ministers.

Eminent persons in different fields known for their ability, experience and integrity alone will be able to provide a clean and efficient governance. It is felt necessary. It will be a suicidal not to utilize and excellent human resources available at a time when the country is faced with instructional decline and erosion of values. A competent and honest government being the *sine qua non* for moving fast towards the constitutional goals, it is expedient to restrict the requirement of membership of Parliament only to the Prime Minister and the Chief Minister. The ministers need not be elected member of Parliament or of State Legislatures. They can be outsiders. To enable such ministers to

3. (1970) 3 SCR 830.

participate in the proceeding in Parliament or State Legislatures, they can be made *ex-officio* member automatically loses his membership as and when he ceases to be a minister. To give effect to these suggestions Articles 75(4) and 164(4) will have to be amended and new provision requiring a minister to possess special knowledge and experience in the subject of his portfolio may have to be inserted.

The words of N. A. Palkiwala are relevant even today after the lapse of three decades he said: "By voting ignorant professional politicians to power, we have kept singularly gifted an enterprising nation in the ranks of the poorest on earth... if experts imbued with a spirit of dedication and wisdom were to be inducted into the cabinet and were to be allowed the requisite freedom of action, they could transform this country into one of the great economic powers".

The *Report of National Commission of Review the Working of Constitution* says: "We, as the nation, appear to have dropped some fundamental values of a free and self governing people and are finding it extremely difficult to retrieve and restore these value to their proper position in the national life... the crucial failure is the innate resistance in government and governmental process to the fundamental article of democracy *viz.*, that all power and all authority flows from the people and that all public institutions are meant solely to serve the public interest the assurance of dignity of the individual enshrined in the preamble of the constitution of remained unredeemed... the first and the foremost need is to place the citizen of this country at center stage and demonstrate this prioritization in all manifestation of governance... that the democratic process have not promoted self governance. People of India, under the dispensation, have to effective control over their social, political and economic destiny or emancipation.

The system of administration design and practiced by political executive with the active support of the permanent civil services has reduced and limited the sovereignty of the people to a mere right to exercise their franchise at the election... crisis of leadership, corruption insensitivity and insufficiency of administration have resulted in extra legal system and parallel economies and even parallel governments. Bureaucratic pettifoggers which cause frustration in the people in their daily life as a more serious fallout of pushing more and more people into extralegal system... there is increasing criminalization of politics and of the electoral process. If remedies are not found and implemented speedily there might remain very little of value to the salvage... political parties, which have fair share of criminal elements, handle enormous funds collected ostensibly for meeting parties and electoral expenditure. Money power and criminal elements have contributed to pervasive degeneration of standards in public life and have criminalized politics. This is reflected in the quality of government's process... there is crisis of confidence. There is crisis of leadership. Political leaders, owing to narrow partisan and sectarian interests and desire for short time political gains, are unable even to agree upon broad common national

purposes... There is pervasive impurity of the political climate and political activity. Criminalization of politics, political – corruption and politician-criminal-bureaucratic nexus have reached unprecedented levels needing strong systematic changes... The economy is gradually sinking into a dept-trap. Economic, fiscal and monetary policies coupled with administrative inefficiency, corruption and wasteful expenditure are increasingly pushing the society into extra-legal systems, crime-syndicates, mob-rule and hoodlum out-fits. Black-money, parallel economy and even parallel government are the overarching economic and social realities. Legitimate Governments will, in due course, find it increasingly difficult to confront them. In course of time these illegal criminal out-fits will dictate terms to legitimate Governments.”

Two and half decades before the dawn of independence, C. Rajagopalchari wrote in his personal diary: “Elections and their corruption, injustice and the power and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us. Men will look regretfully back to the old regime of comparative justice, and efficient, peaceful, more or less honest administration.” He added: “Hope lies only in universal education by which right conduct, fear of God will be developed among citizens from childhood.”

Winston Churchill never relished the idea of India's independence. He said: “Power will go into the hands of rascals, rogues and free booters. These are men of straw of whom no trace will be found after a few years. They will be fight amongst themselves and India will be lost in political squabbles.”⁴

In the concluding session of the Constituent Assembly, President Dr. Rajendra Prasad made a profound statement: “If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution, if they are lacking in these, then the Constitution cannot help the Country. After all the Constitution is like a machine, a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the Country before them. There is a fissiparous tendency arising out of arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interest 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.”

The Constitution speaks in the name of ‘We, the people of India.’ The people of India who are supposed to be the repository of sovereignty and democracy, are relegated to helpless position. The Representation of the Peoples Act gives them Hobson's Choice in most cases, either vote for a

4. Quoted in *The Politics of Crimes and Corruption* by N. K., 1999, Harper Collins Publishers, India, pp 268-269.

candidate who does not deserve to be elected or abstain from voting. The voters do not have right to reject all the unwanted candidates and demand fresh elections with new candidates. The voters need improvement. They are unable to check the money power and the muscle power which dominate the elections. The Supreme Court judgment in *Vineet Narain*⁵ case recognizes the fact of criminalization of politics and the nexus between criminals, politicians and the police brought out in *N. N. Vohra Committee's Report*. Terrorist outfits are advancing in various parts of the country. Serial bomb blasts have been occurring in different parts with increased frequency. The governmental machinery is not able to tackle the problem effectively. In areas where the terrorists have their sway, the Government's writ does not run. Therefore, the time has come when the People of India have to raise their voice and demand clean and effective governance by weeding out tainted public servants and those of doubtful integrity and ensuring that the recruitment at all levels to public services is made by honest, well equipped and experienced members of public service commissions, selection board or selection committees. We need electoral reforms to bring in, capable men and women of integrity into the Legislature. We need a Government which can impart the education to all citizens up to graduation as the first step towards achieving socio-economic equality.



5. AIR 1998 SC 889.