Rajiv Gandhi
Institute for Contemporary Studies

Policy WATCH

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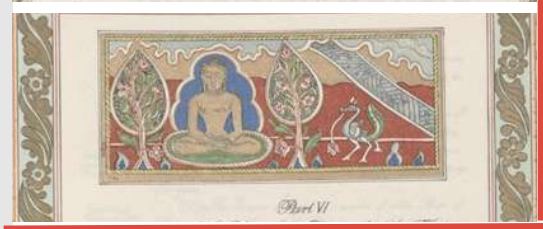
January 2025, New Delhi

Constitutional Values and Democratic Institutions

In this issue



Contents

RAJIV GANDHI
INSTITUTE FOR CONTEMPORARY STUDIES

1. Editorial

The Rajiv Gandhi Institute for Contemporary Studies (RGICS) is the knowledge affiliate of the Rajiv Gandhi Foundation. RGICS carries out research and analysis as well as policy advocacy on contemporary challenges facing India. RGICS currently undertakes research studies on the following five themes:

- Constitutional Values and Democratic Institutions
- Growth with Employment
- Governance and Development
- Environment, Natural Resources and Sustainability
- India's Place in the World

The January 2025 issue of Policy Watch is on the theme Constitutional Values and Democratic Institutions. This issue is special as 26th January 2025 is the 75th anniversary of our Constitution. Though our Constitutional Values and Democratic Institutions are under serious threat, this is a time to celebrate. In that spirit the first article describes the number of activities and program that the Rajiv Gandhi Foundation began organising since April 2024, as a build up to the 75th anniversary celebrations. The next article describes the content of the Exhibition celebrating the 75th Year of India's Constitution. It is designed by the "We the People Abhiyaan". It is called The Making of the Constitution.

We felt that in this moment of elation, we should also take stock of how the Constitution has remained a living document, while being buffeted by changes in the social-economic environment, as also in the political culture. Thus, we have an article each on amendments, violations and case judgments which have remade the Constitution to some extent.

We intersperse the celebration and the critique by reproducing Dr Ambedkar's speech in the Constituent Assembly on the eve of the adoption of the Constitution, on 26th Nov 1949. Not only did he play a seminal role as the Chair of the Drafting Committee, but indeed he was the intellectual anchor of the Constitution. And along with Pandit Nehru, Sardar Patel, Maulana Azad and Dr Rajendra Prasad, Dr Ambekar put his full moral weight behind the Constitution. **We have highlighted some of his speech excerpts for their eternal relevance.**

The fourth article – How the Constitution is Unmade - deals with major violations of the Constitution, classified under a few important headings. The fifth article - How the Constitution is Remade - deals with the important Constitutional Amendments, classified under a few important headings. Both of these articles are based on work done by RGICS Visiting Fellow Arnab Bose.

The last article continues with the theme How the Constitution is Remade. It deals with Landmark Case Judgements, mostly by the Supreme Court, which strengthened, and in some cases weakened the principles enshrined in the Constitution. It has been put together by Prof Somnath Ghosh, Honorary Senior Visiting Fellow, RGICS.

We hope the readers find the issue enjoyable and useful We would welcome any feedback.

Vijay Mahajan
Director, Rajiv Gandhi Institute for Contemporary Studies

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2. Celebrating the 75th year of India’s Constitution

RGF team

This 26th January was the 75th anniversary of India’s Constitution. We decided to celebrate it and called it **HOPE - Celebrating the 75th Year of India's Constitution**. Under this we conducted a series of Art Exhibitions, Film Shows, Music and Dance Performances, Talks and other events.

2.1 Art Exhibitions

We began with hosting the art exhibition ***Moments in Collapse organized by SAHMAT***, curated by Gigi Skaria in collaboration from 14th April 24 and it went on till 14th Aug 24. A link to a video walkthrough of the exhibition is given below:

https://www.youtube.com/watch?v=YHQccIGybKQ

We followed it up by an exhibition with SAHMAT - **‘Ishwar Allah Tero Naam’**: in defense of our secular tradition; which started on the 2nd of October 2024.

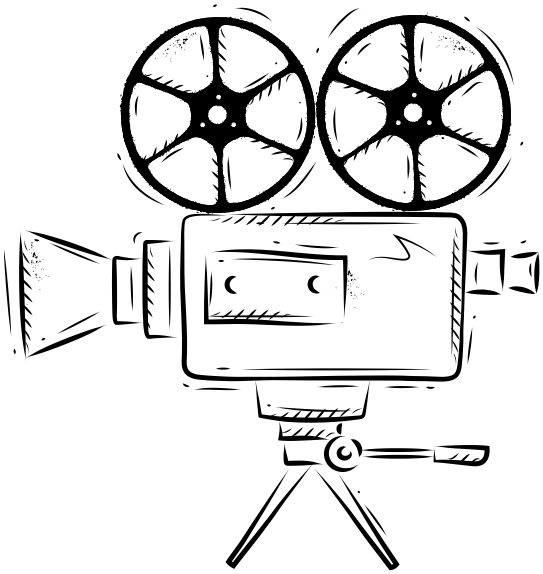
“Art in the Indian Constitution”

A talk by Vinita Gursahani Singh was organized on 31st Jan on the book “Art in the Indian Constitution” brought out by We the People Abhiyaan.

For a full video exposition on the book please click on
https://www.youtube.com/watch?v=u401150FL2k&t=632s

2.2 Film Shows - Flickers of HOPE

In the meantime, we launched the series "Flickers of HOPE" with the film by Yasmin Kidwai "***Filmisthaan***" on 13th Aug 2024. This was a documentary on how Bollywood had made many films which were about India emerging as a newly independent nation.



This was followed by a two-day event on 23rd and 24th of August 2024, starting with a workshop for young film enthusiasts **'Documentaries and Us'** and with the lecture and screenings by Meghnad Da and Tapan Bose da on the second day which included his experimental film '**In Search of Ajantrik'**.

We are screening the film **Zabaan** based on a story by Khwaja Ahmad Abbas titled '**Darogha aur Ladki**' on the 9th of November and held a conversation with the team.

We are also screening the acclaimed filmmaker Anand Patwardhan's '**Vasudhaiva Kutumbakam**' on the 26th November 2024.

2.3 Music, Dance, and other Performances

The theme of this series is an exploration of the classical musical forms of India with performing artists.

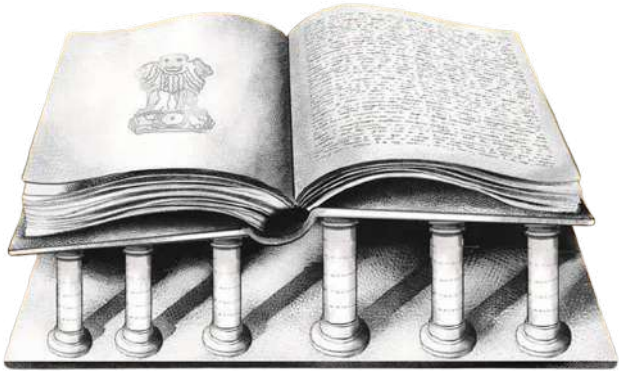
Watan Ki Raah Mein is a campaign to Safeguard the Constitution organised by various civil society organisations. They brought together an evening of musical performances on 19th May 2024.

On 27th September, the much-acclaimed performance of **Gandhi Leela** was organized at Jawahar Bhawan to a full house.

We hosted the famous comedian Anil Abraham for his hilarious show **'Apna time Ayega'** on 16th November, 2024.

'Bulbul-e-Hind: The Poems of Sarojini Naidu' - a presentation in recitation, song, dance and natya of a selection of poems by the iconic Freedom Fighter and poetess Sarojini Naidu is going to be performed on the 29th November 2024.

2.4 Workshops and other events related to the Constitution



Constitutional Values Training Program by Nagesh Jadhaw, Samvidhan Pracharak are being organized.

A workshop on **Constitutionalism for Social Cohesion**, is scheduled on Sunday, 5 Jan 2025 by Pratap Chandra Behra.

'**Hum Bharat Ke Log - 75 Years of Our Constitution: Theatre Empowering the Voices of the People!**' in Uttarakhand with Moazzam Ali, Rang Majma Cultural and Education Trust with the collaboration and support of Rajiv Gandhi Foundation successfully completed 40 shows of participatory theatre program.

2.5 Samvidhan Samvad: Celebrating 75 years of India's Constitution

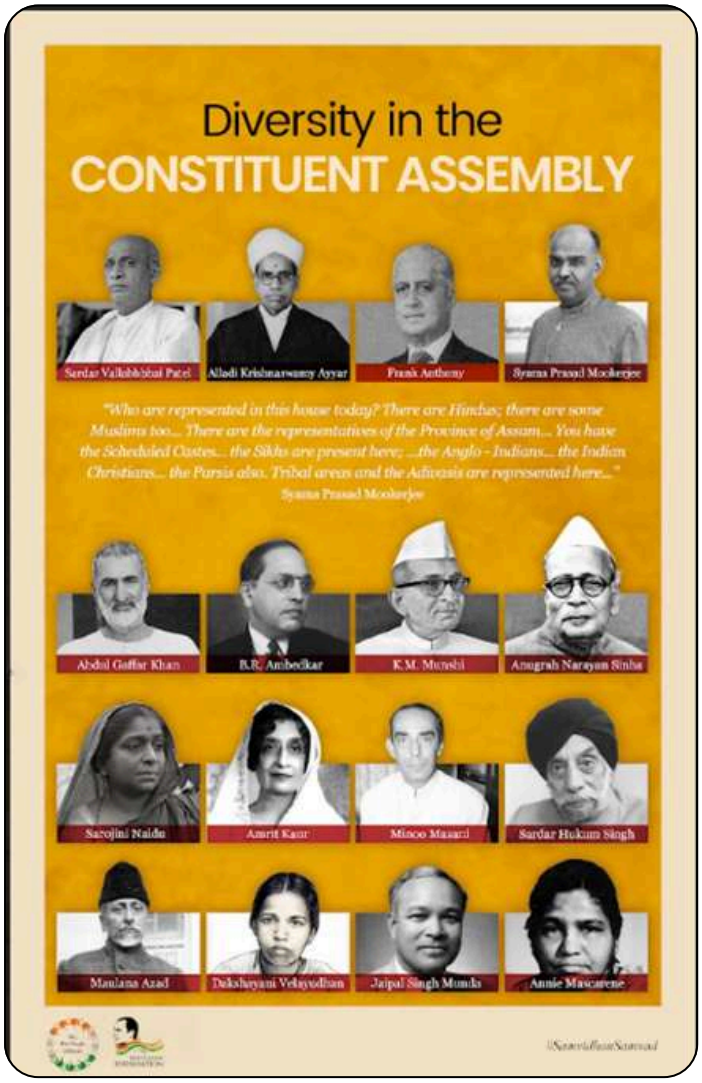
Taking this celebration further, we collaborate with We The People Abhiyan, who have previously worked with us on a few programs, most importantly, a video of the Preamble to the Constitution in Indian Sign Language.

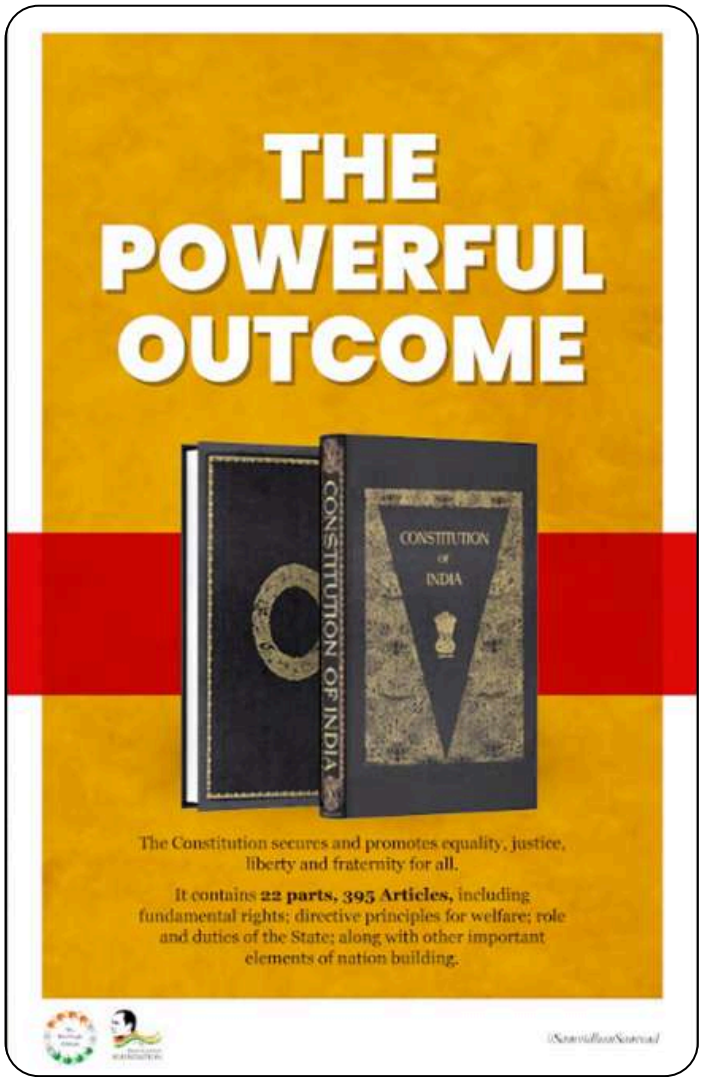
We conducted a series of events promoting the participation of youth in dialogues around the constitution of India and bringing new interesting insights into it, we are calling this series Samvidhan Samvad.

Two events for the Youth - With Schools and Colleges, along with NGOs and AShA centres participating, were organised with We The People Abhiyan Team on the 30th and 31st of January, 2025.

3. An Exhibition on the Making of the Constitution by “We the People Abhiyaan”

We are working on a series of posters, 75 in total with the team that will cover various aspects of the constitution of India, its formation, constituent assembly and its debates, the diverse groups of people involved in its formation, and constitution as a living document. Artist Shoeb Shahid has been selected as the designer of these posters.





We are planning to do this in three phases, phase 1 (26th January, 2025) we will have around 30 panels in both English and Hindi, phase 2 (by 14th April) will increase this to around 50, and the last phase (1st July) will take it all the way up to 75. A total of 34 panels have been made so far, 17 of these panels in English, and 17 in Hindi are already prepared.

Content	Suggested Visuals
3.1 Our Journey of Self-Determination Our freedom struggle was not just a journey of freeing the country from a foreign nation but also of taking control of our nation's destiny. Since the very beginning our leaders led the movement with "Swaraj is our birthright". The idea of Swaraj led to a constant demand for self-governance with the power to have our own Constituent Assembly to draft our Constitution. *"Swaraj would not be a free gift of the British Parliament but a declaration of India's full self expression- the Constitution of India would be framed as per the wishes of the Indians."* *-Written by Mahatma Gandhi in an article "Independence" published in Young India in 1922.* **Events leading to Purna Swaraj:** • **1919 Government of India Act-** This fell short of true self-governance. • **Non-Cooperation Movement-** Frustrated, leaders initiated the Non-Cooperation Movement. • **Motilal Nehru's National Demand, 1924-** This sought a Constitution with Fundamental Rights, but Britain rejected this. • **Simon Commission Protests, 1927-** Britain formed the all-British Simon Commission to draft a Constitution, prompting nationwide protests. • **Demand for greater autonomy-** British included Indians in discussions on reforms, but we wanted more.	 

Content	Suggested Visuals
3.2 Declaration of Purna Swaraj The British were offering freedom but within the domain of the Crown. However, our demand was for *Purna Swaraj*- complete independence from the foreign rule. *"We believe that it is the inalienable right of the Indian people, as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth….The Constitution of India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise."* • *Jawaharlal Nehru declared in his speech of Purna Swaraj in 1930 at Lahore Session.* For the first time the demand and intentions were made clear- not only self rule but self-determination. Hence, now, the negotiations included the right to frame our own Constitution. Eventually, after many give and take, Cabinet Mission plans were proposed, to create a Constituent Assembly. This Constituent Assembly would make the Constitution for the independent India!	 
3.3 Becoming of our Constitution Assembly • **1935:** Indian National Congress officially demanded the creation of a Constituent Assembly. • **1940:** British offered more representation in the existing Viceroy's council instead of a separate Constituent Assembly. This was rejected. • **1942:** The Cripps Mission proposed an assembly to frame a new constitution. This failed too. • **1946:** British Cabinet Mission proposed a plan to form a Constituent Assembly with representatives elected from provincial assemblies. • **July 1946:** Elections were held in British India to select representatives for the Constituent Assembly. Princely states were invited to send representatives. • **December 9, 1946:** The first session of the Constituent Assembly was convened in New Delhi.	

Content	Suggested Visuals
3.4 Representation in the Constituent Assembly The Constituent Assembly had 389 members from different parties like Indian National Congress, Muslim League, Unionist party, Unionist Party (Muslims), Scheduled Caste Federation, Communist party of India, Krishak Praja Party, Akali and the Independents. **How were our members chosen?** Of the 389 members, 292 were elected by the Provincial Legislative Assemblies and 97 were nominated, mostly by Princely States.	
3.5 And so it began… The Constituent Assembly met for the first time in New Delhi on 9 December, 1946. *"There is no reason why our Constituent Assembly, in spite of the obstructions in its way, should not succeed in doing its work. If we are sincere, if we respect each other's opinion, we shall develop so much insight that we will not only be able to understand each other's thoughts, but also be able to go deep to the root and understand each other's real troubles. We will then function in a manner that no one will give no one cause to think that he has been ignored or that his opinion has not been respected."* ***Opening speech by Constituent Assembly Chairman, Dr Rajendra Prasad on 11 December 1946.*** On 13th December, 1946, Pandit Nehru presented the Objective Resolution which aimed to establish India as an: • independent, sovereign, democratic republic, ensuring justice, equality, and freedom for all citizens. • ensuring social, economic, and political justice, equality of status, freedom of thought, expression, belief, faith, and worship. • underscoring commitment to safeguarding the rights of minorities, backward communities, and vulnerable groups. The resolution was agreed and passed by all the members on 22nd January 1947.	 

Content	Suggested Visuals
3.6 Tryst with Destiny On 15th August we gained independence but were also partitioned into two nations: India and Pakistan. Almost 1/3rd members of the Constituent Assembly moved to Pakistan and the total number fell **from 389 to 299.** Emotions on the eve of Independence day, i.e., 14th August, 1947 *"The country, which was made by God and Nature to be one, stands divided today. Separation from near and dear ones, even from strangers after some association, is always painful. I would be untrue to myself if I did not at this moment confess to a sense of sorrow in this separation. But I wish to send on your behalf and my own greetings to the people of Pakistan, which till today has been a part and parcel of ourselves.."* **- Dr Rajendra Prasad** *"We have achieved this freedom, a new question confronts us, which is even more vital. That struggle is over but a fresh one of a different type is to begin; this new struggle is not to be fought against any outsider but is to be settled among our own selves.. Now the time has come when we shall have to shoulder great responsibilities when there will be no room for clapping and for high-sounding slogans"* - **Chaudhri Khaliquzzaman** *"I have a list here of nearly a hundred prominent women of all communities who have expressed a desire to associate themselves with this ceremony... It is in the fitness of things that this first flag that will fly over this august House should be a gift from the women of India. We have donned the saffron colour, we have fought, suffered and sacrificed in the cause of our country's freedom. We have today attained our goal. In presenting this symbol of our freedom, we once more offer our services to the nation. We pledge ourselves to work for a great India, for building up a nation that will be a nation among nations..."* ***-Hansa Mehta***	

Content	Suggested Visuals

3.7 We the People: The Birth of India's Constitution

The Constituent Assembly sat for over the next 2 years and 11 months. The Assembly held 11 sessions over 165 days, during which each article was meticulously debated. Around 2,000 amendments were proposed, and 1,000 were accepted.

The Whens

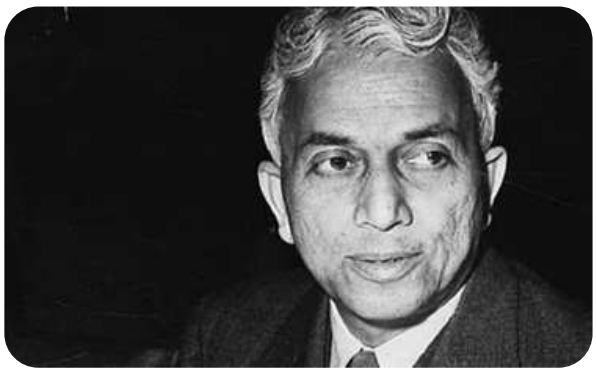
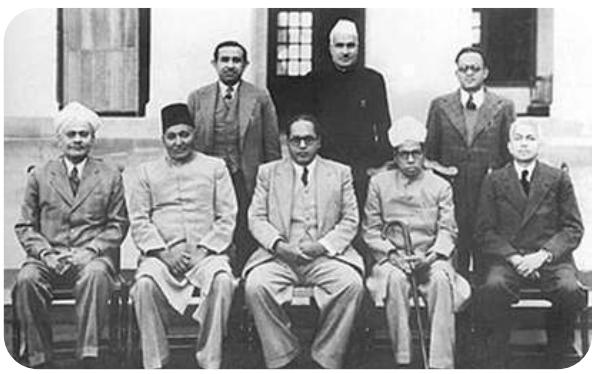
- First Session – 13th Dec 1946 to 22nd Jan 1947
- Second session- 27th Feb 1947 to 30th Aug 1947
- Draft Constitution (B.N. Rau)- October 1947
- First Draft Constitution- 27th Oct 1947 to 21st Feb 1948
- Public circulation of Draft Constitution-21st Feb 1948 to 26th Oct 1948
- Debates on the draft Constitution -4th Nov 1948 to 17th Oct 1949
- Revision-17th Oct 1949 to 14th Nov 1949
- Second reading of the draft Constitution-14th Nov 1949 to 16th Nov 1949
- Third reading of the draft Constitution-17th Nov 1949 to 26th Nov 1949
- Enactment and adoption of the Constitution- 26th Nov 1949 to 26th Jan 1950

The How

Framing of the Indian Constitution was a process which demanded sharing of intellectual ideas, outlining vision for a newborn nation and creating a concrete framework that would stand the test of the time. There were many different topics that needed careful deliberations and that is why the method of debates and voting was adopted. There were also different demands and ideologies that needed space to be heard, therefore different committees were formulated for continuous debates and discussions.

Important Committees

1. Union Powers Committee
2. Union Constitution Committee
3. Provincial Constitution Committee
4. Drafting Committee
5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas

Content	Suggested Visuals
6. Rules of Procedure Committee 7. States Committee 8. Steering Committee 9. Finance and Staff Committee 10. Special Committee to examine the draft Constitution	1. Credentials Committee 2. House Committee 3. Order of Business Committee 4. Ad-Hoc Committee on the National Flag 5. Committee on the Functions of the Constituent Assembly 6. Ad-Hoc Committee on the Supreme Court 7. Committee on Chief Commissioners' provinces 8. Expert Committee on the Financial Provisions of the Union Constitution 9. Linguistic Provinces Commission 10. Press Gallery Committee 11. Ad-Hoc committee on Citizenship There were 8 major committees to discuss the broader issues and then there were 13 minor committees which debated and discussed specific issues at hand.
3.8 Constitutional Advisor- Sir B N Rau • Sir Benegal Narsing Rau was one of the foremost Indian jurists of his time who played a key role in preparing the first draft of the Constitution of India. • He was a distinguished Indian civil servant, jurist, diplomat and statesman. • He was deputed on a world tour to meet with constitutional law experts and seek their inputs on different features of the Draft Constitution. • In the last week of October 1947 Rau's draft was ready. It contained 240 Articles and 13 Schedules and was presented to the Drafting Committee on 27th October 1947. A major part of the deliberations of the Constituent Assembly was centred around this draft.	
3.9 Dr Ambedkar, Chairman and Members of the Drafting Committee The entire Assembly would meet for a fixed period to debate various topics and vote on them. Meanwhile, a specialised committee would convene regularly to consider the debates and prepare drafts for final voting. This specialised committee was known as the Drafting Committee.	

Content	Suggested Visuals
Chairman of the Drafting Committee: • Dr B.R. Ambedkar (Chairman) 	**Members of the Drafting Committee:** • N. Gopalaswamy Ayyangar • Mohammed Saadullah • Alladi Krishnaswami Ayyar • K.M. Munshi • B.L. Mittar substituted by N Madhava Rao following his resignation on health issues • Dr D.P. Khaitan (died in 1948 and was substituted by T.T. Krishnamachari)
3.10 International Influence Apart from the debates and discussions at the committee level, the makers of the Constitution also took inspiration from various Constitutions of the world. • United Kingdom: Parliamentary system and rule of law. • United States: Fundamental rights, independence of Judiciary, Judicial Review. • Ireland: Directive Principles of State Policy, Method of Election of the President.	• Canada: Federal structure with a strong central government. • Australia: Concurrent powers and terminology. • Weimar Republic (Germany): Emergency powers. • South Africa: Amendment procedures • Japan: Concept of “Procedure established by law” • USSR (Now Russia): Fundamental duties and the ideals of justice (social, economic and political), expressed in the Preamble.
	

Content	Suggested Visuals
3.11 Inclusivity- The Core of the Constitution The Constituent Assembly of India was a remarkably diverse body that represented a wide spectrum of Indian society. **1. Religion:** • The Assembly included members from various religious communities, reflecting India's pluralistic society. • **Hindus** made up the majority, as the Hindu population was the largest. • **Muslims** constituted a significant minority in the Assembly. However, after the partition and the creation of Pakistan, Muslim representation in the Indian Constituent Assembly decreased. • **Other Minorities**: There were representatives from Sikh, Christian, Parsi, Jain, and Buddhist communities, though their numbers were small. **2. Caste** • **Scheduled Castes and Tribes:** Efforts were made to ensure representation of marginalised communities. Leaders like Dr. B.R. Ambedkar (Scheduled Caste) and Jaipal Singh Munda (Tribal community) played significant roles. • **General and Other Backward Classes:** Representatives also came from non-Scheduled Caste backgrounds, but the inclusion of backward classes remained minimal.	**3. Professional and Educational Backgrounds:** • The Assembly consisted of **lawyers, scholars, freedom fighters, social activists, and educationists.** Figures like Dr. Rajendra Prasad, Dr. B.R. Ambedkar, Jawaharlal Nehru, and K.M. Munshi brought expertise in law, governance, and social reform. *"Who are represented in this house today? There are Hindus; there are some Muslims too...There are the representatives of the Province of Assam...You have the Scheduled Castes. The Sikhs are present here;. The Anglo-Indians..the Indian Christians..the Parsis also. Tribal areas and the Adivasis are represented here.* *-Syama Prasad Mookherjee*
3.12 The Women of the Constitution Among the hundreds of men in the Assembly were 15 exceptional women. These women made significant contributions to critical debates on fundamental rights, social justice, and gender equality, advocating for provisions that would protect and promote women's rights in the new Constitution. Despite their small numbers, their involvement laid the groundwork for future advancements in women's rights and representation in India.	

<table>
<tr><th>Content</th><th>Suggested Visuals</th></tr>
<tr><td>

Women Members

Ammu Swaminathan, Annie Maccarene, Begum Aizaz Rasul, Dakshayani Velayudhan, Durgabai Deshmuk, Hansa Jivraj Mehta, Kamala Chaudhary, Leela Roy, Malti Chaudhary, Poornima Baneerji, Rajkumari Amrit Kaur, Renuka Ray, Sarojini Naidu, Sujeta Kriplani and Vijaylaxmi Pandit.

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Agree to Disagree

Having an assembly with heterogeneous social, political and intellectual ideologies, members did not always agree on various topics. It was a rather argumentative assembly.

Take for example the debate on Right to Vote:

The drafting Committee proposed that the general election in the country would take place by universal adult franchise, that is, everybody despite their caste, religion, gender, educational background would have the right to vote.

India was amongst the first countries to do so. To give the right to vote to its whole populace at the time of independence. For context, the USA gave the right to vote to African-Americans almost 180 years after their independence.

The varying opinions were:

<table>
<tr><th>Members who opposed it</th><th>Members who supported it</th></tr>
<tr><td>‘Adult franchise presupposes that the electorate is enlightened. Where the electorate is not enlightened there cannot be parliamentary democracy.’ - Brajeshwar Prasad</td><td>“Because we have adult suffrage, our legislature will express the will of the nation as a whole..”- Krishna Chandra Sharma</td></tr>
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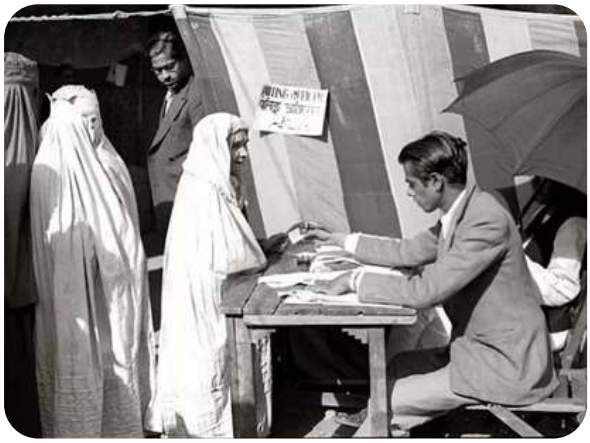
</td><td> 

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Content	Suggested Visuals

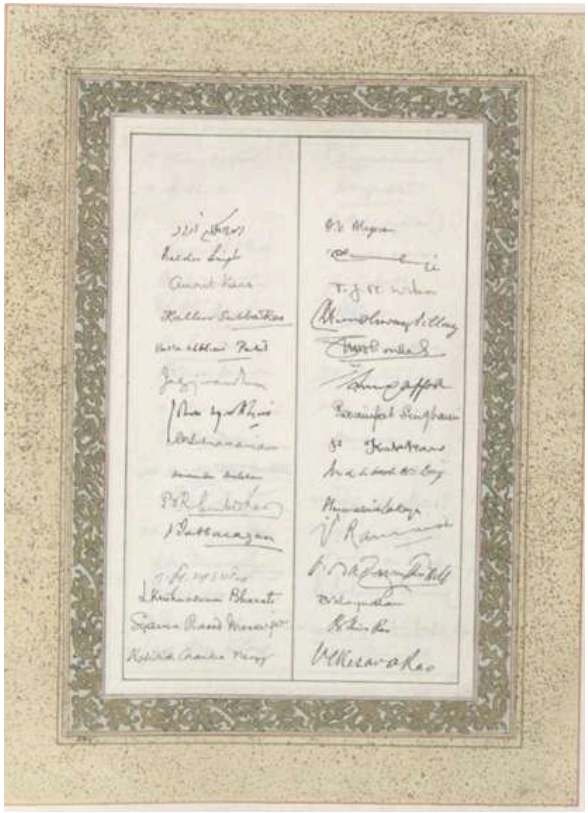
Members who opposed it	Members who supported it
"Without proper education, without the proper development of patriotism in this country, ...this is a dangerous weapon" - M Thirumala	*"India adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule"- Alladi Krishnaswamy Iyer*
"Literacy is the "minimum of requirement in democratic citizenship"- KT Shah	*"If we had not provided an adult franchise what else could we have provided for? Years of freedom struggle and revolt against foreign rule led to India's independence and the constitution-making project. And adopting democracy and the adult franchise was not a novel but a natural choice."- Kamplapati Tiwari*

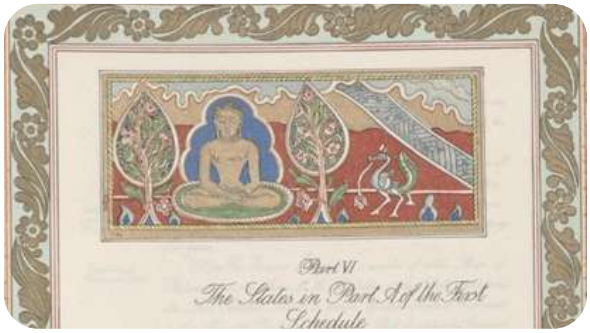
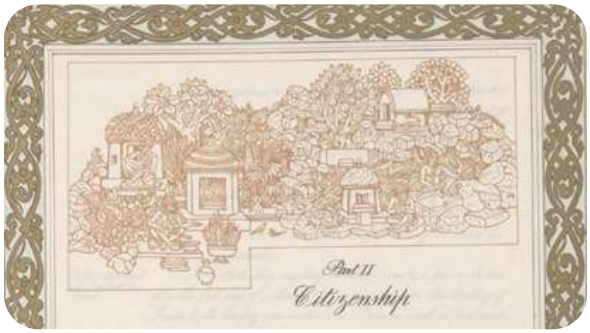
Eventually, majority members voted in the favour of universal adult franchise holding the fundamental value of equality and democracy. The nation came first and weaving a Constitution that secures maximum rights for all citizens were the ultimate goal for the members of the Constituent Assembly.

3.13 Adopt, Enact and give to ourselves…

On 25th November 1949, Dr B R Ambedkar concluded the process of the making of the Constitution by these words:

"The credit that is given to me does not really belong to me. It belongs partly to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for 141 days and without whose ingenuity of devise new formulae and capacity to tolerate and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion.

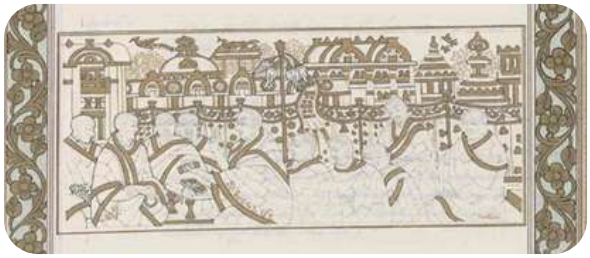
Content	Suggested Visuals
Much greater share of the credit must go to Mr. S. N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equaled, nor his capacity for hard work. He has been an acquisition to the Assembly. Without his help, this Assembly would have taken many more years to finalise the Constitution. I must not omit to mention the members of the staff working under Mr. Mukherjee. For, I know how hard they have worked and how long they have toiled sometimes even beyond midnight. I want to thank them all for their effort and their cooperation." **On the following day, November 26, 1949, our Constitution was adopted.** However, to honour the journey that began on January 26, 1930, with the declaration of Purna Swaraj, the Constitution was enacted in its entirety on January 26, 1950, with the signatures of 284 members. **This day is celebrated as Republic Day.**  	 

Content	Suggested Visuals
3.14 Art and Artists of the Constitution Our Constitution is far more than words on a page; it's a representation of our highest principles, human dignity, and the rights and welfare of every citizen. The original manuscript of the Indian Constitution is not just a legal document; it's a profound artistic tribute to India's rich heritage. Nandalal Bose and his team at Shantiniketan spent nearly four years meticulously illustrating each page with intricate designs inspired by Indian miniature painting. Each part of the Constitution captures India's historical and cultural journey—from the Vedic and Gupta periods to the Mughal and British eras, and finally, to the freedom struggle. The borders and illustrations embody the artist's vision of India's chronicle towards independence, honoring the resilience, leaders, and diverse legacy that shaped the nation. The original copy is calligraphed, with care by Prem Behari Narain Raizada on handmade millbourne loan paper. He started doing calligraphy on 28th November 1949 and completed it by April of 1950. The Hindi version was done by Vasant Krishna Vaidya. Through these artistic tributes, our Constitution captures not just the law of the land but the heart of a nation.	    

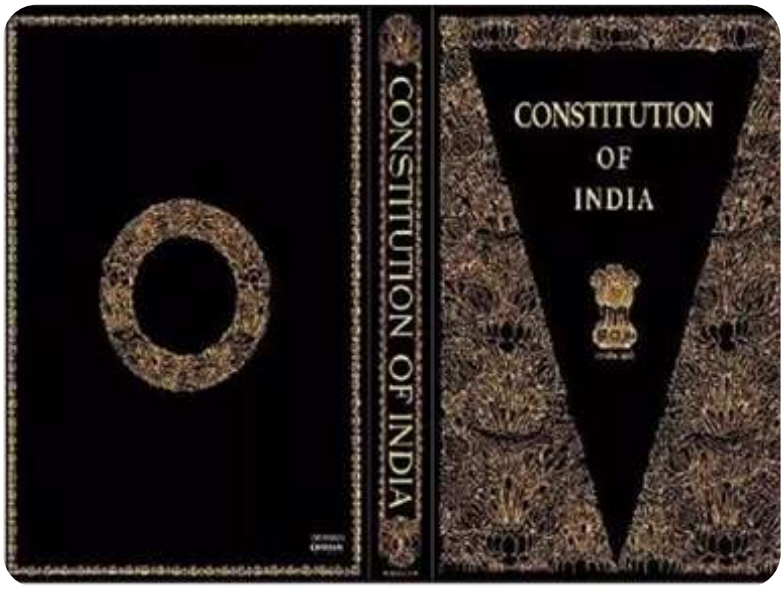
Content	Suggested Visuals

List of Illustrations

1.	Mohenjodaro Period	Decoration with Mohenjodaro seals.
2.	Vedic Period	Scene from Vedic Asram (Gurukul).
3.	Epic Period	Scene from the Ramayana (Conquest of Lanka and recovery of Sita by Rama).
4.	do	Scene from the Mahabharata (Srikrishna propounding Gita to Arjuna).
5.	Mahanjanapada and Nanda Period	Scene from Buddha's life.
6.	do	Scene from Mahavir's life.
7.	Mauryan Period	Scene depicting the spread of Buddhism by Emperor Asoka in India and abroad.
8.	Gupta Period	Scene from Gupta Art. It's development in different phases.
9.	do	Scene from Vikramaditya's Court.
10.	do	Scene depicting one of the ancient Universities (Nalanda).
11.	Medieval Period	Scene from Orissan Sculptures.
12.	do	Image of Nataraja.
13.	do	Scene from Mahabalipuram Sculptures (Bhagirath's penance and the descent of Ganga).
14.	Muslim Period	Portrait of Akbar with Mughal Architecture.
15.	do	Portraits of Shivaji and Guru Gobind Singh.
16.	British Period	Portraits of Tipu Sultan and Lakshmi Bai (Rise against the British Conquest).
17.	India's Freedom Movement	Portrait of the Father of the Nation (Gandhiji's Dandi March).
18.	do	Bapuji the Peace-Maker-his tour in the riot affected areas of Noakhali.
19.	Revolutionary movement for freedom	Netaji Subhas Chandra Bose and other patriots trying to liberate Mother India from outside India.
20.	Natural Features	Scene of the Himalayas.
21.	do	Scene of the Desert.
22.	do	Scene of the Ocean.



3.15 The Final Outcome



The Constitution is a beautifully written document. Through an extensive framework which contains 22 parts with 395 Articles and 12 schedules, it secures values (equality, justice, liberty, fraternity), fundamental rights, social justice, a well-defined structure of the States along with its responsibilities and many other important elements of our nation building.

4. Concluding remarks in the Constituent Assembly on the Constitution on November 25, 1949, by Dr. B.R. Ambedkar

Source: Image

Sir, looking back on the work of the Constituent Assembly it will now be two years, eleven months and seventeen days since it first met on the 9th of December 1946. During this period the Constituent Assembly has altogether held eleven sessions. Out of these eleven sessions the first six were spent in passing the Objectives Resolution and the consideration of the Reports of Committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on the Scheduled Areas and Scheduled Tribes. The seventh, eighth, ninth, tenth and the eleventh sessions were devoted to the consideration of the Draft Constitution. These eleven sessions of the Constituent Assembly have consumed 165 days. Out of these, the Assembly spent 114 days for the consideration of the Draft Constitution.

Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution as prepared by the Constitutional Adviser as a text for the Drafting Committee to work upon, consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the total number of amendments actually moved in the House were 2,473.

I mention these facts because at one stage it was being said that the Assembly had taken too long a time to finish its work, that it was going on leisurely and wasting public money. It was said to be a case of Nero fiddling while Rome was burning. Is there any justification for this complaint? Let us note the time consumed by Constituent Assemblies in other countries appointed for framing their Constitutions.

To take a few illustrations, the American Convention met on May 25th, 1787 and completed its work on September 17, 1787, i.e., within four months. The Constitutional Convention of Canada met on 10th October 1864 and the Constitution was passed into law in March 1867 involving a period of two years and five months. The Australian Constitutional Convention assembled in March 1891 and the Constitution became law on the 9thJuly 1900, consuming a period of nine years.

The South African Convention met in October 1908 and the Constitution became law on the 20th September 1909 involving one year's labour. It is true that we have taken more time than what the American or South African Conventions did. But we have not taken more time than the Canadian Convention and much less than the Australian Convention. In making comparisons on the basis of time consumed, two things must be remembered. One is that the Constitutions of America, Canada, South Africa and Australia are much smaller than ours. Our Constitution as I said contains 395 articles while the American has just seven articles, the first four of which are divided into sections which total up to 21, the Canadian has 147, Australian 128 and South African 153 sections.

The second thing to be remembered is that the makers of the Constitutions of America, Canada, Australia and South Africa did not have to face the problem of amendments. They were passed as moved. On the other hand, this Constituent Assembly had to deal with as many as 2,473 amendments. Having regard to these facts the charge of dilatoriness seems to me quite unfounded, and this Assembly may well congratulate itself for having accomplished so formidable a task in so short a time.

Turning to the quality of the work done by the Drafting Committee, Mr. Naziruddin Ahmed felt it his duty to condemn it outright. In his opinion, the work done by the Drafting Committee is not only not worthy of commendation, but is positively below par. Everybody has a right to have his opinion about the work done by the Drafting Committee and Mr. Naziruddin is welcome to have his own. Mr. Naziruddin Ahmed thinks he is a man of greater talents than any member of the Drafting Committee. The Drafting Committee does not wish to challenge his claim. On the other hand. The Drafting Committee would have welcomed him in their midst if the Assembly had thought him worthy of being appointed to it. If he had no place in the making of the Constitution it is certainly not the fault of the Drafting Committee.

Source: Image

Mr. Naziruddin Ahmed has coined a new name for the Drafting Committee evidently to show his contempt for it. He calls it a Drafting committee. Mr. Naziruddin must no doubt be pleased with his hit. But he evidently does not know that there is a difference between drift without mastery and drift with mastery. If the Drafting Committee was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in known waters to find the fish it was after. To be in search of something better is not the same as drifting. Although Mr. Naziruddin Ahmed did not mean it as a compliment to the Drafting committee. I take it as a compliment to the Drafting Committee. The Drafting Committee would have been guilty of gross dereliction of duty and of a false sense of dignity if had not shown the honesty and the courage to withdraw the amendments which it thought faulty and substitute what it thought was better. If it is a mistake, I am glad the Drafting Committee did not fight shy of admitting such mistakes and coming forward to correct them.

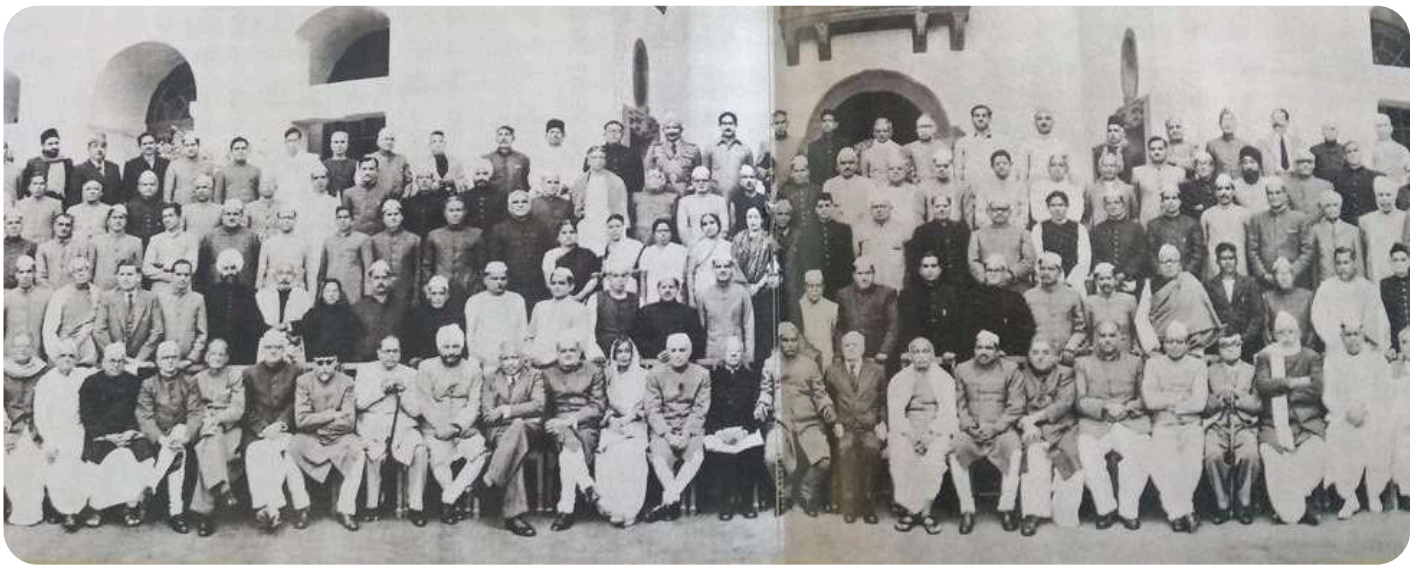
I am glad to find that with the exception of a solitary member, there is a general consensus of appreciation from the members of the Constituent Assembly of the work done by the Drafting Committee. I am sure the Drafting Committee feels happy to find this spontaneous recognition of its labours expressed in such generous terms. As to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger, better and more competent than myself such as my friend Sir Alladi Krishnaswami Ayyar. I am grateful to the Constituent Assembly and the Drafting Committee for reposing in me so much trust and confidence and to have chosen me as their instrument and given me this opportunity of serving the country. (Cheers)

The credit that is given to me does not really belong to me. It belongs partly to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for 141 days and without whose ingenuity of devise new formulae and capacity to tolerate and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion.

Much greater, share of the credit must go to Mr. S. N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equalled, nor his capacity for hard work. He has been as acquisition to the Assembly. Without his help, this Assembly would have taken many more years to finalise the Constitution. I must not omit to mention the members of the staff working under Mr. Mukherjee. For, I know how hard they have worked and how long they have toiled sometimes even beyond midnight. I want to thank them all for their effort and their co-operation. (Cheers)

The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly has been merely a motley crowd, a tessellated pavement without cement, a black stone here and a white stone there is which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress Party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of yes men. Fortunately, there were rebels. They were Mr. Kamath, Dr. P. S. Deshmukh, Mr. Sidhva, Prof Saxena and Pandit Thakur Das Bhargava. Alongwith them I must mention Prof. K. T. Shah and Pandit Hirday Nath Kunzru. The points they raised were mostly ideological.



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That I was not prepared to accept their suggestions, does not diminish the value of their suggestions nor lessen the service they have rendered to the Assembly in enlivening its proceedings. I am grateful to them. But for them, I would not have had the opportunity which I got for expounding the principles underlying the Constitution which was more important than the mere mechanical work of passing the Constitution.

Finally, I must thank you Mr. President for the way in which you have conducted the proceedings of this Assembly. The courtesy and the consideration which you have shown to the Members of the Assembly can never be forgotten by those who have taken part in the proceedings of this Assembly. There were occasions when the amendments of the Drafting Committee were sought to be barred on grounds purely technical in their nature. Those were very anxious moments for me. I am, therefore, specially grateful to you for not permitting legalism to defeat the work of Constitution making.

As much defence as could be offered to the constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr.. T. T. Krishnamachari. **I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their purposes or will they prefer revolutionary methods of achieving them? If they adopt the prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to pay.**

The condemnation of the Constitution largely comes from two quarters, the Communist Party and the Socialist Party. Why do they condemn the Constitution? Is it because it is really a bad Constitution? I venture to say no'.

The Communist Party want a Constitution based upon the principle of the Dictatorship of the Proletariat. They condemn the Constitution because it is based upon parliamentary democracy. The Socialists want two things. The first thing they want is that if they come in power, the Constitution must give them the freedom to nationalize or socialize all private property without payment of compensation. The second thing that the Socialists want is that the Fundamental Rights mentioned in the Constitution must be absolute and without any limitations so that if their Party fails to come into power, they would have the unfettered freedom not merely to criticize, but also to overthrow the State.

These are the main grounds on which the Constitution is being condemned. I do not say that the principle of parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property without compensation is so sacrosanct that there can be no departure from it. I do not say that Fundamental Rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation or if you think this to be an over-statement, I say they are the views of the members of the Constituent Assembly. Why blame the Drafting Committee for embodying them in the Constitution? I say why blame even the Members of the Constituent Assembly? Jefferson, the great American statesman who played so great a part in the making of the American constitution, has expressed some very weighty views which makers of Constitution, can never afford to ignore. In one place he has said:

"We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country."

In another place, he has said :

"The idea that institutions established for the use of the national cannot be touched or modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself. Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generations, which they will have no right to alter; in fine, that the earth belongs to the dead and not the living;"

I admit that what Jefferson has said is not merely true, but is absolutely true. There can be no question about it. Had the Constituent Assembly departed from this principle laid down by Jefferson it would certainly be liable to blame, even to condemnation. But I ask, has it? Quite the contrary. One has only to examine the provision relating to the amendment of the Constitution.

The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying to the people the right to amend the constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia but has provided a most facile procedure for amending the Constitution.

I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and if they cannot obtain even a two-thirds majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public.

There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities. It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does.

The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a constitution can be called centralism. It may be that the Constitution assigns to the Centre too large field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. Centre cannot by its own will alter the boundary of that partition. Nor can the Judiciary. For as has been well said:

"Courts may modify, they cannot replace. They can revise earlier interpretations as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another."

Source: Image

The first charge of centralization defeating federalism must therefore fall. The second charge is that the Centre has been given the power to override the States. This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal feature of the constitution. Their use and operation are expressly confined to emergencies only. The second consideration is : Could we avoid giving overriding powers to the Centre when an emergency has arisen? Those who do not admit the justification for such overriding powers to the Centre even in an emergency, do not seem to have a clear idea of the problem which lies at the root of the matter. The problem is so clearly set out by a writer in that well-known magazine "The Round Table" in its issue of December 1935 that I offer no apology for quoting the following extract from it. Says the writer :

"Political systems are a complex of rights and duties resting ultimately on the question, to whom, or to what authority, does the citizen owe allegiance. In normal affairs the question is not present, for the law works smoothly, and a man, goes about his business obeying one authority in this set of matters and another authority in that. But in a moment of crisis, a conflict of claims may arise, and it is then apparent that ultimate allegiance cannot be divided. The issue of allegiance cannot be determined in the last resort by a juristic interpretation of statutes The law must conform to the facts or so much the worse for the law. When all formalism is stripped away, the bare question is, what authority commands the residual loyalty of the citizen. Is it the Centre or the Constituent State?"

The solution of this problem depends upon one's answer to this question which is the crux of the problem. There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to all Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the Constituent States by these emergency powers? No more than this – that in an emergency, they should take into consideration alongside their own local interests, the opinions and interests of the nation as a whole. Only those who have not understood the problem, can complain against it.

Here I could have ended. But my mind is so full of the future of our country that I feel I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country (Cheers). What would happen to her independence? Will she maintain her independence, or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lose it a second time? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people.

In the invasion of Sind by Mahommed Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahommed-Bin Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahommed Gohri to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki Kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput Kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh Kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realization 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 for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood. (Cheers)

On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lose it again. This is the second thought that comes to my mind and makes me as anxious as the first. It is not that India did not know what Democracy is.

There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure.

A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments-for the Sanghas were nothing but Parliaments – but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, Res Judicata, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

This democratic system India lost. Will she lose it a second time? I do not know. But it is quite possible in a country like India – where democracy from its long disuse must be regarded as something quite new – there is danger of democracy giving place to dictatorship. It is quite possible for this newborn democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives.

It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

Source: Image

T**he second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not *"to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions".*** There is nothing wrong in being grateful to great men who have rendered lifelong services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O'Connel, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of its social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life.

These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty equality could not become a natural course of things. It would require a constable to enforce them.

We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality.

In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value.

How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which is Assembly has to laboriously built up.

The second thing we are wanting in is recognition of the principle of fraternity. what does fraternity mean? Fraternity means a sense of common brotherhood of all Indians-if Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is, can be realized from the story related by James Bryce in his volume on American Commonwealth about the United States of America.

The story is- I propose to recount it in the words of Bryce himself- that-

"Some years ago, the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England divine proposed the words `O Lord, bless our nation'. Accepted one afternoon, on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word nation' as importing too definite a recognition of national unity, that it was dropped, and instead there were adopted the words `O Lord, bless these United States."

There was so little solidarity in the U.S.A. at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United States could not feel that they were a nation, how difficult it is for Indians to think that they are a nation. I remember the days when politically minded Indians, resented the expression "the people of India". They preferred the expression "the Indian nation." **I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult –** far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are antinational also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. **Without fraternity equality and liberty will be no deeper than coats of paint.**

Source: Image

These are my reflections about the tasks that lie ahead of us. They may not be very pleasant to some. But there can be no gainsaying **that political power in this country has too long been the monopoly of a few and the many are only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These down-trodden classes are tired of being governed. They are impatient to govern themselves.** This urge for self-realization in the down-trodden classes must not be allowed to devolve into a class struggle or class war. It would lead to a division of the House. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a House divided against itself cannot stand very long. Therefore, the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance for its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stress on them.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. **Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Governments for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.**

Reference: http://164.100.47.194/Loksabha/Debates/Result_Nw_15. aspx?dbsl=503&ser=&smode=#M65*14
Title: DRAFT CONSTITUTION -- (Contd.) Complete File (HTML) Volume: Volume XI (14th November to 26th November 1949) Date: 25/11/1949

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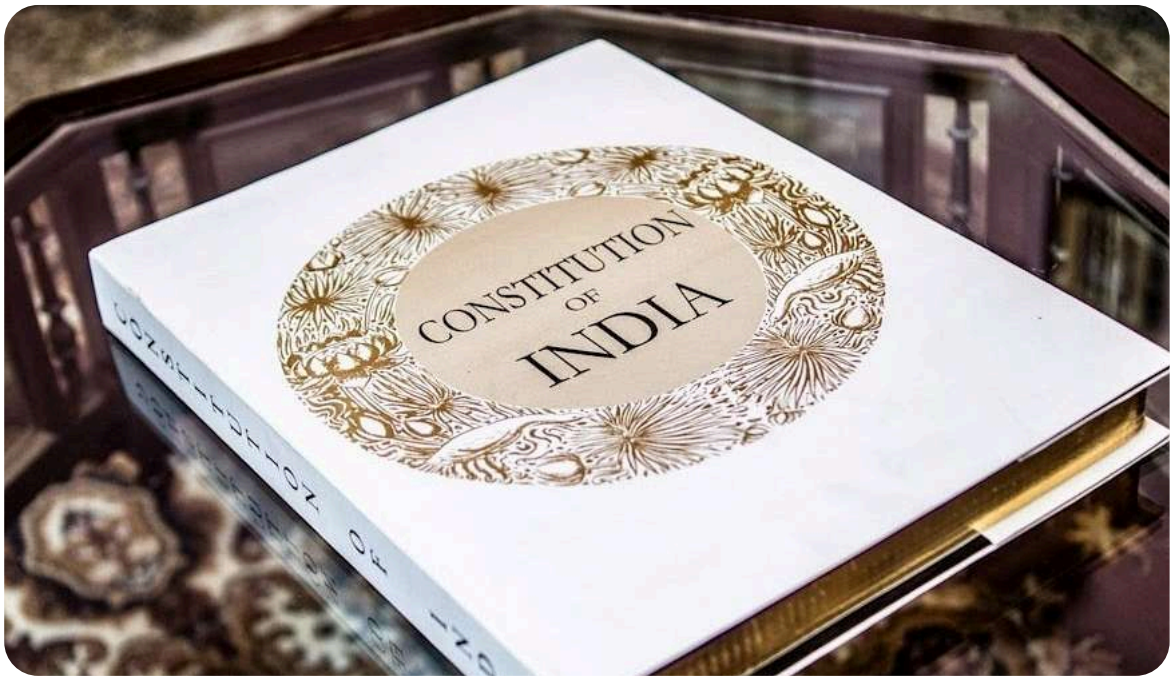
5. How the Constitution is unmade - Some glaring violations of the Constitution

Arnab Bose



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5.1 Executive domination over the Judiciary

5.1.1 The 39th Constitutional Amendment, 1975

In June 1975, the Allahabad High Court invalidated Indira Gandhi's 1971 election on grounds of electoral malpractice, barring her from elections for six years. Indira Gandhi reacted by proclaiming emergency, and the Parliament used its amending power to pass the 39th constitutional amendment. This amendment introduced Article 392A to the Constitution which prevented the questioning of the election of the Prime Minister and the Speaker in any court of law and allowed it to only be challenged before a committee formed by the Parliament. The constitutional validity of the 39th amendment was challenged in the Indira Nehru Gandhi v. Raj Narain case in 1975, where the court held that, by excluding judicial review, the Amendment violated three essential features of the constitution: fair democratic elections, equality, and separation of powers, and therefore was invalid.

5.1.2 National Judicial Appointments Commission Act, 2014

The National Judicial Appointments Commission Act, 2014 was introduced with the 99th Constitutional Amendment. The current collegium system was to be replaced by the NJAC which was to be comprised of 6 members, which included the CJI, 2 senior-most judges, the Law Minister and 2 more eminent members. However, the NJAC would result in appointments having too much reliance on the executive and therefore had the potential of undermining judicial independence. Consequently, in the Supreme Court v Union of India case in 2015, the NJAC Act and the 99th Constitutional Amendment was struck down by the SC on grounds of violation of the basic structure of the constitution.

5.1.3 Arbitrary use of ordinances has increased

Article 123 of the constitution provides the President with ordinance-making powers when Parliament is not in session, if urgent circumstances exist which require immediate action. The Executive is required to lay ordinances before the reconvened legislature. While it is clear that promulgating ordinances is supposed to be an exceptional emergency power, since there is no explicit mention of circumstances that justify ordinances, various governments have routinely misused these powers. In 2017 the SC held that the Executive's power to promulgate ordinances was subject to judicial review, and the Courts could evaluate whether the use was legitimate or based on ulterior motives. Despite that, in 2020 the central government promulgated 14 ordinances, which were not limited to urgent matters, such as ordinances on salaries and allowances for members of Parliament which indicated a clear misuse.

5.2 Violation of the Fundamental Right to Equality

5.2.1 The Bihar Sathi Land (Restoration) Act, 1950

In 1946 the SC had granted a land lease to inhabitants of a settlement in Bihar. In response, there was an agitation by the tenants of the locality against the lease and the matter was referred to the Congress Working Committee. The Congress Committee took the view that the settlement was illegal, and the lessees were asked to vacate the land. The lessees however refused and consequently, the Bihar Legislature passed the Bihar Sathi Land (Restoration) Act, 1950, which cancelled the lease. However, in 1953 the SC passed a judgment in the Ram Prasad v State of Bihar case which held the Bihar Sathi Land (Restoration) Act, 1950 invalid on the ground that act violated the principle of equality before law.

5.2.2 The Hindu Succession Act, 1956

Source: Image

The Hindu Succession Act of 1956 dealt with the succession and inheritance of ancestral properties, according to Hindu law. As per the original Act (now amended), it provided that in case a person dies without a will, ancestral property must only be acquired by male descendants of the person in a joint Hindu family.

Though women had an absolute ownership over their own property, as per this Act, they could not claim rights over ancestral property. Thus, this Act, in its original form, by differentiating between sons and daughters, was discriminatory towards women (daughters), and was in direct violation of articles 14 and 15 of the Constitution.

5.2.3 Section 497 of the Indian Penal Code

The enactment of the law for adultery in India dates back to colonial times when the Indian Penal Code was enacted in 1860. Adultery was criminalised under Section 497 of the IPC. Over the years the criminalisation of Adultery was questioned by various women's rights activists and lawyers. The issue with section 497 was that, while its purpose was to criminalize adultery, it only considered sexual intercourse between a married woman and another man (married or unmarried) as adultery. If a married man engaged in sexual intercourse with an unmarried woman, it was not considered adultery. Thus, the law discriminated against married women and violated articles 14 and 15. In 2018 the SC, in the Joseph Shine v UOI case finally held section 497 to be unconstitutional.

5.2.4 Section 377 of the Indian Penal Code

Section 377 of the IPC criminalized certain sexual acts which were deemed unnatural which led to the criminalization of homosexuality in India. In 2014, in the National Legal Services Authority v. UOI case, the SC held that the right to express one's identity in a non-binary gender was an essential part of freedom of expression. The NALSA case, ultimately led to the 2018 Navtej Singh Johar v. UOI judgment, where the SC struck down certain aspects of sec 377, declaring that it undermined the principle of equality and was unconstitutional. The court held that an LGBT person's decision to engage in intimate sexual relations with people of the same sex was an expression of his/her autonomy. This judgment led to the decriminalization of homosexuality in India.

5.3 Violation of the Fundamental Right to Liberty

5.3.1 Habeas Corpus Case, 1976

On 25th June 1975, on advice of Prime Minister Indira Gandhi, the President of India declared Emergency. At the time many politicians and activists, were detained under the Maintenance of Internal Security Act, 1971. The detainees approached various High Courts to issue the Writ of Habeas Corpus. The government, in response to high court judgments, approached the Supreme Court in the ADM Jabalpur v. Shivkant Sharma case (popularly known as the Habeas Corpus case) to question the use of habeas corpus during emergency. Four out of five judges ruled in favour of the government and denied habeas corpus. This judgment is considered one of the darkest moments of the Indian judiciary where the SC failed to fulfill its primary duty of protecting the right to life and liberty. In 2017, the Supreme Court, in the K.S. Puttaswamy v. UOI case, overruled the SC judgment in the ADM Jabalpur case.

Source: Image

5.3.2 Misuse of The Unlawful Activities (Prevention) Act

The Unlawful Activities (Prevention) Act is India's primary anti-terrorism legislation. It was enacted in 1967 and has been amended several times since, most recently in 2019. Prior to the 2019 amendment, the UAPA enabled the notification of an organization as a terrorist organization. The 2019 amendment gave the central government the power to arbitrarily designate individuals as terrorists. While the framework under which the trial of a UAPA accused was conducted was already draconian, the inclusion of individuals further undermines the right to personal liberty under article 21. This has led to various instances of people being booked under UAPA on frivolous grounds which are not related to terrorism. For e.g. in October 2021, the J&K Police booked students and staff of two medical colleges under the UAPA for allegedly cheering for Pakistan, when it won a T20 World Cup match against India.

5.3.3 Wrongful Detention of Journalist Mohammed Zubair, 2022

Mohammed Zubair, journalist and co-founder of Alt-News, a fact-check website, was arrested by the Delhi Police in June 2022, on charges of posting an allegedly objectionable tweet in 2018. He was arrested from his residence in Bengaluru and brought to Delhi to join an investigation based on a complaint filed in 2020. He was remanded to a day's police custody which was extended by four days. Then he was sent to judicial custody for 14 days. The SC granted him interim bail for 5 days, however, there were 6 different FIRs against him in different places across UP, each of which ordered a 14-day judicial custody. Ultimately, the Supreme Court granted him bail in all 6 cases on 20th July 2022, nearly a month after he was arrested, calling the FIRs a vicious cycle of police action. This vicious cycle of police action was a clear case of violation of his right to liberty under article 21.

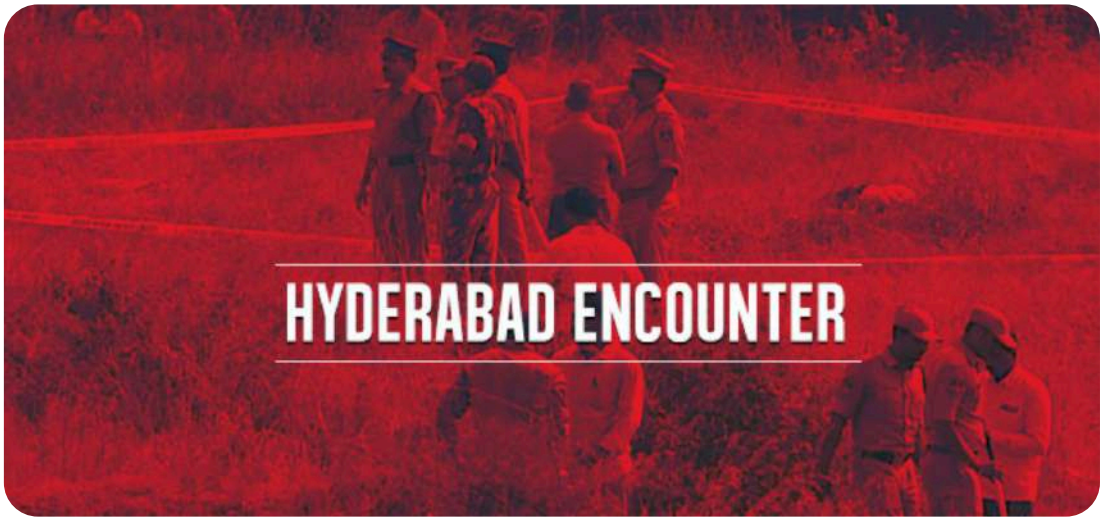
5.3.4 Excessive internet shutdowns by Central and State Governments

Access to the Internet is crucial for citizens to exercise their freedom of speech, but in recent times the central and state governments have frequently restricted internet access. In 2017 new rules were issued under the Indian Telegraph Act which placed the powers for issuing internet shutdowns with the Home Secretary in each state, allowing for a great degree of arbitrariness. Since then, the number of shutdowns has increased, and in 2020 India had the highest number of shutdowns worldwide at 109, severely undermining freedom of speech. In January 2020, the Supreme Court ruled in the Anuradha Bhasin v UOI case, that freedom of speech through the medium of the internet was protected under the constitution. The Court laid down guidelines to limit Internet suspensions under the Telegraph Act. The Court also held that any government-imposed restriction on Internet access is subject to judicial review.

Source: Image

5.4 Violation of the Fundamental Right to Life

5.4.1 Hyderabad Extra Judicial Killing by Telangana Police, 2019



Source: Image

On November 29, 2019, four persons were arrested in connection with the rape and murder of a woman in Hyderabad. On December 6, 2019, it was reported that the suspects were killed when they attacked the police. A Commission of inquiry was constituted by the SC to investigate the matter. In a 387-page report, the Commission called the episode a case of fake encounter. It also found that the police deliberately attempted to suppress the fact that three of the deceased were minors. The report finally recommended that the ten police officers, involved in the encounter, be tried under Section 302 for murder. The Hyderabad fake encounter case was a gross violation of Article 21 of the Constitution. The right to life of every person is sacrosanct and protected by the Constitution even if they are suspected of committing a crime.

5.4.2 Custodial Death of P. Jayaraj and J. Bennick by Tamil Nadu Police, 2020

On 19 June 2020, in Sathankulam, Tamil Nadu, the police arrested P. Jayaraj and his son J. Bennicks for violating covid lockdown regulations. Following the arrest, they were tortured in police custody and succumbed to their injuries a few days later. The deaths sparked massive outrage in Tamil Nadu. Subsequently, the Madras High Court took suo motu cognisance of the case and ordered the Superintendent of Police to inquire into the incident. On 28 June, the Tamil Nadu CM directed the probe to be handed over to the CBI. During the investigation a chargesheet was filed against 10 police officials who were arrested. The chargesheet showed that the police officers tortured Jayaraj and Bennicks, and inflicted several injuries which led to their deaths. This was in complete violation of the most fundamental aspect of the constitution.

5.4.3 Shopian Fake Encounter Case, 2020

In July 2020, it was reported by the media that three militants had been killed in an encounter in Shopian, J&K on the intervening night of July 18 and 19. The J&K police instituted a special investigation team to look into the matter which identified the deceased as Abrar Ahmed (25), Imtiyaz Ahmed (20) and Mohammed Ibrar (16). On December 28, 2020, the SIT filed a chargesheet against Captain Bhoopendra Singh which identified the three as labourers and stated that the Army captain and the two civilian accomplices first abducted the labourers, took them in a vehicle to a secluded spot and shot them dead. It was also stated that the captain planted weapons and materials on the victims to brand them as terrorists. The motive was to claim Rupees 20 lakh, which was given as a reward by the Indian army for killing militants in J&K. This fake encounter goes against the very heart of the Fundamental Rights.

5.4.4 Custodial Death of Ravi Jadav and Sunil Pawar by Gujarat Police in 2021

On 22nd July 2021 four police officials were booked for murder in connection with the custodial death of two 19-year-olds in Gujarat. The incident took place in Chikhli police station where the two youths were found hanging from an electric cable. Senior Police sources said that they were suspected of vehicle theft and were brought to the police station for interrogation. However, they were not arrested on record and were detained without informing their families. The postmortem was conducted under the panel of five doctors. Upon further investigation, the four policemen were booked for murder, and under relevant sections of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. This was a case of police atrocity where the most fundamental of all rights, the right to life, was taken away from youths who had their entire lives ahead of them.

5.4.5 Bulldozing of Houses by the Khargone District Administration in Madhya Pradesh, 2022

In April 2022, Ram Navami celebrations in Khargone, MP led to communal violence. In the aftermath the District Administration undertook a demolition drive of homes and establishments largely owned by members of the minority Muslim community accused of inciting the violence. The District Collector had stated that the drive was undertaken to send the rioters a message. The SC, in various judgments, has interpreted the right to life to include the right to shelter, and has recognized two entitlements under this right: the right of persons to be affected by eviction to be issued notice, and the right to rehabilitation. However, in Khargone, while some affected persons were not served any notice, several others were served notices without enough time to respond. Further, no efforts were made to rehabilitate affected persons. This was in direct violation of the constitutional safeguards established by the court.

Source: Image

5.5 Violation of the Preamble Value of Secularism

5.5.1 Shah Bano Case, 1986

Source: Image

Shah Bano Begum was a Muslim woman married to Mohammad Ahmed Khan since 1932. In 1975 Mohammed Khan divorced Shah Bano and expelled her from their home. Thereafter, Shah Bano received maintenance from her husband for a period of two years, after which it stopped. Consequently, in April 1978, she filed a petition in a court in Indore, demanding further maintenance, however, Mohammed Khan contested the claim on the grounds that the Muslim Personal Law limited the payment of maintenance only till the period of iddat, which was usually three months. In April 1985, the Supreme Court upheld the decision of the High Court that ordered the payment of maintenance to Shah Bano. However, the Central government passed the Muslim Women (Protection on Divorce) Act, 1986, essentially overturning the Supreme Court verdict thereby undermining secularism.

5.6 Violation of the Preamble Value of Social Justice

5.6.1 The Habitual Offenders Act, 1952

In colonial India, through the enactment of the Criminal Tribes Act of 1871, around 200 tribal communities across the country were notified as criminal tribes who were considered to be habitual criminals. Five years after independence, the Criminal Tribes Act was repealed in August 1952. but the union government enacted the Habitual Offenders Act. While the Habitual Offenders Act did not apply to entire communities, in the implementation of the Act, the stigma of criminalisation and the targeting of these communities continued. Today, stripped of their fundamental right to justice, equality, and freedom, these communities continue live in fear of the authorities. This act has undermined the basic principle of social justice and the National Human Rights Commission has recommended repealing it.

5.6.2 The Bombay Prevention of Begging Act, 1959

In India twenty states and two union territories had criminalized the act of begging modeled on the Bombay Prevention of Begging Act of 1959. Over the years the provisions as well as the implementation of these anti-begging laws had been highly arbitrary with numerous raids in public places, which led to the arrest of many poor, homeless and disabled people. The notion of criminalizing poverty and treating the disabled, destitute and marginalized as convicts undermined the idea of social justice. In 2018 the Delhi HC held the Bombay Prevention of Begging Act, 1959 to be unconstitutional on grounds that it violated Articles 14 and 21 of the Constitution.

5.6.3 Continued employment of manual scavengers by government bodies

India's central government since independence in 1947 has adopted legislative and policy measures to end manual scavenging. However, because these policies are not properly implemented, the practice continues to be widespread across the country, including within government bodies. In the Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage and Allied Workers case in 2011, the Supreme Court passed a judgement emphasizing the plight of sewage workers who were being deprived of their fundamental rights. The continued existence of manual scavenging highlights the state's neglect of laws banning manual scavenging and deeply undermines the constitutional notion of social justice.

5.7 Violation of the Principle of Federalism

Source: Image

5.7.1 The Industries (Development and Regulation) Act, 1951

In 1951 the Parliament passed the Industries (Development and Regulation) Act specifying those industries, which were to be the controlled by the centre in national interest. The Act originally was fair and reasonable, and gave the centre control over vital and strategic industries. However, in course of time, more and more industries were brought within the purview of the Act leading to the Union's control over a very large number of industries. The Constitutional effect was that the power of the State Legislatures with respect to the subject of 'Industries' under Entry 24 of the State List, was curtailed undermining the principle of federalism.

5.7.2 The Dismissal of The SR Bommai (Janata Dal) Government by the Karnataka Governor in 1989

S.R. Bommai was the Chief Minister of the Janata Dal government in Karnataka between August 13, 1988 and April 21, 1989. His government was dismissed on April 21, 1989 under Article 356 of the Constitution. The dismissal was on grounds that the Bommai government had lost majority following large-scale defections. The then Governor P. Venkatasubbaiah refused to give Bommai an opportunity to test his majority in the Assembly. To challenge the decision of the Governor, Bommai first moved the Karnataka High Court and then the Supreme Court. On March 11, 1994, the Supreme Court issued a landmark judgment which put an end to the arbitrary dismissal of State governments under Article 356 by providing certain restrictions.

5.7.3 Dismissal of the Kalyan Singh Government in Uttar Pradesh in 1998 by the Governor

In Feb 1998, the Kalyan Singh led BJP government in UP lost the majority after Janata Dal and Loktantrik Congress MLAs withdrew their support. Thereafter, Governor Romesh Bhandari dismissed the government and installed Loktantrik Congress' Jagdambika Pal as the new CM of the state. However, the decision was challenged by Kalyan Singh in the Allahabad HC. The court ordered a floor test to determine the real CM, and after 3 days Kalyan Singh was reinstated as the CM and Jagdambika Pal had to resign. This was a clear case of misuse of powers by the governor and undermined federalism.

5.7.4 Installing of Shibu Soren as CM of Jharkhand in 2005 by the Governor Despite not having Majority

In 2005 after the elections, Governor Syed Sibtey Razi installed Jharkhand Mukti Morcha's Shibhu Soren as the new CM of Jharkhand, despite the NDA claiming the support of 41 MLAs in the 80-member assembly. The matter reached Supreme Court which ordered a floor test. Subsequently Shibu Soren failed to prove his majority in the house and BJPs Arjun Munda was sworn in as the CM of the state. This was a case of misuse of powers by the governor which undermined the federal principle of the constitution.

5.7.5 Imposition of President's Rule in 2016 in Uttarakhand

In March 2016 in Uttarakhand, 9 members of the Harish Rawat led Congress government, demanded a vote on an appropriation bill, but the speaker refused and passed the bill by a voice majority. This led the 9 MLAs to rebel and join hands with the opposition, and demand the dismissal of the Congress government. The Governor gave the CM till 28th March to prove his majority. However, before the floor test, much political turmoil ensued, and on March 27 article 356 was imposed. To end the political uncertainty the SC asked CM Rawat to face a trust vote on May 10. The SC also held that the Assembly could not be dissolved, but only kept in temporary suspension, until both houses of the parliament approved the President's Rule. After the floor test the Congress Government was ultimately reinstated and the President's Rule was revoked. As noted by the SC, this was a case of misuse of Article 356.

5.7.6 Imposition of President's Rule in Arunachal Pradesh in 2016

In 2016 in Arunachal Pradesh 21 MLAs of the ruling congress party joined with the BJP and rebelled against chief minister Nabam Tuki. While the Congress had won the 2014 state elections, there was alleged dissatisfaction with the Chief Minister. The anti-Tuki faction communicated their wish to form a government before the governor, and in an emergency assembly session the speaker was impeached. In response, the speaker disqualified the 21 MLAs on grounds of defection. Thereafter, on grounds of failure of Constitutional machinery, President's rule was imposed and the Congress government was dismissed. The Congress, challenging the Governor's actions, moved the Supreme Court. In July 2016, the SC quashed the governor's order calling it illegal and re-instated the Congress government.

5.7.7 Lakshwadeep Panchayat Regulations, 2022

In 2022 the Administrator of Lakshwadeep introduced the New Lakshwadeep Panchayat Regulations 2022 replacing the Lakshadweep Panchayat Regulations of 1994. Considering the territorial sensitivities of the islands, the LPR 1994 had a clear mention of the areas that could be declared as panchayat areas. Hence no arbitrary proclamation of a panchayat areas was possible.

However, the LPR 2022 brought about a drastic change by giving the administrator power to constitute panchayat areas through a notification, as s/he saw fit, without considering the territorial sensitivities of the islands. In April 2023 the Kerala high court ordered the Lakshadweep administration to withdraw notifications in relation to LPR 2022, saying they were in contravention of relevant provisions of the Constitution.

5.7.8 Demand for Resignation of Vice-Chancellors of Nine Universities by Kerala Governor in 2022

Source: Image

In October 2022 the Kerala Governor asked the vice-chancellors of nine universities to tender their resignation within 24 hours due to discrepancies in the selection process. Subsequently, when the VCs refused to resign, the Governor issued show cause notices requiring them to respond on their right to continue in office. Thereafter, the V-Cs moved the Kerala High Court, and were allowed to continue in their posts until the governor passed a final order.

The High Court also stated that, "It does not require much judgment to say no one can be asked to tender resignation. And what was the hurry in issuing the letter? That is also troubling". Many legal experts questioned the haste in issuing the first notice demanding their resignation, calling it a misuse of Governor's powers as Chancellor.

5.7.9 Telangana Governor Withholding Assent of 10 Bills in 2023

In March 2023 the Telangana Government filed a petition in the SC alleging delay by the Governor in giving her assent to 10 bills passed by the state assembly, some of which had been pending since September 2022. In the hearing the SC observed that bills sent to the governor must be returned as soon as possible and State Assemblies should not be made to wait indefinitely.

The court also added that the expression 'as soon as possible' had significant constitutional content and must be taken seriously by constitutional authorities. This is a case of a Governor misusing her discretionary powers and undermining the federal character of the constitution. The National Commission to Review the Working of the Constitution and the Puncchi Commission have previously called for amendments prescribing a time limit by which Governors must give their assent to remove the possibility of such misuse.

5.8 Violation of the Spirit of Democracy

5.8.1 Declaration of National Emergency in 1975

On 25th June 1975, the President of India, on advice of Prime Minister Indira Gandhi declared a national emergency. This was done after the Allahabad HC invalidated Indira Gandhi's 1971 election on grounds of electoral malpractice, barring her from elections for six years. With the proclamation of Emergency, Article 359 (later amended by the 44th Constitutional amendment) was activated which allowed the President to suspend the right to move any court for the enforcement of fundamental rights during emergency.

The Emergency led to a wide scale abuse of power with the Maintenance of Internal Security Act, 1971 being used to arrest a large number of political opponents. Emergency was finally revoked after 21 months on 21st March 1977. In 2020, the Supreme Court said that the 1975 Emergency should not have happened. This period is widely considered one of the darkest phases of Indian democracy.

5.9 Addendum: The Constitution Under Attack at 69[1]

As we approach the Republic Day (26 January, 2019), marking 69 years of the adoption of the Constitution of India, there is a palpable sense of fear that this foundation of our country's republican democracy is under severe threat – from the ruling govt. itself. In the past nearly five years, the Narendra Modi led BJP govt. has systematically subverted the Constitution and its many pillars, be it the Supreme Court, the Parliament, the democratic election and governance system, the role of various watchdogs like the CBI or the CVC, the Reserve Bank of India, Election Commission, CBI, CIC etc. have had to deal with political rulers wanting to misuse or even subvert them. But never before has such a sweeping disregard for the Constitution been experienced at this scale, except perhaps the 19 months of Emergency in 1975-77.

We give below some of the most flagrant examples of Modi's attempts to subvert the Constitution through attacks on institutions.[2]

5.9.1 Bypassing Parliament

After getting a comfortable majority in Lok Sabha, the BJP and its allies have treated the Parliament as a tool for propaganda only and often downgraded or by passed its sovereign authority. The Constitution recognised the Parliament as the supreme expression of the people's will. But Modi and his govt. treats it like a nuisance. For example, the 2018 Union Budget was bulldozed through the Parliament without any debate. It was for the first time since Independence that this happened.

A no confidence motion was disallowed, and the session was adjourned by the Speaker who belongs to the ruling party BJP. The motion to impeach the Chief Justice was unilaterally dismissed by Chairperson of the Rajya Sabha, even though he had no powers to decide on the merits of the motion. Earlier, the govt. had 'passed' the Aadhar related laws too by a sleight of hand, smuggling them in with finance bills at the last minute. Another trick used to bypass the Parliament is the systematic use of ordinances to bring in laws that it feared would be opposed. The ordinance on Land Acquisition was one such which had to be taken back after massive resistance from the farmers in 2015.

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[1] https://cpim.org/constitution-under-attack-69-part-1-why-modi-govt-has-so-little-respect-constitution/

[2] https://cpim.org/constitution-under-attack-69-part-2-how-modi-govt-has-subverted-bypassed-or-pressurised/

Ordinances on allotment of Rajya Sabha seats between Telangana and Andhra Pradesh, textiles, re-promulgation of coal mines ordinance and for appointment of Principal Secretary to the PM are other such examples where the institution of Parliament and its democratic functioning has suffered damage.

5.9.2 Interfering with Supreme Court

Source: Image

In January 2018, four Supreme Court judges took an unprecedented step of holding a press conference to voice their protest against arbitrary allocation of cases to benches by the then Chief Justice of India. The real issue was that the CJI was allegedly distributing cases to different Benches to suit the Modi government. The rebel judges wanted transparency and accountability so that this perversion in the functioning of one of the pillars of Indian democracy could be ended. They also wanted certain cases to be probed or carried forward, which seem to have got side-lined due to the struggle between the court and the government on appointments.

5.9.3 Eroding autonomy of the RBI

In the Modi era, severe friction has emerged between the RBI and the Union govt. The previous governor's term was not renewed as Modi feared that he would not be pliant enough. But the new governor Urjit Patel too resigned midway. A deputy governor came out openly against repeated interference by the govt. There were several friction points including policy issues and the desire of the Modi govt. to set up a separate payments regulator and the most important one of the govt.'s desire to take more and more funds from the RBI reserves to pad up its balance sheet. While ultimately, the RBI needs to heed the govt. and the Parliament, the resistance was to be destroying it altogether and using it as a treasure chest in the run up to the general elections.

Earlier, in 2016, the country had watched with shock as the disastrous demonetisation of November 2016 was rammed through the RBI Board. Currency management is the RBI's responsibility, but Modi secretly planned it with a group of outside consultants and told the Board hours before the decision was announced by him.

Of late, the Modi govt. has adopted the usual tactic of appointing RSS ideologues to all bodies in order to make them conform to his thinking. S.Gurumurthy, a well-known RSS ideologue, has now been inducted into the RBI Board.

5.9.4 Pressurising the Election Commission

This is a Constitutional body that plays an important role in managing India's electoral system. It appears to be under pressure from the govt. as can be seen by several instances of flagrant partisanship. In 2017, it delayed the announcement of Gujarat Assembly polls schedule, allegedly to allow the PM and his party to continue distributing largesse in the state. Another instance was the hurried disqualification of AAP MLAs from Delhi on the office of profit charges, after which the Supreme Court rejected the EC's decision, and castigated it for not looking at the whole thing more thoroughly.

The all-important general elections are weeks away now and the EC will have to play a crucial role in determining the dates and phases, as also ensuring that the Code of Conduct is followed meticulously by the Modi govt. How much accommodation this body will provide to the Modi govt. and BJP will soon be clear.

5.9.5 CBI, the caged parrot

Source: Image

The recent war between the top two officers of the CBI also appeared to be an internal spat, but was actually a direct result of the Modi government first appointing its favoured nominee Alok Verma as the director in January 2017, and then putting his back up by inserting another favourite Rakesh Asthana as his number-two. After the Verma-Asthana fight came out in the open, the government arbitrarily, and illegally, sent both of them on leave, and appointed a third favourite, Nageshwar Rao as the interim director. The whole sorry spectacle exposed the deeply compromised investigation agency. Subsequently, the Supreme Court had to reappoint Verma as the director – but he was again removed by the select panel headed by Modi himself within hours. The CBI's role as a handmaiden of the central government, its misuse to target opposition parties and political targets, and the concomitant growth of the corruption inside it have destroyed an agency that was supposed to be in the frontline of the fight against corruption in high places. While this hollowing out of CBI has undoubtedly been going on for decades, the Modi government's usual flagrant interference has led to the ongoing implosion.

5.9.6 CIC and RTI Diluted

In a move to curb the use of Right to Information (RTI) Act to expose government malfeasance, the Modi government has moved amendments to the Act itself, which do away with the present five-year fixed term for information commissioners both at the Central Information Commission (CIC) and State Information Commissions (SICs). The amendments also enable the Centre to prescribe the term of office, salaries and allowances, and other terms and conditions of service of chief information commissioners, and information commissioners at both central and state levels.

In this case, the government has attempted to subvert the RTI Act and its machinery through pushing amendments – a legislative way of curbing transparency and accountability. In the process, the whole mechanism of information commissions will be made dependant on the government, further weakening it. It has also made fresh appointments of commissioners based on its own choice violating set procedures.

5.9.7 CVC Compromised

The Central Vigilance Commission, another statutory body, has been headed by a Modi appointee KV Chowdary since 2015. At the time of his appointment, several eminent persons had raised a red flag saying that there were allegations of his involvement in various criminal/corruption-related cases including the Nira Radia tapes case, the Moin Qureshi case (which involved the present warring CBI officers too), and others. However, the government went ahead with his appointment. The CVC's role in "sorting out" the ongoing CBI imbroglio is well known. The CVC is the supervisory body for CBI.

5.9.8 State Governors as Trojan Horses

Extending the practice of previous Congress govts., the Modi govt. has not only appointed RSS loyalists as Governors in most states but it is actively using them as its tool to trample democracy. The tussle between the AAP led Delhi government and the Centre has been carried out through the Lt. Governor who is appointed by the Centre. The elected chief minister has not been allowed to govern due to constant obstruction by the Modi govt. In Goa, Manipur, Meghalaya and Karnataka BJP has used Governors to capture power, though in Karnataka the move fell apart after the Supreme Court directed a floor test and BJP's Yeddyurappa had to quit. Acting in a partisan way, these BJP Governors have opened the path for BJP to form govts. through horse trading, making a mockery of their constitutional authority.

In many other official bodies ranging from the UGC to top officers in research and academic bodies including university appointees like vice chancellors, the Modi government has played fast and loose, freely appointing its own supporters, and thereby tilting the balance in favour of their ideological positions. These appointees have also played an active role in destroying democratic functioning in the institutions they head, as most flagrantly brought out by in the case of JNU and its BJP-supporting VC. This is not just a matter of convenience and patronage. This is a long-term strategic takeover of democratic institutions for spreading the RSS ideology far and wide, beyond the term of the present govt. The other side of the coin is that anybody who objects to either this takeover or to the policies coming out of RSS controlled bodies is branded as 'anti-national' and a witch-hunt ensues.

6. How the Constitution is Remade - Important Constitutional Amendments

Arnab Bose

[3]

Source: Image

We begin by listing major amendments which enhanced the scope and application of the Values enshrined in the Preamble of the Constitution – Sovereignty of the People, Secularism, Socialism, Democracy, Justice, Liberty, Equality and Fraternity:

6.1 Amendments Expanding Voting Rights for Elections

6.1.1 The Constitution (Sixty First Amendment) Act, 1989

Reduced the age of voting rights for all elections in the country from 21 years to 18 years.

6.2 Amendments Expanding Democratic Local Governance

6.2.1 The Constitution (Seventy Third Amendment) Act, 1992

Provided statutory provisions which gave constitutional status to Panchayati Raj Institution as the third level of administration in villages, thereby strengthening local governance.

6.2.2 The Constitution (Seventy Fourth Amendment) Act, 1992

Gave constitutional recognition to municipal governments, making them the third level of administration for urban areas, such as towns and cities. This was done to strengthen urban local governance by enabling elected municipal representatives to have a decisive role in planning, provisioning and delivery of services in urban areas.

6.3 Amendments Making Education a Fundamental Right

6.3.1 The Constitution (Eighty Sixth Amendment) Act, 2002

- Provided for the right to free and compulsory education of children between the ages of six to fourteen years as a fundamental right.
- Provided that the state would endeavour to provide early childhood care and education to all children until the age of six years

6.4 Amendments for Social and Economic Justice

6.4.1 The Constitution (First Amendment) Act, 1951

- Broadened the scope of permissible restrictions to the freedom of speech to include matters related to public order, security of the state, and relations with foreign countries.
- Provided the government with the authority to impose reasonable restrictions on the right to property to enable land reform, acquisition of property for public welfare and abolish the zamindari system.
- Provided special provisions for the advancement of Scheduled Castes and Scheduled Tribes allowing the government to make reservations for these communities in educational institutions and public employment. It also directed states to promote the educational and economic interests of these communities.

6.4.2 The Constitution (Eighth Amendment) Act, 1959

Extended the period of reservation of seats for Scheduled Castes and Scheduled Tribes as well as the Anglo-Indian community in the Lok Sabha and the State Legislative Assemblies till 1970.

6.4.3 The Constitution (Twenty Sixth Amendment) Act, 1971

Abolished the privy purse paid to former rulers of erstwhile princely states which were incorporated into the republic of India at independence.

6.4.4 The Constitution (Sixty Fifth Amendment) Act, 1990

Provided for the establishment of the National Commission of Scheduled Castes and Scheduled Tribes and specified its statutory powers in the Constitution.

6.4.5 The Constitution (Ninety Third Amendment) Act, 2006

Enabled the provision of 27 percent reservation for Other Backward Classes (OBCs) in government and private educational institutions except minority institutions.

6.4.6 The Constitution (One Hundred and Second Amendment) Act, 2018

Granted Constitutional Status to the National Commission for Backward Classes (NCBC).

6.4.7 The Constitution (One Hundred and Sixth Amendment) Act, 2023

Reserved 33 percent of the seats for women in the directly elected seats of the Lok Sabha, State Legislative Assemblies and the Delhi Legislative Assembly. It included 33 percent reservation in seats reserved for scheduled castes and scheduled tribes for women from these communities.

6.4.8 The Constitution (One Hundred and Third Amendment) Act, 2019

Introduced a maximum of 10 percent reservation for Economically Weaker Sections (EWSs) of society, other than the socially and educationally backward classes, scheduled castes and scheduled tribes, for admission to central government educational institutions and private educational institutions (except minority institutions), and for employment in central government jobs.

Reservations in state government educational institutions and state government jobs was not made mandatory. However, some states have chosen to implement this reservation. This amendment pushed the total reservation in central government institutions beyond 50 percent to 59.50 percent.

Source: Image

6.5 Amendments Concerning Federalism

6.5.1 The Constitution (Seventh Amendment) Act, 1956

Facilitated the reorganization of states on linguistic lines by enabling the enactment of the States Reorganisation Act of 1956. This act was a major step towards dividing India into states and union territories which divided the country into 14 states and 6 union territories.

6.6 Amendments Concerning Financial Arrangements

6.6.1 The Constitution (Eightieth Amendment) Act, 2000

Altered the revenue-sharing scheme between the centre and the states in accordance with the recommendations of the Tenth Finance Commission. The new scheme fixed the state's share in the total income obtained from certain central taxes and duties at 29 percent.

6.6.2 The Constitution (One Hundred and First Amendment) Act, 2016

Introduced the national Goods and Services Tax (GST) in India, which is a comprehensive, multi-stage, destination-based tax that is levied on every value addition on the supply of goods and services in the country.

The GST replaced the earlier Value Added Tax (VAT), along with other indirect taxes such as excise duty, services tax etc. and is now the single domestic indirect tax law for the entire country.

Source: Image

6.7 Amendments Concerning Judicial Reform

6.7.1 The Constitution (Nineteenth Amendment) Act, 1966

By abolishing election tribunals, it removed the power of election tribunals to adjudicate on any doubts and disputes in connection with elections to the Parliament and the state legislatures and enabled the trial of election petitions by high courts.

6.7.2 The Constitution (Forty Third Amendment) Act, 1977

Repealed some of the provisions that had been inserted by the 42nd amendment which:

- Restored the jurisdiction of the Supreme Court and the high courts in respect of judicial review and issue of writs.
- Deprived the Parliament of its special powers to make laws on matters concerning ‘anti-national activities’ and ‘anti-national associations’.

6.8 Amendments Concerning Parliamentary Reform

Source: Image

6.8.1 The Constitution (Twenty Fourth Amendment) Act, 1971

- Made it explicit that the parliament had the power to amend any provision of the constitution including fundamental rights
- Made it obligatory for the President to give assent to any constitutional amendment bill presented to the President

6.8.2 The Constitution (Thirty Third Amendment) Act, 1974

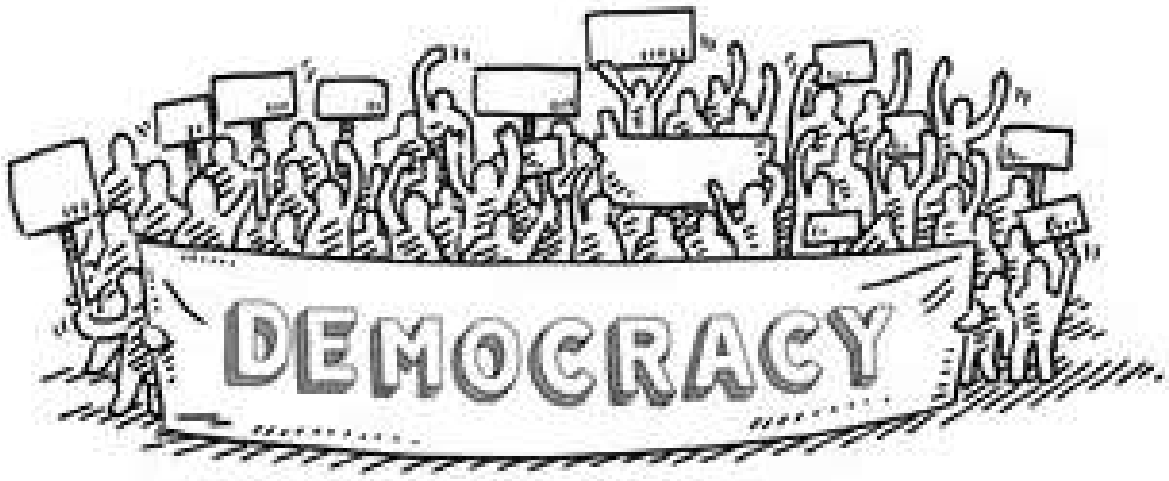
Prescribed the procedure for resignation by members of parliament and state legislatures as well as the procedure for verification and acceptance of resignation by the house speakers.

6.8.3 The Constitution (Fifty Second Amendment) Act, 1985

Introduced the anti-defection law which limited the ability of politicians to switch parties by providing for the disqualification of members from parliament and state legislatures in case of defection from one political party to another. This amendment led to the recognition of the new term 'political party' in the Constitution.

Not all the amendments of the Constitution can be said to have promoted the values enshrined in the Preamble. Indeed, some have curtailed or diluted these. Here are some such amendments:

6.9 Amendments Undermining Democratic Values



Source: Image

6.9.1 The Constitution (Forty Second Amendment) Act, 1976

Known as the mini constitution, it made significant changes to the Constitution, including some which were considered controversial. Some of the key changes were as follows:

- Added the words 'socialist', 'secular' and 'unity and integrity of the nation' to the preamble.
- Added Fundamental Duties of Indian citizens to the Constitution to promote a sense of civic responsibility.
- Education, Forests, Protection of wild animals and birds, and Administration of justice, constitution, and organization of all courts except the Supreme Court and the High Courts were all moved from the State list to the Concurrent list.
- Promoting equal justice and providing free legal aid to the poor, taking steps to secure participation of workers in management of industries, and protection and improvement of the environment were added to the Directive Principles of State Policy.
- Conferred on the parliament the power to make laws on matters concerning 'anti-national activities' and 'anti-national associations.
- Added provisions to allow the Centre to deploy central forces in the state to deal with law-and-order situations.
- Extended the duration of the President's rule in a State from six months to one year.
- Power of the Supreme Court and High Courts for Judicial Review and issue of writs was curtailed.
- Prevented the judicial review of constitutional amendments.
- Introduced necessary provisions to allow the suspension of fundamental rights during emergency and gave emergency laws legal immunity.

6.10 Amendments Restoring Democratic Values

6.10.1 The Constitution (Forty Fourth Amendment) Act, 1978

Nullified various provisions that were brought into the Constitution by the 42nd Amendment Act. It included the following:

- Allowed for changes to the basic structure of the constitution only through a majority of votes at a referendum in which at least 51 percent of the electorate participated.
- Reversed the provision made by the 42nd amendment that prevented judicial review of constitutional amendments.
- Right to Property was moved from the list of fundamental rights and made into a legal right.
- Provided that emergency could only be declared when the security of India or any part of its territory was threatened by war, external aggression or armed rebellion. Internal disturbance, not amounting to armed rebellion, could not be a ground for the declaration of emergency. It also provided that such a declaration could only be made on the basis of written advice tendered to the President by the Cabinet.
- Provided that the law for preventive detention cannot authorise detention for a period of more than three months, unless an Advisory Board has made such a recommendation.
- Provided the media the right to report freely and without censorship the proceedings in Parliament and the State Legislatures.

6.11 Amendments Providing Restrictions on Liberty

6.11.1 The Constitution (Sixteenth Amendment) Act, 1963

- Inserted the phrase ‘sovereignty and integrity of India’ in various clauses, allowing the government to impose reasonable restrictions on freedom of speech and expression, peaceful assembly, and forming associations in the interest of sovereignty and integrity of the nation.
- Included the same phrase in the oaths for legislators, ministers, judges, and the Comptroller and Auditor General (CAG).

6.12 Amendments Limiting Fundamental Rights

6.12.1 The Constitution (Twenty Fifth Amendment) Act, 1971

- Curtailed the right to property to permit the acquisition of private property by the government for public use, on the payment of compensation which would be determined by the Parliament and not the courts.
- Exempted all laws in relation to Directive Principles of State Policy from judicial review, even if the laws violated Fundamental Rights

7. How the constitutional values are reinforced by court decisions

Dr Somnath Ghosh

“[While] A great judgment restores the constitutional values of a polity from the waywardness into which it may have fallen, a landmark judgment is one which opens up new directions in our constitutional thinking and, in the process, adds new dimensions to what are regarded as established constitutional principles. If “great” restores the centrality of constitutional values, “landmark” revitalises them.” Peter Ronald deSouza, Professor at the Centre the Study of Developing Societies, Delhi.[3]

Landmark court decisions in India substantially change the interpretation of existing law. Such a landmark decision may settle the law in more than one way. In present-day common law legal systems it may do so by:

- Establishing a significant new legal principle or concept:
- Overturning prior precedent based on its negative effects or flaws in its reasoning;
- Distinguishing a new principle that refines a prior principle, thus departing from prior practice without violating the rule of stare decisis;
- Establishing a "test" (that is, a measurable standard that can be applied by courts in future decisions).

In India, landmark court decisions come most frequently from the Supreme Court of India, which is the highest judicial body in India. High courts of India may also make such decisions, particularly if the Supreme Court chooses not to review the case or if it adopts the holding of the lower court.

Before we proceed further, we are tempted to refer to two observations by legal luminaries.[4] The first is on the organic element of law by Justice S. Ratnavel Pandian, that “[T]he inevitable truth is that law is not static and immutable but ever increasingly dynamic and grows with the ongoing passage of time”.

[3] Quoted by Justice Ved Prakash, Landmark Judgments of the Supreme Court of India, PDF file

[4] Ibid

The history of landmark judgments is a testimony to that. The other quotation is by former CJI, D.Y Chandrachud: “When histories of nations are written and critiqued, there are judicial decisions at the forefront of liberty. Yet others have to be consigned to the archives, reflective of what was, but should never have been.” The judgments we curate here are testimony to both these observations.

7.1 Great Judgments

We begin by looking at four recent ***great*** judgments that could potentially impact large constituencies of the population and have restored the constitutional values of a polity from the waywardness into which it had fallen:[5]

7.1.1 Withdrawal of remission granted to Bilkis Bano convicts | Bilkis Yakub Rasool v Union of India | Two-judge bench

A judgement that quashed the Gujarat government’s order to release 11 convicts in the Bilkis Bano case was the first big decision to make headlines from the Supreme Court in 2024. The convicts were sentenced for life for the gang rape and murder of Bano’s family during the 2002 Gujarat Riots. It was a crime that had shocked the conscience of large sections of the nation. Notably, the convicts were sentenced in Mumbai, making the Maharashtra government the appropriate authority to consider remission.[6]

The judgement suggests that the Gujarat government was aware of the convicts’ mischief of applying to the wrong government and still considered their application. The judgement put on record that the Gujarat government, run by the Bharatiya Janata Party, acted “in tandem” with the convicts. Justice B.V. Nagarathna’s opinion reiterated that remission applications can only be considered if convicts respect the rule of law. Further, the judgements stated that although the decision to release convicts rests in the administrative domain, courts have the authority to quash remission orders.

Source: Image

[5] Supreme Court Observer (SCO), Supreme Court Review: Top 10 judgements of 2024 https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2024/

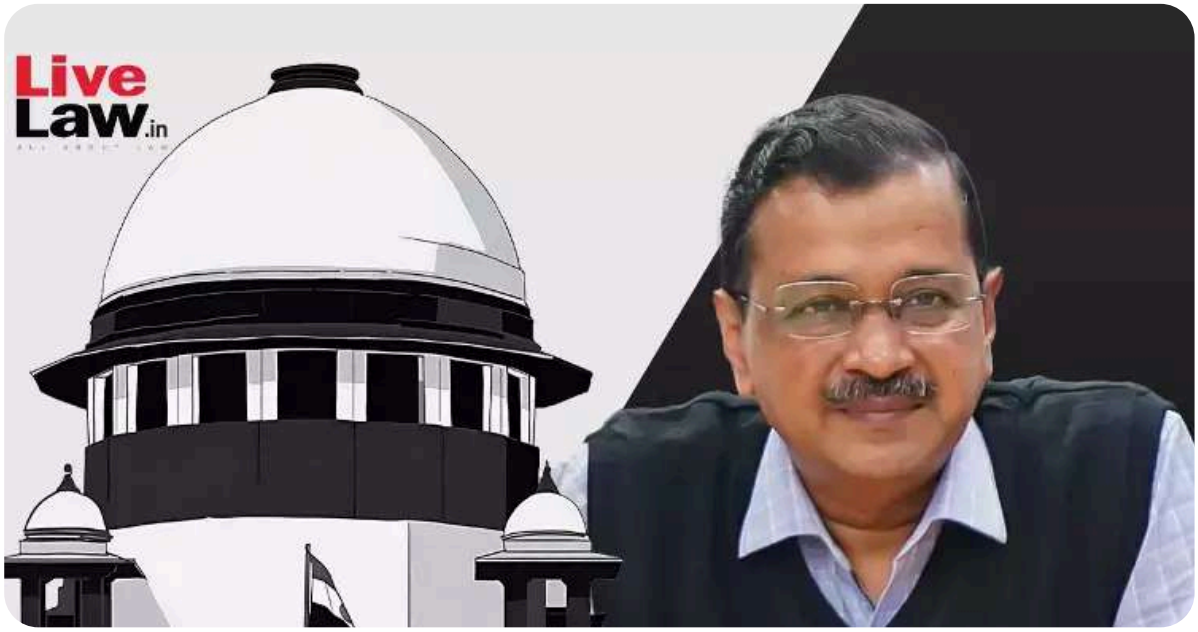
[6] Ibid

7.1.2 Validity of the Electoral Bonds Scheme | Association of Democratic Reforms v Union of India | Five-judge bench [7]

In the lead-up to the 2024 Lok Sabha Elections, a five-judge bench quashed the 2018 Electoral Bond Scheme. The EB Scheme allowed corporations, individuals and organisations to donate anonymously to political parties. On 15 February 2024, the Court unanimously held that voters had a right to be informed about the sources of party funding. The Court found that the 2018 Scheme was not foolproof, and did not fulfil the Union's justification of wanting to protect donors from adverse actions by rival political parties. In a boost to free and fair elections, the Court ordered the immediate halt of bond sales and asked the Election Commission and the State Bank of India to publicly disclose the data they had hitherto collected on EB transactions.

Citizens, journalists and researchers scoured through the data, drawing connections between donations, on the one hand, and profitable government tenders and abrupt halting of criminal investigations, on the other. In August, however, the Court refused to set up a Special Investigation Team to probe allegations of quid pro quo, stating that the allegations were mere "assumptions".

7.1.3 Bail for Delhi Chief Minister Arvind Kejriwal | Arvind Kejriwal v Directorate of Enforcement | Two-judge bench



Source: Image

The Arvind Kejriwal bail saga had the effect of relaxing the stringent interpretation of the bail norms in the Prevention of Money Laundering Act (PMLA), 2002. Kejriwal was arrested by the Enforcement Directorate (ED) for his alleged role in the Delhi Liquor Policy scam.

He was also arrested by the Central Bureau of Investigation (CBI) on corruption charges in connection with the same scam. The Supreme Court noted that Kejriwal had suffered long periods of incarceration and that the trial in his case was unlikely to commence in the foreseeable future.

[7] Ibid

The Court's decision seemed to open the doors for the release of other incarcerated Opposition political leaders like Manish Sisodia, K. Kavitha and V. Senthil Balaji. Many of the subsequent orders, too, referred to the delay in commencement of trial. More than once, the Court reiterated the maxim of "bail is the rule, jail is the exception" in the context of PMLA cases. These developments suggested that the Court has come a long way since Vijay Madanlal, the July 2022 case where it had upheld the onerous bail conditions under the PMLA. The Kejriwal case also opened a new aspect to determine the validity of an arrest under the PMLA, one of "need and necessity".

7.1.4 Guidelines to curb illegal bulldozer demolitions | *In Re: Directions in the matter of demolition of structures* | Two-judge bench

Two years after homes of the Muslim individuals accused in the Jahangirpuri communal violence were bulldozed by authorities, the Court issued detailed directions to curb such demolitions nationwide. In September 2024, a bench took up the matter after a long hiatus, prompted by the bulldozing of the home of a Muslim auto-rickshaw driver. The action had been taken after his Muslim tenant's son had stabbed a Hindu classmate.

The Supreme Court ruled that bulldozer demolitions of this nature infringed fundamental rights, such as the right to shelter, diluted the separation of powers by making the executive judge and jury and undermined the rule of law. The bench also laid down some procedural guidelines: a written notice to be served to the owner-occupier at least fifteen days ahead, keeping collectors and district magistrates in the loop about notices and ensuring personal hearings before a designated authority. It also held that the ground-level government officers would pay from their own pockets if any procedure is violated.

The decision addressed a serious case of executive overreach—more than 150,000 homes were razed and over 700,000 people, mainly Muslim, had been rendered homeless by bulldozing action in two years.

7.2 Landmark Judgements

A review of landmark judgments indicates a four-fold classification. Two of these have to do with the citizenry of the country ensuring (i) social, economic and political justice, including equality of status and of opportunity; (ii) fundamental rights relating to life and liberty. Incidentally, all these find expression in the Preamble to the Constitution of India. Verily, in the Kesavananda Bharati case, Justice J M Shelat and Justice A N Grover had held that the Preamble to the Constitution contains the clue to the fundamentals of the Constitution. The third has to do with centre-state relations; and the last with the *basic structure* of the Constitution.

7.3 Social, economic and political justice

Mohd. Ahmed Khan v. Shah Bano Begum (1985): Had it not been for what followed, the judgment would have perhaps been classified under individual rights. The Supreme Court upheld the payment of maintenance and alimony to Shah Bano and hence to Muslim women by Muslim Husbands. The government of the day passed the Muslim Women (Protection of Rights on Divorce) Act 1986 which diluted this judgement and restricted the right to maintenance and alimony which was heavily criticized as a move to appease Muslims opposing the judgement. The Supreme court later through Danial Latifi v. Union of India case and Shamima Farooqui v. Shahid Khan upheld the Shah Bano judgement effectively nullifying the Muslim Women Act 1986.

Validity of sub-classification within reserved categories | *State of Punjab v Davinder Singh* | (2024) Seven-judge bench. In a potentially far-reaching judgement on the affirmative action jurisprudence in the country, a seven-judge bench of the Supreme Court upheld states' power to create sub-classification within the reserved Scheduled Caste and Scheduled Tribe categories (SC/ST). In a 6:1 majority, the bench led by Chief Justice D.Y. Chandrachud overturned E.V. Chinnaiah v Union of India (2004).[8]

Source: Image

The majority reasoned that sub-classification was permissible to ensure "substantive equality" since different communities in the SC/ST list faced varying degrees of discrimination and inequality. The bench, however, held that any law creating sub-classification had to be based on empirical evidence and would be subject to judicial review.

According to Anup Surendranath, Professor of Law at National Law University, Delhi, "[T]he opinion by Chief Justice D.Y. Chandrachud (on behalf of himself and Justice Manoj Misra with all judges in the majority expressing agreement) wades into tricky waters on reservation jurisprudence. For most part, it provides much-needed clarity. One of the enduring legacies of this opinion will be its take on the relationship between reservations in Article 16 and 'efficiency' in Article 335." [9]

[8] Supreme Court Observer (SCO), Supreme Court Review: Top 10 judgements of 2024, op. cit.

[9] "Reservations and sub-classification of SC/STs: A mixed bag for substantive equality", Supreme Court Observer, 22 Aug 2024 https://www.scobserver.in/journal/reservations-and-sub-classification-of-sc-sts-a-mixed-bag-for-substantive-equality/#:~:text=On%201%20August%202024%2C%20in,v%20State%20of%20Andhra%20Pradesh

In the wake of the judgement, several state governments indicated that they were keen to advance sub-classification. Haryana was the first to do so—weeks after the judgement, the Nayab Singh Saini-led BJP government approved the Haryana Scheduled Caste Commission Report, which recommended a 10 percent 'sub-quota' for deprived SCs in government jobs. Earlier this month, Telangana chief minister Revanth Reddy announced that the Commission constituted by his government to study sub-classification would submit its report. Reddy's Congress government has made it clear that there would be a positive outcome for the Madiga community, which was prominent in spearheading the movement in favour of sub-classification.

7.3.1 Validity of Section 6A of the Citizenship Act (Assam Accord) | In re: Section 6A of Citizenship Act | (2024) Five-judge bench

Source: Image

This case questioned whether Section 6A of the Citizenship Act, 1955, introduced to implement the Assam Accord of 1985, violated Articles 11, 14, 29, 326 and 355. The Accord sought to resolve the tensions caused by the influx of refugees into Assam in the wake of the Bangladesh Liberation War in 1971. It grants citizenship to those who entered before 24 March 1971, bringing legal certainty to thousands of immigrants who have lived in Assam for decades without clarity over their citizenship.

The judgement upheld Section 6A in a 4:1 majority. Rejecting claims that the provision dilutes Assamese culture and amounts to external aggression, the majority acknowledged Assam's distinct identity and emphasised that Assam's cultural concerns arose from non-implementation of the provision rather than the provision itself. However, the majority judgement fell short of the expectations of constituencies of native Assamese, who wished for the cut-off date for citizenship to be pushed back two more decades to 1951.

This case exemplifies a deeper tension within India's democracy: the challenge of accommodating displaced populations while safeguarding the cultural, linguistic, and ethnic identities of regional communities. In Assam, where the interplay of migration, ethnicity and language is particularly sensitive, Section 6A remains both a product of compromise and a flashpoint for debates about identity and inclusion.[10]

[10] ibid

7.3.2 Minority status of AMU | *Aligarh Muslim University v Naresh Agarwal* | (2024) Seven-judge bench

Source: Image

The Supreme Court overruled a 57-year-old precedent set by a five-judge bench in Azeez Basha v Union of India (1967). The 1967 verdict had ruled that Aligarh Muslim University (AMU) does not have a minority status under Article 30 as it was established through a Union legislation (the AMU Act of 1920). In a 4:3 majority in the present case, the Court held that institutions incorporated by a legal instrument can have a minority status if the "brain" behind the establishment of an institution was a member of the minority community; what was the purpose of the establishment; and what were the steps taken to implement this purpose (such as seeing how the land was obtained and who provided the funding).[11]

It further held that the court cannot rely on the language of the Act to determine who established the university — such as the AMU Act which states that the university was incorporated and established under the Act itself. This would make Article 30(1) — a fundamental right — subservient to a statutory enactment, the majority held.

Article 30(1) says that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." In the 1967 Azeez Basha case, the SC Constitution bench had held that AMU was not a minority institution and to enjoy the status, it should have been both established and administered by the minority.

While overturning its 1967 verdict, the SC Bench also pointed out that it has "already held… that an education institution is a minority educational institution if it is established by religious or linguistic minority" and "it is not necessary to prove that administration vests with a minority to prove that it is a minority education institution because the very purpose of article 30(1) is to grant special rights on administration as a consequence of establishment. "To do otherwise, would amount to converting the consequence to a precondition," it added.[12]

[11] https://indiankanoon.org/doc/33465676/

[12] https://www.scobserver.in/cases/aligarh-muslim-university-minority-status-case-background/

This was the first time when the Supreme Court, in 75 years, laid down such indicators. The parameters will assist a smaller bench in determining whether AMU is a minority institution or not. They are also likely to be applied in other cases where an institution seeks to control its own affairs, especially when it comes to reserving seats for students from a particular community. The present case reached the Court after AMU decided to reserve 50 percent seats in postgraduate medical courses for Muslim candidates in 2005.

7.4 Fundamental rights relating to life and liberty

Source: Image

Most of landmark judgments in this category relate to Article 21 of the Constitution. Article 21 of the Indian Constitution is a cornerstone of fundamental rights. It is often regarded as the heart and soul of the Constitution because it encapsulates the quintessential right to life and personal liberty. This article is not merely a legal provision; it is a reflection of the aspirations of the founding fathers of the Indian Republic, who sought to secure the dignity and rights of every citizen. Over the years, Article 21 has evolved through numerous landmark case laws, shaping the course of Indian jurisprudence and safeguarding the fundamental rights of citizens.

Article 21 of the Indian Constitution reads, "No person shall be deprived of his life or personal liberty except according to procedure established by law." This seemingly straightforward provision has profound implications. It guarantees two distinct but interconnected rights: the right to life and the right to personal liberty.

The right to life is not limited to mere existence; it encompasses the right to live with dignity. It includes the right to a healthy environment, the right to livelihood, and the right to protection from arbitrary or unlawful actions that may jeopardize one's life. It is not an absolute right but can be restricted by law, provided the procedure for such restrictions is established by law and is fair, just, and reasonable.

Right to Personal Liberty: The right to personal liberty includes freedom from unlawful detention or imprisonment. It ensures that a person cannot be deprived of their freedom without due process of law. It also encompasses various aspects of personal freedom, such as freedom of movement, speech, expression, and association.

- **Romesh Thappar vs State of Madras (1950):** This was the first case relating to freedom of speech. The Supreme Court struck down as unconstitutional the ban on dissenting media under the Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949. This in-turn led to formulation of the 1st amendment of the Constitution of India which clarified public order can form grounds for reasonable restrictions of free speech.

- **A.K. Gopalan v. The State of Madras (1950)**: Just a day after independence, A.K. Gopalan (or AKG, as is popularly known) was arrested for stirring up the people "against His Majesty the Emperor" and charged with sedition. While he was released, just over a month later, he was detained again under the colonial laws that were still in place in the newly independent nation. After India became a republic, the Preventive Detention Act, 1950 was passed to 'regularise' detentions of many including AKG. "I was a political prisoner from 1930 to 1945 in the eyes of a foreign government. Under today's popular government, I am branded as a criminal," he wrote in his autobiography In the Cause of the People. In 1950, he moved the Supreme Court against his detention, perhaps hoping that the freedoms guaranteed by the new Constitution that came into force in 1950 would ensure his release from jail. After all, Article 21 stated that "no person shall be deprived of his life or personal liberty except according to procedure established by law". [13]

AKG argued that the preventive detention law violated his fundamental rights under, among others, Article 21 and Article 22 of the Constitution (protection against arrest and detention). However, Article 22, while providing for "protection against arrest and detention", including the right to be informed of charges, the right to a lawyer and the right to be produced before a court within 24 hours, carves out a strategic exception — that protection is suspended when an arrest is under a law that specifically provides for preventive detention. Thus, AK Gopalan v State of Madras would thus go on to become the first case to question the Constitution's contrariety.

On May 19, 1950, a six-judge bench held that the preventive detention law was valid and only allowed minor procedural safeguards that the length of detention had to be informed at the time of arrest although it could be extended. While AKG lost his case, the prescient questions it raised continue to shape our rights and freedoms.

"Preventive detention is curtailing someone's freedom based on their past conduct that was used in England and other parts during war situations. The British used it in India and while we continued it in our Constitution, Gopalan's case brought in some procedural safeguards. Disclosure of grounds for detention, judicial review was put in place even if Gopalan lost his case in the SC. The argument that we look at our fundamental rights as a bundle and not in isolation also emerged from the arguments by Gopalan's lawyer," former Attorney General for India K K Venugopal told The Indian Express. His father M K Nambyar argued for AKG.

However, four of the six judges held that "procedure established by law" is a narrow threshold and a law made by Parliament, in this case the Preventive Detention Act, 1950, was sufficient to suspend the right under Article 21. The majority opinion stated that "law" had been used in the "sense of State-made law and not as an equivalent of law in the abstract or general sense embodying the principles of natural justice."

Justice Fazl Ali penned a dissent, which Justice Mehr Chand Mahajan concurred with, saying, "The question to be decided is whether the word 'law' means nothing more than statute law." He then held that the word law means "valid law" and "procedure" means "certain definite rules of proceeding and not something which is a mere pretence for procedure".

Over two decades later, and a year after his death, AKG stood vindicated — the Supreme Court in its 1978 ruling in Maneka Gandhi v Union of India restored Justice Ali's dissenting opinion as the Court's majority opinion and established "due process" as a necessary criteria for any law to be constitutionally valid.

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[13] Shaju Philip & Apurva Vishwanath, "When freedom came on Aug 15, 1947, AK Gopalan was in jail; his case a benchmark for personal liberty", The Indian Express, February 4, 2025 https://indianexpress.com/article/express-exclusive/when-freedom-came-on-aug-15-1947-ak-gopalan-was-in-jail-his-case-a-benchmark-for-personal-liberty-9815842/

- **Kharak Singh v. State of Uttar Pradesh (1963)** In the Kharak Singh case, the Supreme Court adopted a wider meaning of personal liberty and said that it will include all the rights which are given under Article 19(1). The court addressed the issue of surveillance and the right to privacy. Although the court upheld the validity of surveillance laws, it recognized the right to privacy as a part of personal liberty under Article 21. This case laid the groundwork for future judgments that expanded the right to privacy as an intrinsic part of the right to life and personal liberty.

Source: Image

- **ADM Jabalpur vs Shivkant Shukla (1976):** Also known as the Habeas Corpus (ADM Jabalpur) Case. Involves a landmark judgment but for all the wrong reasons. Presided over by CJI A N Ray who had earlier given a dissenting opinion on the Kesavananda Bharati case and was appointed CJI by Mrs. Gandhi by superseding three senior brother judges, the bench by a majority of 4:1 upheld the detention of citizens during the Emergency period from 1975 to 1977. The 1976 judgment ruled that the state could suspend a person's right to not be detained without cause.

It was held that in view of the presidential order dated 27th June, 1975, no writ petition can be moved in the HC under Art.226 for habeas corpus during the proclamation of emergency under Art. 359 (1). Further, the court upheld the constitutional validity of clauses 8 and 9 of Sec. 16 of the MISA, 1971.[14]

Justice Y V Chandrachud (father of just retired CJI DY Chandrachud) stated that all executive action must be performed in pursuance of the law passed by the parliament. The majority also held that the court of law has no power to look into and decide the validity of a detention order under the MISA, 1971. And finally, the Basic Structure theory cannot be used to build an imaginary picture within the constitution that creates a conflict with the provisions of the constitution.

The sole dissenting judgment of Justice Khanna is classic in its simplicity and innate wisdom. For those who fight for personal liberty, the laws relating to preventive detention on detention without trial is an evil.

[14] https://www.alec.co.in/judgement-page/the-habeas-corpus-adm-jabalpur-case

Justice Khanna denied that Art. 21 is sole repository of right to life and personal liberty and even if Art.21 was not there in the constitution, the state has no discretion to deprive a person of his life and liberty without the authority of law.

During the proclamation of emergency only the procedural power of Art. 21 is restricted but the substantive power remains intact therefore a person cannot be deprived of his right to life and personal liberty. And finally, the sanctity of life and liberty needs to be maintained in order to understand the difference between a society which is lawless and a lawful society.[15]

In 2017, in the Right to Privacy case, a nine-judge bench led by Chief Justice J.S. Khehar overturned the 1976 judgment. The judgment ruled that life and liberty are fundamental rights and that the 1976 judgment was "per incuriam". Justice D.Y. Chandrachud, who was part of the 2017 bench, noted that the 1976 judgment (to which his father Y V Chandrachud was a part) was "seriously flawed". He also noted that the judgment was an aberration in India's constitutional jurisprudence.

- **R.C. Cooper v. Union of India (1970):** In this case, the Supreme Court redressed its views taken in A.K. Gopalan case. Now the court held that the word personal liberty would not only include Article 21 but also includes the 6 Fundamental Freedoms given under Article 19 (1).

- **Sunil Batra v. Delhi Administration (1978):** Sunil Batra's case marked a significant development in the jurisprudence of Article 21. The court held that the right to life includes the right to live with human dignity. It declared that torture and cruel treatment in prisons violate the right to life and personal liberty. This decision led to the evolution of the concept of custodial violence and the need to protect the dignity of prisoners.

- **Maneka Gandhi v. Union of India (1978).** The case of Maneka Gandhi is a watershed moment in the history of Article 21. Before this case, the prevailing interpretation was that the state could deprive a person of their passport without giving reasons, as long as it was done in accordance with the procedure established by law. However, in this case, the Supreme Court held that the procedure established by law must be just, fair, and reasonable and it cannot be arbitrary, oppressive, or unreasonable. This decision expanded the scope of Article 21 by emphasizing the importance of substantive and procedural due process. In this landmark judgment, the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to live with dignity.

- **Olga Tellis v. Bombay Municipal Corporation (1985).** In the Olga Tellis case, the Supreme Court addressed the issue of the eviction of slum dwellers in Bombay. The court held that the right to life under Article 21 includes the right to livelihood. It emphasized that eviction without providing an alternative livelihood would violate the right to life of the slum dwellers. This case laid the foundation for the recognition of the right to livelihood as an integral part of the right to life.

- **Vishakha v. State of Rajasthan (1997).** Vishakha's case is a landmark judgment related to gender equality and the right to life with dignity. The Supreme Court recognized that sexual harassment at the workplace violates a woman's fundamental rights, including her right to life and personal liberty. This case led to the formulation of guidelines known as the Vishakha Guidelines to prevent and address sexual harassment at the workplace, contributing to women's empowerment and safety.

[15] https://indiankanoon.org/doc/1735815/

- **Naz Foundation v. Government of NCT of Delhi (2009)** The Naz Foundation case was a significant milestone in the context of LGBTQ+ rights and Article 21. The Delhi High Court, in a historic judgment, decriminalized consensual homosexual acts between adults, stating that criminalization violates the right to life and personal liberty. While the judgment was later reversed by the Supreme Court, it ignited a national conversation on LGBTQ+ rights and contributed to the eventual decriminalization of homosexuality in India.

- **Selvi v. State of Karnataka (2010)** The Selvi case addressed the issue of narco-analysis, brain mapping, and lie detector tests. The Supreme Court held that subjecting an individual to these tests without their consent violates the right against self-incrimination, which is a part of the right to life and personal liberty. This decision reaffirmed the importance of protecting an individual's dignity and bodily integrity.

- **Puttaswamy v. Union of India (2017)** The Puttaswamy case is a landmark judgment on the right to privacy. The Supreme Court held that the right to privacy is a fundamental right under Article 21 and other related articles of the Constitution. This judgment established that the right to privacy is an intrinsic part of the right to life and personal liberty and has far-reaching implications for data protection and individual autonomy.

- **Common Cause v. Union of India (2018)** In the Common Cause case, the Supreme Court recognized the right to die with dignity as a facet of the right to life. The court legalized passive euthanasia and living wills, allowing individuals to make choices about their end-of-life medical treatment. This decision reflected a deep understanding of the right to life's meaning in the context of personal autonomy and dignity.

- In **National Legal Services Authority v. Union of India and Ors (2014), the Supreme Court** recognised transgender as 'third gender' in law and affirmed that the fundamental rights granted under the Constitution of India will be equally applicable to them. The court held that the gender of a person is to be decided by the person himself after looking into the Right to Life Article. So, all the rights which are given to normal people must be given to transgendered people like Public toilets, medical care for transgendered persons and the provisions of reservations under Article 15 and 16 must be extended to them as they classify as a minority section.

Source: Image

7.5 Centre-state relations

Source: Image

S. R. Bommai v. Union of India (1994). The Supreme Court discussed at length provisions of Article 356 of the Constitution of India (President's Rule) and related issues. This helped put an end to the arbitrary impositions seen until then. The case established that the power under Article 356 is subject to judicial review.

The case originated when the central government dismissed the Janata Dal government of S.R. Bommai in Karnataka in 1989. The dismissal was based on the claim that the government had lost its majority due to defections.[16]

While Bommai's challenge was initially rejected by the Karnataka High Court, the Supreme Court ruled that the test of majority of the government should be done in the floor of the Assembly. The court also ruled that policies of a state government directed against the basic structure of the Constitution would be a valid ground for the exercise of the central power under Article 356.

The significance of the Bommai case is that it is one of the most quoted verdicts in the country's political history. While all nine judges unanimously upheld the provision, the Court ruled that the President's decision would be subject to judicial review. *Bommai* is still the settled law on when and how President's rule can be imposed, and was invoked in recent cases challenging President's rule in Uttarakhand (2016) and Arunachal Pradesh (2016), both of which were overturned by the Supreme Court.[17]

Further, according to research by Alok Prasanna Kumar, Senior Resident Fellow at Vidhi Karnataka, the imposition of President's rule drastically decreased after the *Bommai* verdict. Between January 1950 and March 1994, President's Rule was imposed 100 times or an average of 2.5 times a year. Between 1995 and 2021, it has been imposed only 29 times or a little more than once a year.[18]

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[16] https://indiankanoon.org/doc/60799/

[17] Apurva Vishwanath, "What was the SR Bommai judgment, which the SC relied on in its Article 370 ruling?", *The Indian Express*, December 12, 2023 https://indianexpress.com/article/explained/explained-global/germany-far-right-far-left-parties-election-9842907/

- **Taxation of mines and minerals and regulation of industrial alcohol | Mineral Area Development Authority v Steel Authority of India; State of UP v Lalta Prasad Vaish | 2024 Nine-judge bench:**

Source: Image

Two nine-judge benches dealt with the distribution of law-making powers between the Union and state governments this year. In Mineral Area Development Authority, an 8:1 majority held that Parliament's power to make laws on mines and minerals cannot be extended so far that it usurps states' powers to legislate on the subject.

In Lalta Prasad Vaish, in a similar majority, the Supreme Court found that the Union's powers under List I of the Seventh Schedule cannot be used to take away the powers that List II has vested in the states. Thus, state governments had the power to regulate industrial alcohol.

In these cases, which were seen as a shot in the arm for state autonomy, the majority found that a clear division of legislative powers between the states and the centre was critical for maintaining India's federal structure. They stressed on the importance of interpreting the two Lists in a way that ensured that states' law-making powers were not read narrowly.

Interestingly, Justice Nagarathna dissented and expressed similar concerns in both cases. She observed that the Union having control of critical subjects like minerals and industrial alcohol allowed the central government to take decisions that would prevent uneven economic development and discourage inter-state rivalries.

"It is all important that this edifice is not dislodged while attempting to dynamically interpret the Constitution," she wrote.

[18] Ibid

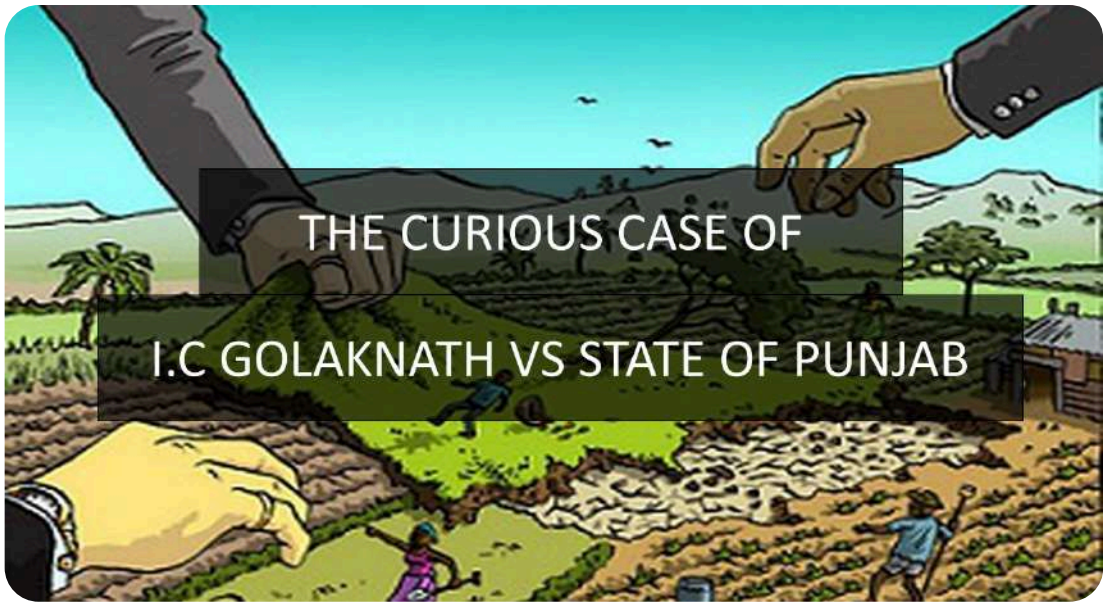
7.6 Basic structure of the Constitution

- **Golaknath v State of Punjab (1967):** The case involved the Golaknath family, who owned 500 acres of land in Jalandhar, Punjab. In 1953, the Punjab government passed the Punjab Security and Land Tenures Act that limited land ownership to 30 acres per person. The Golaknath family challenged the Act, arguing that it violated their fundamental rights to acquire and hold property, as guaranteed by Article 19(1)(f) (right to property) and under Article 13(3)(a), which declares that any law contravening Fundamental Rights is void. They sought judicial relief to declare the Act unconstitutional and contested the 17th Amendment, which had placed the Punjab Act in the Ninth Schedule of the Constitution, thereby rendering it immune to judicial scrutiny.

The original and unamended Article 368 was silent regarding the extent or width of the power to amend the Constitution. The government claimed unlimited power, as the Constitution had no explicit limitation.[19] Yet, while Article 368 gave Parliament the power to amend the Constitution, could any such amendment be classified as "law" if it infringed upon Article 13(3)(a) which declares that any law contravening Fundamental Rights (as enshrined in Part III of the Constitution) is void.

The Supreme Court ruled that Parliament lacked the authority to amend Fundamental Rights, introducing the doctrine of prospective overruling **(**that allows courts to overturn existing laws and introduce new ones, but only for future cases) reinforcing the inviolability of these rights, and establishing a foundation for the Basic Structure Doctrine in future jurisprudence.

But, Parliament thought otherwise. As a result, The Constitution (Twenty-fourth Amendment) Act, 1971 came into being which amended article 368 for giving effect to the Directive Principles of State Policy and for the attainment of the objectives set out in the Preamble to the Constitution. The 1971 Act also amended article 13 of the Constitution to make it inapplicable to any amendment of the Constitution under article 368.[20] This effectively curtailed the powers of the judiciary and limited the scope of judicial review. The 25th and 29th Amendments were also passed, which sought to limit the fundamental rights of citizens and give Parliament the power to amend any part of the Constitution.



Source: Image

[19] Shubham Verma, "Basic Structure Doctrine Explained on its Fiftieth Anniversary", NewsClick, 24 Apr 2023 https://www.newsclick.in/basic-structure-doctrine-explained-its-fiftieth-anniversary#:~:text=In%201967%2C%20in%20the%20Golaknath,the%20Constitution%E2%80%94including%20Fundamental%20Rights

- **Kesavananda Bharati v. State of Kerala (1973):** Sri Kesavananda Bharati filed a petition challenging the validity of these amendments (24th, 25th and 29th), arguing that they violated the basic structure of the Constitution.[21] This led to the landmark Kesavananda Bharati judgment, which upheld the basic structure doctrine and placed limits on the power of the Parliament to amend the Constitution. The court in a 7-6 decision asserted its right to strike down amendments to the constitution that were in violation of the fundamental architecture of the constitution. Justice Hans Raj Khanna asserted through the Basic Structure doctrine that the constitution possesses a basic structure of constitutional principles and values.[22] The Court partially cemented the prior precedent Golaknath v. State of Punjab, which held that constitutional amendments through Article 368 were subject to fundamental rights review, but only if they could affect the 'basic structure of the Constitution'. At the same time, the Court also upheld the constitutionality of the first provision of Article 31-C, which implied that laws seeking to implement the Directive Principles, which do not affect the 'Basic Structure,' shall not be subjected to judicial review.

The significance of the Kesavananda Bharati case lies in the fact that it established the doctrine of basic structure of the Indian Constitution. The basic structure doctrine holds that certain fundamental features of the Constitution, such as the supremacy of the Constitution, the rule of law, and the independence of the judiciary, including the power of judicial review are integral to the basic structure of the Constitution, and cannot be amended or abrogated by the Parliament through a constitutional amendment.

This doctrine has served as a check on the power of the Parliament to amend the Constitution and has ensured that the Constitution remains a living document that is responsive to changing times while preserving its fundamental values and principles. The Kesavananda Bharati case has thus had far-reaching consequences for the constitutional development of India, making it one of the most significant cases in Indian constitutional law.

Source: Image

[20] https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-fourth-amendment-act-1971#:~:text=The%20Supreme%20Court%20in%20the,III%20relating%20to%20fundamental%20rights

[21] Google.com search

[22] https://en.wikipedia.org/wiki/Kesavananda_Bharati_v._State_of_Kerala#:~:text=(Writ%20Petition%20(Civil)%20135%20of%201970)%2C%20also,of%20the%20fundamental%20architecture%20of%20the%20constitution

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