

Democracy in Peril - Remedies to Surmount - A Brief Study

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Abstract

Democracy is the only best system of any government. It stands on strong pillars namely Executive, Parliament and Judiciary. Indian Constitution was framed on these three independent structures and one cannot override on the other under any circumstances. However, the framers of the Constitution, taking into consideration some aspects like increasing population, illiteracy, social conditions, developmental requirements in various fields, etc., a clause was enshrined to the effect that Parliament, which consists of people elected representatives to provide changing needs for establishing a welfare state, to amend the constitution from time to time without subverting the main theme of the constitution. Unfortunately, slowly moral and ethical values in all spheres of activities are relegated to back seat and high volume of kleptocracy emerged and is widening its vicious wings to throw away the trust and belief between and among the people. Today, all well said three pillars are losing its sheen and giving wider scope to the tattlers publicly. This is tormenting the righteous persons.

However, it is disheartening to go through a news report that about 4000 criminal cases are pending in various courts against politicians, out of which 2500 cases are registered against sitting legislators. All these cases are ranging from corruption to money laundering. Amicus Curiae in a reply to Supreme Court, some of these cases are stuck at the stage of framing charges. In a democratic set up, elected representatives are rapacious to gain power and pelf on political platform, an easy and comfortable profession even for one term or still less time. Therefore, they are disdained by people inherently though not open.

Keywords: Constitution, Judges Plight, Comments on Judiciary

Introduction

Our country (India) has abundant faith and trust in the judicial system. But at the same time, people are getting despaired due to abnormal delay in delivering justice. Further, stepping on the court steps has become highly expensive beyond the financial capacity of common man. Hence litigants are often resorting to outside settlements through arbitration by lawyers or local jurists, because the rights of the poorest of the poor are not within their reach due to illiteracy and innocence. They have no voice to claim their legitimate right. If someone raises the voice of poor, the courts should at least hear them patiently by providing an advocate to plead their cause unhesitatingly without yielding to any pressure. Indian democracy is survived with the well laid principles "for the people, by the people of the people". It can be more elaborately and vividly explained in volumes and on its vision; the governance by the rulers should be carried out. Any side track that takes place is to be put on right track by the judiciary. In this

process, the judiciary is under tidings even by governments as its certain policies are struck by courts as they are in subversion of public/national interest. Judiciary never involves out of its sphere unless and until it finds failure of constitutional adherence by any institution.

CONSTITUTION Speaks:

- C stands for Caboodle (All People)
- O -do- Oath (Principles/Promises)
- N -do- Nationalism
- S -do- Sovereignty
- T -do- Transparent
- I -do- Integrity
- T -do- Tutelary (Protector, Guardian)
- U -do- Unity
- T -do- Tenacious (Everlasting)
- I -do- Independence
- O -do- Opportunity
- N -do- Naturalism

Constitution means "A fundamental Law of a State or Nation. Though the said three pillars of the constitution are entirely independent in nature, Parliament which consists of elected representatives is supreme as it is also vested with the power of law making. Parliament may in exercise of its constituent power to amend the constitution by way of addition, variation or repeal any provision. Government is a trust and people are the ultimate sovereign in a democracy.

Some important quotations generally in use are:

1. Nemo debet esse iudex in propria causa (No one should be a judge in his own case)
2. Nemo debet bis puniri pro uno delicto (No one should be punished twice for one fault)
3. Dormiunt aliquando leges numquam mortuntur (The laws sometime sleep, never die)
4. Fiat justitia tunc caelum (Let right be done though heavens fall)
5. Feme Covert. (A married woman)
6. Feme Sole. (An unmarried woman)
7. Amicus Curiae. (A friend of the court. A member of the bar or other standby, who informs the court when it is doubtful or mistaken any fact or decided case)

Judges' Plight

Judges are now-a-days facing severe tidings as their pronounced verdicts are not up to the expectations of the litigants who lost their court cases. Judges always go through legal provisions for proclaiming judgments. Recently Justice N.V. Ramana, who is in line to become the Chief Justice of India after the present incumbent retires, while speaking at the virtual launch of a book " Judiciary, Judges and the Administration of Justice " authored by former Supreme Court Judge Banumathi, said that Judges are self restrained from speaking out in their own defence, they are now being construed as soft targets for criticism. This issue is further complicated by the proliferation of social media and technology, wherein judges are becoming victims of juicy gossip and slanderous social media posts Further Justice Ramana said a line that there is a misunderstanding that Judges enjoy a luxurious life style in ivory towers. In fact their life is no bed of roses. Judges have to balance their social life in order to be independent. He quoted Aharon Barak, Chief Justice of Supreme Court of Israel, "crucial condition for judicial independence is the personal independence." The Judges in office have to work 24 x 7 and 365 days. (The Hindu, dated 13-09-2020).

Comments on Judiciary

Why Judges are taken to task when they are in most honourable posts? A former retired judge of Supreme Court made ignominious comments in media sometime ago. He very categorically stated that judiciary is also a corrupt institution as politics. Years ago one judge of a Subordinate Court was arrested on bribe charge for granting bail to an accused criminal. All such episodes are known as 'quid pro quo' (something for something).

A recently retired Supreme Court Judge, Deepak Gupta (May 2020) in his farewell address expressed his opinion by saying that our legal systems are totally geared in favour of rich and the powerful. If rich are behind bars, then time and again they approach the higher courts till they obtain an order that their trial should be expedited. This is done at the cost of the poor litigants whose trials get further delayed because they cannot approach the higher courts. On the other hand, if a rich person is on bail or wants to delay a civil litigation, he can afford to approach the appellate courts to delay the trial or proceedings till the other side gets virtually frustrated. Another retired Apex Court Judge (now no more) as per press report, felt his displeasure by saying "India is the best in enacting laws but the worst in implementing laws (The Hindu, dated 23-08-2015). Such open views are also leading for criticism and adverse comments on judiciary and its judgments. One more very renowned judge of Supreme Court, a human right activist, proudly stated that he never awarded capital punishment of death even to hard core criminals. Is it not violation of Criminal Procedure Code and Indian Penal Code? There are laws enacted by Parliament and also Judge made laws. Our legal procedure is totally interpretative as we have seen 13 bench of Supreme

Court 7: 6 verdict in Kesavananda Bharati vs. State of Kerala in respect of Fundamental Rights issue in the year 1973.

As quoted by Dr. N.S.R. Murthy in The Hans India Newspaper on 20-08-2020, “Covid-19 pandemic may not be that much rampant, but the corruption is omnipresent wherever there is air. It is not necessary to name a particular field that corrupt and corrupted do not exist. But the amounts of bribe differ depending on weight of the case. Though many corrupt officials are caught red handed, the menace continues all in its velocity. A dismissed Tahsildar in Hyderabad, a big fish in the net of ACB is the latest example. It would be the right thing if the photographs of all these corrupt persons are displayed in Police Stations, Railway Stations and other important locations”. In spite of arrests, corruption continues to flourish at all levels. One Deputy Collector is accused in a big bribe of more than one crore is another current example.

Conclusion

Democracy is not one of the best but the best. Therefore, the Constituent Assembly had adopted, enacted and given this Constitution by laying well founded pillars - Executive, Parliament and Judiciary. A strongly built Constitution in grandiloquent terms very comprehensively is equated with a Bible, a Bhagavad Gita and a Quoran. It means it is irreligious and also a religion of Indian man kind to be worshipped in letter and spirit by all patriots. Unfortunately our democratic values are being deteriorated on account of surging selfish motives in all trades. A political thinker said, “As civilization advances, man decays morally and ethically”. Man is a social animal and as such he inherits the characteristics of animal instincts and hence cruelty has become a part of his nature. Examples are many. To cite a few, creating pandemonium in people's houses during sessions is one which is highly disturbing the function of the government. There are numerable ways to express dissent or displeasure by the disgruntled. Judiciary is also found no exception as cases till date filed are piled up in lakhs in all courts which will consume three hundred years for disposal according to a statistical report. Further, Indian Democracy is in peril due to high amount of kleptocracy in all fields. Therefore, it has given room for tattling by the people. For every problem, there is a solution shown in Applied Management Science. A few are, firstly, rooting out corruption at any cost; secondly, collecting the entire black money parked in safety nets local and foreign financial institutions such as Banks, NBFCs, etc. and thirdly gross reduction of illiteracy and unemployment. Fourthly, industrialization of the nation, fifthly corrupt and criminals should be barred from contesting in elections and in employment or doing any business, last but not least, bringing education and health under direct Government control. There is always light at the end of tunnel. Governments, as a matter of fact, all institutions should follow the righteous path to win the confidence of

the subjects to glow brighter and to establish Ramarajya, the dream of Father of the Nation Mahatma Gandhi. This dream should not remain static. Let us trust the people. We always live on hope.

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