

OCCASIONAL PUBLICATION 112



**The Constitution of India and Indian Democracy:
Have the Legislature, Judiciary and Executive
Remained True to their Constitutional Mandate?**

by

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The Constitution of India and Indian Democracy: Have the Legislature, Judiciary and Executive Remained True to their Constitutional Mandate?*

When I look around, I see many whom I know, and many who know me. It is an absolute privilege to be on this impactful platform of the prestigious India International Centre (IIC). It is indeed my honour to address the august audience here on this momentous occasion of Constitution Day, and while we all are in the *Amrit Kaal* of our Independence.

The IIC, of which I became a member in 1990, since its foundation days has been a significant epicentre of deep thoughts, constructive ideation, as also interactions and conversations on issues of national and international importance. There is national and global recognition and appreciation, and very rightly so, of the IIC as a conducive and engaging platform for thinking minds who are ever keen to reflect on momentous issues and those of great contemporaneous relevance.

I am grateful to the IIC for enabling me to unfold my thoughts on this day on this platform. Best wishes and greetings to all of you and all the countrymen on Constitution Day. It was on this day in 1949 that Independent India laid the foundation for a new future for itself.

Many in the world thought India would not last long. They wrote about it, reflected on it in the public domain. Yet, we have traversed for so long and we are in the 75th year of our Independence, as a shining star on the global horizon. This time Constitution Day is very special on this count also. The completion of 75 years for the mother of democracy, the largest democracy, is indeed a milestone. We can all be proud of it.

*Hon'ble Vice President of India, Shri Jagdeep Dhankhar's speech at the India International Centre on Constitution Day, 26 November 2022.

In the journey of 75 years, our institutions—the Legislature, the Judiciary and the Executive—have performed in an exemplary manner. They addressed issues that have taken us to this level. The performance has been commendable.

The Judiciary, in particular, even towards the end of the last century, engaged in innovation to impart justice to the people at large. I particularly congratulate the Hon'ble Supreme Court today for adopting technology to ensure justice through e-initiatives like the Virtual Justice Clock, Digital Courts, etc. This beginning has been made today.

Today, we cherish one of the finest Constitutions in the world. Members of the Constituent Assembly were enormously talented with impeccable credentials and immense experience. The Constituent Assembly, given the scenario then, was as representative as was practicable. This is an issue on which my young friends in particular can focus. But given those times, it could not have been more representative than it was. However, with each election, there has been progressively authentic enhancement in the representation gradient. Presently, the Parliament reflects with authenticity on the will, aspirations and ordainment of the people as never before.

Synergic functioning of the Legislature, Judiciary and Executive, the three facets of governance that are vital for democracy, is a Constitutional mandate. This has been happening in our country and results in the success of our democracy. However, there is always room for improvement.

The sublimity of the Doctrine of Separation of Powers is a doctrine that is very critical to the success of democracy and an essential feature of good governance. This is realised when the Judiciary, Legislature and Executive optimally function in tandem and togetherness, and with one qualification—meticulously ensuring scrupulous adherence to their respective jurisdictional domains. Any incursion by one in the domain of the other, howsoever subtle,

and howsoever perceptually and apparently justifiable, has the potential to upset the applecart of governance.

The contemporaneous scenario on this count calls for a look by all who care for Bharat at their heart. The spectacle of incursions by one in the domain of the other is being reflected with concerning frequency in the public domain. This trend is on the increase. We find each incursion hogging public limelight with high decibel media coverage. It is a time when we should look at the rise India is witnessing, and all those at the helm of affairs of these august institutions are required to very seriously ponder and reflect on the evolution of a healthy, wholesome ecosystem in consonance with the spirit and essence of the Constitution.

In the initial decades of our Constitutional functioning, the Doctrine of Separation of Powers and checks and balances worked well, by and large, wholesomely sustaining the Constitutional equilibrium amongst the Legislature, Executive and Judiciary. This has, however, been subjected to some kind of test or strain, as a consequence of the judicial verdict imparted by the highest court of the land.

Undoubtedly, the highest court of the land and courts of record, the High Courts, are possessed of the power by means of 'judicial review' to invalidate administrative government action or a legislative enactment on the premise of the same being repugnant to the Constitution.

The year 1973 was different: in the Kesavananda Bharati case, the Supreme Court asserted, for the first time, the right of the courts to strike down Constitutional amendments that violated what it called the 'Basic Structure', or the fundamental architecture of the Constitution. The most significant aspect is that the Constitutional provision came to be struck down. So what emanated from the Legislature was undone by the court.

In subsequent years, the highest court delivered significant rulings on matters that it held pivotal to this Basic Structure. The most recent and prominent judicial manifestation of the Basic Structure Doctrine was on 16 October 2015, when the highest court of the land in a 4:1 majority verdict held both the 99th Constitution Amendment Act, 2014, and the National Judicial Appointments Commission (NJAC) Act, 2014, unconstitutional on the premise of being in violation of the Basic Structure—independence of the Judiciary, very rightly, being a facet of it.

History of sorts was created in Parliament which is normally sharply divisive on issues. But with respect to the 99th Constitutional Amendment Act, there was complete unanimity in the Lok Sabha without a single dissenting voice. The House of the People voted in unison in favour of this Constitutional Amendment. In the Rajya Sabha too there was unanimity, but there was one abstention. Such a scenario is perhaps unparalleled in the democratic history of the world. Those involved with world affairs know it—even the PATRIOT Act after 9/11 did not get that kind of support. Such a massive mandate of the people reflected on the floor of Parliament was judicially neutralised by invoking the applicability of the Basic Structure Doctrine.

This judicially evolved doctrine has been severely commented on and some have termed it as *ex-facie*, compromising the sovereignty of Parliament. Any standoff between these vital wings of the Constitution certainly does not augur well for Constitutional functioning. It is time, while we are in the *Amrit Kaal* of our Independence, to reflect on the scenario with a view to overcome differences, so that Constitutional essence prevails. As Vice-President of the country, on this significant day to make this point, I could not have been at a more imminently suitable place.

With this in mind, I seek to traverse these issues.

The Preamble of the Indian Constitution firmly imparts its foundation, its premise—‘WE, THE PEOPLE OF INDIA’. They are the fountainhead of power. So, ordainment of the people, reflected by way of the sanctified mechanism of their representatives in legislature theatres is supreme, if we go by the preamble of the Indian Constitution, which is part of the Constitution as per judicial declaration. This, according to me, is an inalienable spinal feature of the supreme document of governance—the Constitution of India.

In this premise, Parliamentary sovereignty is inviolable for sustainability and the blossoming of democratic values. Its supremacy is non-negotiable, being quintessential to democracy and all that it stands for. The negation of such a sanctified mechanism will be a travesty of democratic values and of the power of the people. Dislocation of this has the potential to unsettle our democracy and adversely impact growth.

The Basic Structure Doctrine is rendered vulnerable on yet another count. It fails to subscribe to the rationale that no Parliament can eternally and inexorably bind future Parliaments. While our Constitution was framed by enormously talented people, the kind of representation we have now is far more vertical, more horizontal and authentic, and we are a billion more.

There is widespread belief that there is a compulsive need to revisit the judicially evolved mechanism of the Basic Structure of the Constitution. There can be no other befitting place than this. The people who care for this country, constituting the elite and the intelligentsia, come from all segments of society to brainstorm and seek out in which democratic dispensation a verdict imparted by Parliament amending the Constitution can be undone. I am sure the answer will be obvious.

The architecture of the Constitution is not amendable to variation except by the people through their representatives and that too by way of the mechanism duly sanctified. The power of the Parliament of the day to act in exercise of its Constituent power is spelt out. What is spelt out in the Constitution is to ‘amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure’. This cannot be judicially qualified, diluted in any manner including by invoking the Basic Structure Doctrine. I feel, having bestowed attention on the issue for quite long, negation of a Constitutional provision evolved in a sanctified manner is beyond the purview of judicial attention.

On this aspect, the thought process of the founding fathers of the Constitution is discernible in one particular Article, i.e., Article 145, sub-article (3) of the Constitution, which provides for a minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution or for the purpose of hearing any reference from the President under Article 143 of the Constitution—the number shall be five.

The Constitutional prescription unambiguously indicates that the Supreme Court may determine a substantial question of law as to the interpretation of this Constitution. Those who are involved with legal academics will find no difficulty that even after interpretation is accorded, Parliament being sovereign is the ultimate arbiter. Article 145(3) imparts jurisdictional limitations on the highest court of the land that extends to ‘interpretation of the Constitution’.

On this topic, very significant observations were made by Dr. B. R. Ambedkar, who, when describing the Constitution, said *‘it is not a mere lawyers’ document but a vehicle of life whose spirit is always the spirit of age’*. This has relevance. I have seen it for myself. Those in my age group have lived in times when there was no Internet, no mobile phone, no sophisticated typewriters and

no electricity in the villages. There was the evolution of what we used to call the video library, which has now disappeared. VCRs and VCDs used to be necessary gifts in semi-urban and rural areas, and they too have vanished. Recall the success of PCO booths; we could never imagine such a massive revolutionary development of the digital world we live in where every Indian has a mobile phone in hand. Therefore, the Constitution is dynamic and deals with practical situations. The instruments of change in the form of provisions for amendment make the Constitution a constantly evolving testament.

The framers of the Constitution, with a sagacious approach and deep devotion, had envisaged that situations will arise which will make it imperative for the Legislature to amend the Constitution in consonance with the need of the hour. They believed that the Legislature alone represents and articulates the will and concerns of the people. It is they who can feel the pulse of the people and they are accountable for it. There is a mechanism whereby they come to represent and make suitable course corrections to meet the requirements of the country and the people. Thus, the power to amend the Constitution was vested in Parliament.

Ever alive to the needs of the changing times and making use of this power to amend, the Indian Constitution has not remained static and has grown with time. We have had more than a hundred constitutional amendments and on this occasion I recall what Darwin said: *'it is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change.'*

Now this power to amend the Constitution, of which Parliament is the sole repository, has been invoked. It has come to be invoked in effecting structural changes in the Constitution. I would make reference only to four of them. We didn't have Panchayat Raj in the Constitution, but we have it now as Part IX of the Constitution. It has dramatically changed governance at the village level. It has effected a sea change in the development of village panchayats. Another

major structural change is Part IX-A, dealing with Municipalities, and there is not much difference in the timeframe between these two events. Another has been added, Part IX-B, a spinal mechanism for the Co-operative Sector. On this day, while we are fully alive to the Fundamental Rights the Constitution has imparted to us, it was by way of an amendment of the Constitution that citizens were made aware of their Fundamental Duties, and that was Part IV-A.

Parliamentary democracy, its functioning, its success in India, has been a guiding light for other democracies in the world. We are fully alive to the situation elsewhere. We have spinally, strongly survived.

The Constituent Assembly embodied sublimity, decorum and discipline, exemplifying the highest standards of debate, discussion and deliberations—all quintessential to the flourishing and blossoming of democracy. There have been numerous instances where we go through the debates of the Constituent Assembly to understand what the intent was and one is amazed by the depth of knowledge reflected therein and the level of awareness. The Constituent Assembly was called upon to address many difficult issues of bewildering complexities. Language was one such issue. The Constituent Assembly navigated seamlessly these contentious issues by engaging in dialogue, healthy deliberation, involved debate and friendly discussion, and the underlying philosophy was a deep urge to be consensual. The Herculean task of the evolution of our Constitution was achieved without any disruption, any disorder or any exhibition of unbecoming conduct in or outside the Constituent Assembly theatre.

The present scenario on this plank calls for introspection at the level of all concerned. Repeated disruptions in Parliament, revealing a conduct that people find difficult to emulate, are issues that must engage the minds of the intelligentsia, opinion makers, the elite and academia so that there can be

systemic corrections. Without further elaboration, I call upon parliamentarians to exemplify conduct that inspires people's admiration and emulation by drawing inspiration from the framers of the Constitution.

I am reminded of the address in the Constituent Assembly by one of the towering giants of Indian politics, who became the first President of the Union. When he was elected as Chairman he made some observations, and I quote the first reflection by him:

The work of this Constituent Assembly is most arduous and comes at a critical time....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.

These observations bear huge relevance today. The 'other point of view' which is very critical is rejected at the drop of a hat, without consideration. My own experience shows that more often than not, the 'other point of view' is the correct point of view.

Reception of an idea in the spirit that was imparted by Dr. Rajendra Prasad is the need of the times now. I have had occasion to interact, in my capacity as Chairman of the Rajya Sabha, with a large number of members of the Rajya Sabha—they are enormously talented, each of them has experience and credentials. There is no reason for us not to succeed. There is no global entity of consequence in the corporate world or otherwise that does not have a footprint of an Indian genius at the apex.

So, as the nation celebrates 75 years of Independence, embodied in the spirit of *Azadi ka Amrit Mahotsav*, we may look back at the profound transformations that have taken place in our country which give us reason to be proud. We should strive to bring new energy and new strength towards 'a New India'.

I have ventured to reflect today with complete sincerity to myself, because I know anything coming from this platform will be viewed with sublime positivity. And I am sure it will start a nerve centre stimulation where we are in a position to affirmatively change the course of events.

India is on the rise as never before. The upliftment is unstoppable. Only a few months back we were declared the fifth largest economy in the world, surpassing our erstwhile colonial rulers. It is only a matter of time, by the end of this decade, that we will be the third largest. India is a global destination of opportunities and investments. During my two recent visits abroad, I have felt that being an Indian is now very different. All these are a consequence of our functional democracy.

This Constitution Day, let us pledge to promote the values enshrined in our Constitution and strive to build a Bharat that our founding fathers envisioned. I am grateful to this platform that I could find the courage to speak out with sincerity. I am sure that reaction from any quarter, whatsoever, will come only after going through the entire content and understanding the intent. Because if, as a nation, in the most difficult times, we are surviving with a shining start, it is because of our Judiciary, our Executive and our Legislature acting in tandem and togetherness.

My idea, through these thought processes, is to suggest that this synergic approach needs to be optimised and refined, so that we can claim the position which rightfully belongs to us, that is, being *Vishwa Guru*.

About the Author

Shri Jagdeep Dhankhar, Hon'ble Vice-President of India, did his schooling from Chittorgarh, Sainik School, after taking the Indian School Certificate Examination recognised by the Cambridge University. He graduated in B.Sc. (Honours) Physics from Maharaja's College, Jaipur, affiliated to the University of Rajasthan. He received his LLB from the University of Rajasthan and was enrolled with the Bar Council of Rajasthan as an Advocate in 1979. He was designated as Senior Advocate by the High Court of Judicature for Rajasthan in 1990 and practiced primarily in the Supreme Court.

He was Member, Ninth Lok Sabha (1989–1991); Chairman, Committee on Absence of Members from the Sittings of the House (January–April 1990); Member, General Purposes Committee (January–May 1990); Member, Committee of Privileges (May 1990); Union Deputy Minister for Parliamentary Affairs (April–November 1990); Member, Rajasthan Legislative Assembly (1993–1998); Governor of West Bengal (2019–2022). He was appointed Vice-President of India from 11 August 2022 onwards, and Ex-Officio Chairman, Rajya Sabha.

He has held several prominent positions, among them President (Ex-Officio) of Indian Institute of Public Administration (IIPA), Delhi; President (Ex-Officio) of Indian Council of World Affairs (ICWA), Delhi; Chancellor (Ex-Officio) Delhi University; Chancellor (Ex-Officio) Panjab University.

Shri Dhankhar has contributed several articles on legal issues to newspapers and periodicals.



The India International Centre was founded with a vision for India, and its place in the world: to initiate dialogue in a new climate of amity, understanding and the sharing of human values. It is a non-government institute, designed, in the words of its founder president, Dr. C.D. Deshmukh, to be a place where various currents of intellectual, political and economic thought could meet freely. In its objectives, the Centre declares its purpose as being that of society to 'promote understanding and amity between the different communities of the world by undertaking or supporting the study of their past and present cultures, by disseminating or exchanging knowledge thereof, and by providing such other facilities as would lead to their universal appreciation.'

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