

**International Conference «Constitution and Constitutional Supervision:  
Developing the Doctrine and Advancing the Case-Law»**

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Good afternoon and Namaste to all.

At the outset, I would like to thank the Constitutional Court of the Russian Federation for organizing this International Conference on the subject “Constitution and Constitutional Supervision: Developing the Doctrine and Advancing the Case-Law”, and giving me an opportunity to speak on the topic “Constitutional Supervision: Response to Changes”.

This Conference sees participation from delegates of different nations with different cultures and different languages, yet we all are here discussing the same theme – that is, the importance of the Constitution in our countries and its ever-evolving nature.

India gained political independence on 15th August 1947, after nearly two centuries of colonial rule and in the background of partition of the country. However, the first Constituent Assembly was convened much earlier on 9th December 1946, and after nearly three years of deliberations, the draft Constitution was adopted on 26th November 1949. Today, in acknowledgment, we celebrate 26th November as the Law or Constitution Day in India.

The Preamble of our Constitution, one of the finest in the world, captures the ethos behind the Constitution, and a part thereof reads:

“We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens;

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity;

and to promote among all

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;”

India’s Constitution at 1,45,000 words on adoption, stood as the lengthiest written Constitution in the world. Since then, it has seen over 100 amendments in the last 73 years and now it includes 1,46,385 words at present. At the time of its adoption, Sir Ivor Jennings had said that India’s founding document was “too long, too rigid and too prolix”. Since then, he has been proved wrong inasmuch the Indian Constitution has manifested to be appropriately both rigid and flexible, as the circumstances require. It is a pragmatic governing document rather than a theoretical one.

Our Constitution was drafted at a time when India was developing its political identity as an independent nation in the aftermath of partition and large-scale violence. The drafting was particularly challenging due to the social and economic condition of the masses and ethnic diversity in our country. By any reasonable measure, these Constitution drafters were an extraordinarily able group, who carried out their work with idealism and practicality. It is because of their sheer fortitude and sagacity that we, the people of India, have a farsighted and visionary founding document as our Constitution.

The Indian Constitution is a living document. It had transformed the lives of 340 million people then, and continues to impact, like no other document, over 1.4 billion citizens of India now. It would be my endeavour to show how the Constitution has influenced and continues to influence all of us. The Constitution drafters had several goals and objectives. It would be appropriate to refer to and reflect on some of the pivotal unique features of the Indian Constitution.

However, I will begin by acknowledging that the Constitution incarnates the spirit that the sovereignty of this Republic is derived from, and vests with, the people of India. Based on this core objective and foundation, the Constitution is drawn to provide adequate safeguards to protect the Fundamental Rights of the

citizens.

An example of the unique feature and strong vision of the Constitution and its response to the society's needs is the Universal Suffrage in India. There was no precedent for millions of illiterate and impoverished people being enfranchised, and yet, India as a country adopted and has sustained the Universal Suffrage, making it a successful and multicultural functioning democracy.

India has a glorious record of conducting free, fair, and transparent elections, and the credit for this goes to the Election Commission of India. The decisions of the Election Commission have widened the scope of democratic participation, making a significant impact on the Indian society and polity. India's election process is a colossal democratic exercise that involves over 900 million eligible voters, making it the world's largest democratic election, and India – the world's largest Constitutional democracy. Today, India has 28 states and 8 union territories, divided into 765 districts and 7,078 sub-districts, 6,64,296 villages, 2,62,659 rural local bodies comprising 2,55,298 village panchayats, 6,696 block panchayats and 665 district panchayats. Further, there are 4,852 urban local bodies divided into 2,417 town panchayats, 1,864 municipalities and 255 municipal corporations. The people living across India participate in great numbers to vote in the Union, State and local body elections, including village elections, with a sense of entitlement and purpose. They know the power of a vote, and how their exercise of the right to vote can bring about change.

The Constitution of India is the first to provide for affirmative action or reservation, which is designed to address the systemic inequalities and discrimination faced by historically marginalized groups like Scheduled Castes, Scheduled Tribes, and Other Backward Classes. The aim is to create a more inclusive society by providing preferential access to education, employment, and other opportunities to the disadvantaged groups. The basic idea behind affirmative action is to provide a favourable head-start to the underprivileged in order to bring them at par with the rest of the society.

The 86th amendment inserted Article 21-A in the Constitution of India to

provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right. Consequently, the Indian Parliament enacted the Right of Children to Free and Compulsory Education Act of 2009, which provides for horizontal affirmative action by reserving 25% seats in all schools, including private schools, in favour of the marginalized groups.

Another goal for our Constitution drafters is to affirm and promote unity in diversity. Protection of minority rights in India is crucial, and even justiciable in the country's Constitutional framework. The Indian Constitution recognizes the diverse religious, linguistic, and cultural identities of the country's citizens and seeks to safeguard their rights and interests. The Constitution provides specific protections for minority communities. For instance, Articles 29 and 30 of the Constitution provide for the protection of the rights of linguistic and religious minorities to conserve their language, culture, and religion. Additionally, the legislature has enacted several laws and policies to protect the interests of minorities, as provided in the Constitution and the laws enacted by the Parliament and the State Legislatures, such as the National Commission for Minorities Act, 1992, which provide for the establishment of National Commissions to monitor and safeguard the rights of minorities. The underlying idea here is to assert and uphold the principle of non-discrimination, equality and fraternity.

These values give direction and purpose not only to the Constitution, but also to our Indian society. The Constitution lays down the fundamental structure and powers of the nation's institutions, along with the rights and duties of its citizens. But that is not all. The drafters knew that the Constitution may need revisions and changes, and it is this foresight and vision that makes our Constitution a dynamic document. The Constitution, though enforced in 1950, continues to serve its citizens due to two main reasons: first, the Constitution is amended as and when needed, and second, the judiciary, the legislature and the executive read the Constitution holistically and flexibly while deciding case laws and enacting and enforcing laws, respectively.

Starting with my first prong – Article 368 of the Constitution grants the

Parliament the power to amend the Constitution. Like a living being, the Constitution responds to experiences. So far, the Constitution has been amended more than 100 times, bringing about a wide range of changes – from enhancing the powers of the President and Governors to pass ordinances (38th amendment) to introducing the Goods and Services Tax (101st amendment). In fact, the 42nd amendment is often termed as the ‘mini-constitution’ because of the plethora of changes that it brought about, such as amendment to the Preamble, addition of some Directive Principles of State Policy, and curtailment of judicial review power of the High Courts in India. However, thereafter, the legislature reconsidered and removed many of these changes by subsequent amendments, thereby restoring constitutional balance. That way, the development of the Constitution is actually a never-ending process.

Even though the Constitution evolves according to the changing times and the corresponding needs of the society, it also retains its sanctity as a sacred document. In that sense, Article 368 of the Constitution aims to strike a balance between the ‘flexible’ and ‘rigid’ nature of the Constitution. The basic structure and the original spirit of the Constitution is the foundation and the edifice of our polity.

I now move to the second reason that has kept the Constitution’s importance intact, i.e., the contribution of the legislature, the executive, and in particular the judiciary, in maintaining the dynamism of the Constitution.

Before independence, the functions of most Indian Courts were limited to dispensing justice in civil and criminal disputes. After independence, the High Courts and the Supreme Court, in the language of Patanjali Sastri, C.J. in the case of *State of Madras v. V.G. Row*<sup>1</sup>, are “sentinel on the *qui vive*” (watchful guardians of the Fundamental Rights) to watch the enforcement of the Fundamental Rights tempered by principles of social justice and to prevent any deviations therefrom.

The Constitution of India envisages a holistic approach towards civic life in a democratic polity, and gives to each of its citizens, ‘Fundamental Rights’, such as

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<sup>1</sup> (1952) 1 SCC 410.

Right to Equality, Right to Freedom, Right against Exploitation, Right to Life, Right to Freedom of Religion, and Cultural and Educational Rights. The Chapter on Fundamental Rights is a constant reminder that the powers of the State have bounds, and that every human as an individual is sacred, and human rights are invaluable. To ensure the protection of these essential rights, citizens are given the power to file writ petitions when they feel that the State has violated any of their Fundamental Rights. This is an important power vested with the citizens. Articles 32 and 226 of the Indian Constitution allow the Supreme Court and High Courts, respectively, to issue writs when a citizen's basic rights are violated. In *L. Chandra Kumar v. Union of India and Others*<sup>2</sup>, a nine judges' bench of the Supreme Court held that the authority to issue writs to Indian citizens to uphold their Fundamental Rights is an aspect of the basic structure doctrine, and hence, this power could never be amended or eliminated.

Through these petitions, the judiciary has widely interpreted various provisions such as Right to Education, Right to Life and Liberty, and Right to Form and Manage Minority Educational Institutions, etc. For example, in *Sunil Batra (II) v. Delhi Administration*<sup>3</sup>, the Supreme Court widened the scope of the writ of *habeas corpus* and held that the writ can be issued not only in case of unlawful detention, but can also be issued against ill-treatment of prisoners while in custody of the authorities. In *A.K. Kraipak and Others v. Union of India and Others*<sup>4</sup>, the Supreme Court quashed the selection list of the Indian Forest Service on the ground that one of the selected candidates was the ex-officio member of the selection committee.

There are other examples of how judicial interpretation forms our understanding of the Constitution. For instance, in 1991, the Government decided to reserve 27% civil posts and direct recruitments for the Other Backward Classes in India. A nine judges' bench of the Supreme Court in *Indira Sawhney and Others*

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<sup>2</sup> (1997) 3 SCC 261.

<sup>3</sup> (1980) 3 SCC 488.

<sup>4</sup> (1969) 2 SCC 262.

v. Union of India and Others<sup>5</sup> upheld the reservations for the Other Backward Classes, and also introduced the idea of ‘creamy layer’. In essence, this meant that the individuals belonging to Other Backward Classes who had attained a certain level of social and economic advancement would be excluded from the benefits of reservations.

The last few years have seen many decisions involving overcoming obstacles that were distinctly socio-cultural or religious in nature. I would only refer to three. In 2014, the Supreme Court granted legal recognition to transgender and other ‘gender non-conforming’ persons in *NALSA v. Union of India*<sup>6</sup>. In particular, it held that all persons have the Constitutional right to self-identify their gender. Further, it directed Union and State Governments to allow transgender persons to access reservations in public education and employment. In 2017, a five judges’ bench of the Supreme Court in *Shayara Bano v. Union of India and Others*<sup>7</sup> struck down *Triple Talaq* or instant divorce, a practice in Muslim personal law that gave unilateral rights to the husband to terminate the marriage, as violative of the Fundamental Rights of Muslim women. The court held that *Triple Talaq* is arbitrary and discriminatory, and goes against the principles of gender justice and equality enshrined in the Indian Constitution. Following the decision in *Shayara Bano*, the Parliament of India in 2019 passed the Muslim Women (Protection of Rights on Marriage) Act, which criminalized the practice of *Triple Talaq*. In 2020, in *Secretary, Ministry of Defence v. Babita Puniya and Others*<sup>8</sup>, the Supreme Court held that the Indian Army's erstwhile policy of absolutely excluding women officers from receiving permanent commission was violative of the guarantee of equality under Article 14 of the Constitution. In subsequent decisions, the Supreme Court has affirmed the decision in *Babita Puniya* and repudiated the unfairness and discrimination in rank promotion for women army officers.

The courts have given the expression “life” in Article 21, that is, the

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<sup>5</sup> 1992 Supp (3) SCC 217.

<sup>6</sup> (2014) 5 SCC 438.

<sup>7</sup> (2017) 9 SCC 1.

<sup>8</sup> (2020) 7 SCC 469.

Fundamental Right to protection of life and personal liberty, an expansive interpretation. The Courts have ruled that “life” does not connote merely physical or animal existence but embraces something more, namely the right to live with human dignity and all that goes along with it – the bare necessities of life such as adequate nutrition, clothing and shelter over the head. Based on this interpretation, the Supreme Court has ruled that the right to live with human dignity encompasses within its ambit, the protection and preservation of an environment free from pollution of air and water. Health and sanitation have also been held to be an integral facet of the right to life. Thus, the judiciary has been focussing on protection of the environment while interpreting the Constitution in a positive manner. In a writ petition filed by an environmentalist, the Supreme Court ordered the tanneries to establish effluent treatment plants, directions on utilization of Pet-coke, and registration of diesel vehicles, etc.

In *Maneka Gandhi v. Union of India*<sup>9</sup> in 1978, the Supreme Court held that all the Fundamental Rights were mutually dependant and do not exist in isolation from one another. Thus, a golden trifecta between Article 14 (right to equality), Article 19 (Right to freedom of speech and expression, peaceful assembly, formation of unions, free movement, residing in any part of India, and practice of any profession, occupation, trade or business) and Article 21 (Right to life and personal liberty) has been propounded – there is a nexus between Articles 14, 19 and 21 of the Constitution – a law under Article 21 must satisfy the provisions under Articles 14 and 19 as well. The Supreme Court and the High Courts, thus, have the power to declare a law as unconstitutional by reading Article 21 along with Articles 14 and 19, as Article 14 of the Constitution provides no room for laws that are manifestly arbitrary and unreasonable. Therefore, the Indian Constitution, through the interpretations and supervision of the Supreme Court of India, has travelled far in the understanding of the concept of due process of law in India.

In the 1980s, the Supreme Court accepted that any public-spirited person

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<sup>9</sup> (1978) 1 SCC 248.

may espouse the cause of others for the enforcement of any legal right by filing Public Interest Litigations (PIL) or Social Action Litigation. The concept of PIL, as against the rule of locus, was evolved to help the weaker sections of society, who, due to their poverty, ignorance or illiteracy, were not able to assert their rights. The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners. In *Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar*<sup>10</sup>, the PIL mechanism led to the release of more than 40,000 under-trial prisoners and right to speedy justice emerged as a basic Fundamental Right which had been denied to these prisoners.

The Supreme Court in *Fertilizer Corpn. Kamgar Union (Regd.), Sindri and Others v. Union of India and Others*<sup>11</sup> made a forceful plea that the “law should not be a closed shop”, else “the system may crumble under the burden of its own insensitivity”. Giving a practical meaning to ‘access to justice’, the Supreme Court has observed:

“It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go un-redressed and justice is done to him.”

Thus, the Supreme Court evolved the concept of ‘public injury’ and allowed a public-spirited citizen to approach the court for redressal of public injury relating to environment, human rights, administration of justice, arbitrary action of the executive, etc. in cases of:

Violation of basic human rights of the poor;

Air or water pollution;

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<sup>10</sup> (1980) 1 SCC 81.

<sup>11</sup> (1981) 1 SCC 568.

Neglected children;

Non-payment of minimum wages to workers and violation of labour laws;

Petitions from jails complaining of harassment, for pre-mature release and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a Fundamental Right;

Petitions against police for refusing to register a case, harassment by police and death in police custody;

Petitions against atrocities on women, in particular harassment of women, rape, murder, kidnapping etc; and

Violation of religious rights or other basic Fundamental Rights.

The Supreme Court and the High courts of India entertain writ petitions and public interest litigation petitions also in the form of letter petitions received from the public, in terms of the guidelines which have been framed. In 2022, the Supreme Court of India received a total of 1,02,360 letter petitions, 11,003 civil writ petitions and 4,743 criminal writ petitions. These figures reflect the acceptance of the robust mechanism established by the drafters of the Constitution to keep a check on the powers of the executive.

As I mentioned earlier, the credit goes not only to the judiciary, but also to the legislature and the executive. The Constitution envisages a Welfare State, geared towards the ushering of prosperity, equality, liberty and social justice for all. The Constitution expects the State to take measures that are at par with the rest of the society. The legislature, by its various legislations, materializes the civil liberties envisaged in the Fundamental Rights mentioned in the Constitution. Some examples are the Juvenile Justice Act, 2015; Mental Healthcare Act, 2017; and Consumer Protection Act, 2019. These legislations are often amended to ensure that all Indians can lead their lives in peace and harmony as citizens of India.

The 73rd and 74th Amendments to the Constitution devolved power to local self-government institutions; in particular the villages. The local population receives funds and decides how to use the money. The elected elders can be contacted by the villagers with the problems and issues. These landmark changes

embody the Constitution's dynamic character, ensuring that it remains a living–breathing document that reflects the nation's ethos and aspirations.

Ultimately, the Constitution is meant to respond to the changes in the future, survive and flourish. In my opinion, Constitutional performance depends on how the society transforms and whether the Constitution can accommodate such transformations. The Indian Constitution has thrived and benefited with a rigid core, and a pliant and elastic contexture – a happy and proud achievement by any reckoning. It has maintained and strengthened all the institutions and processes it had initially established and conceived.

I would like to end with a quote of Justice H.R. Khanna from his book ‘Making of India’s Constitution’:

“If the Indian constitution is our heritage bequeathed to us by our founding fathers, no less are we, the people of India, the trustees and custodians of the values which pulsate within its provisions! A constitution is not a parchment of paper, it is a way of life and has to be lived up to. Eternal vigilance is the price of liberty and in the final analysis, its only keepers are the people. Imbecility of men, history teaches us, always invites the impudence of power.”

I once again thank the organisers for putting up this spectacular conference, and look forward to hearing from my distinguished colleagues from all over the world.

Thank you.