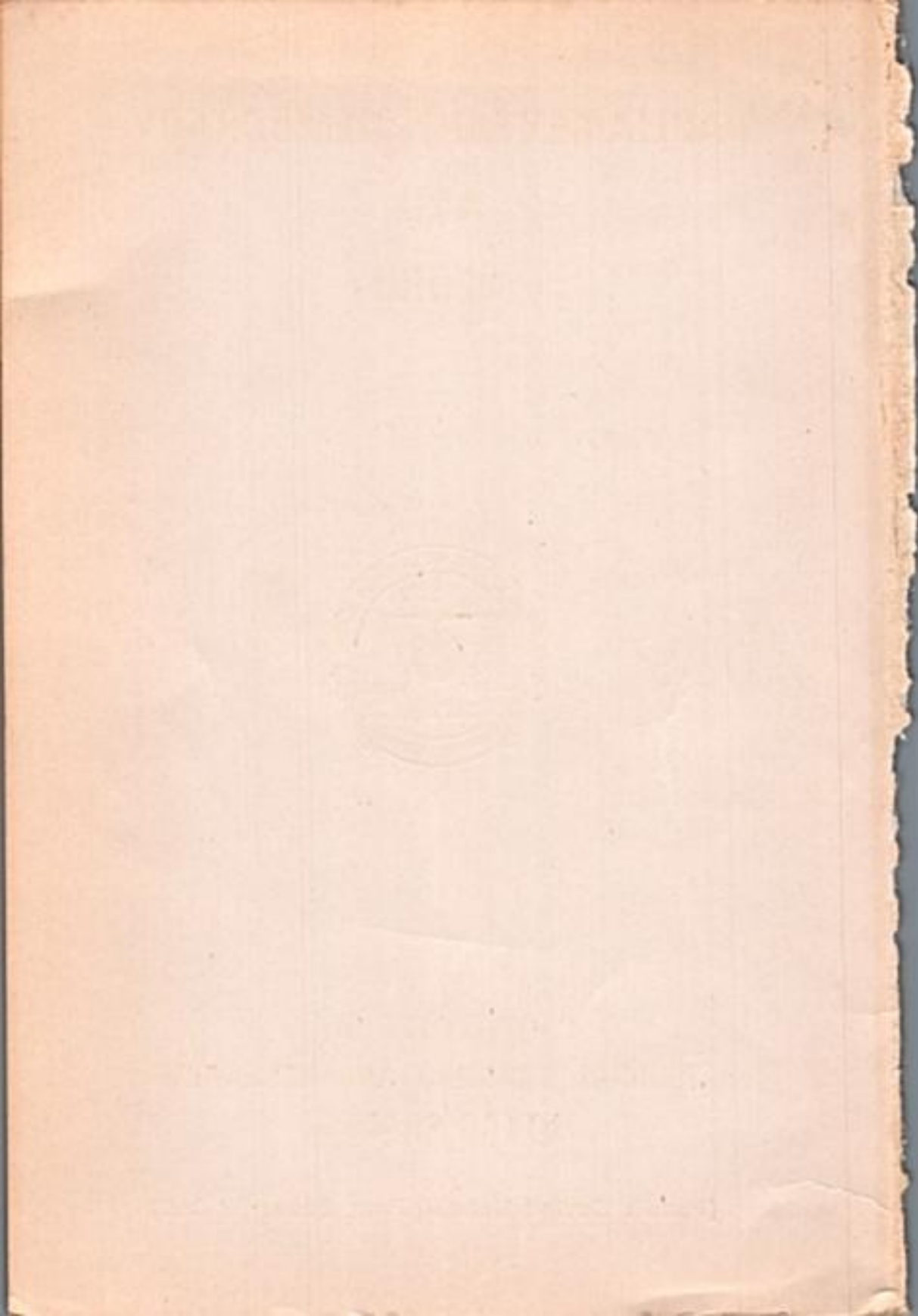


**PARLIAMENTARY DEMOCRACY
AND
NEHRU**



**INSTITUTE OF
JUDICIAL TRAINING AND RESEARCH
UTTAR PRADESH**

(Pandit Govind Ballabh Pant Research Cell)



CONTENTS

1. **Welcome address**
Sri J.K. Mathur 1
2. **उद्घाटन भाषण**
माननीय श्री बलदेव सिंह आर्य 7
3. **Key note address**
Hon'ble Mr. Justice M.M. Dutt 15
4. **Nehru's role in the making of our Constitution**
Hon'ble Mr. Justice K.N. Goyal 19
5. **संसदीय लोकतन्त्र एवं नेहरू पर कुछ विचार**
माननीय श्री जगदीश चन्द्र दीक्षित 27
6. **संसदीय लोकतन्त्र के लाभ**
माननीय श्री ओम प्रकाश रिछरिया 33
7. **Presidential Address**
Hon'ble Mr. Justice K.C. Agarwal 39
8. **Nehru, and Indian Democracy**
Dr. H.M. Jain 43
9. **Nehru, Parliamentary Democracy and the Judiciary**
Dr. R.C. Vyas 49

PREFACE

The system of governance is chosen by a country not for mere form or cosmetic effect but because it is considered to be effective delivery system for the objectives and aspirations of the people of that country. The process of selection itself is usually eloquent of the expected goals.

It was the felt need to retrieve and restate the objects and the ideals which motivated the selection of the parliamentary democracy to run this country that propelled this Institute to organise a seminar on 'Parliamentary Democracy and Nehru'. Pandit Jawaharlal Nehru was undoubtedly the main architect of this structure. His perception of its working was sought to be discussed in the seminar organised during his birth centenary year.

The seminar was presided over by Hon'ble Mr. Justice K.C. Agarwal, Chief Justice of the Allahabad High Court and was inaugurated by Sri Baldev Singh Arya the Minister of Urban Development U.P. Government. The key note address was delivered by Hon'ble Mr. Justice M.M. Dutt of the Supreme Court of India. Hon'ble Mr. Justice K.N. Goyal, Lokayukta was the main speaker. Sri Jagdish Chandra Dikshit, Chairman of the U.P. Vidhan Parishad and Sri Om Prakash Richhariya, Minister of State for Law and Justice also spoke in the seminar. Papers were also contributed by Professor H.M. Jain, Head of the Political Science Department of the Allahabad University and Dr. R.C. Vyas, Ex-Professor of Law, Lucknow University.

All the speeches and papers have been collected in this book. This collection of different aspects of the subject will present a holistic view, and is likely to be very informative.

Lucknow, February, 1990

J.K. MATHUR
Director,
Institute of Judicial Training
and Research, U.P.
Lucknow.

CONTRIBUTORS

1. Agarwal Krishna Chandra - Acting Chief Justice of Uttar Pradesh.
2. Arya Baldev Singh - Minister for Urban Development, U.P.
3. Dkshit Jagdish Chandra - Chairman, Legislative Council of U.P.
4. Dutt Murari Mohan - Judge, Supreme Court of India.
5. Goyal Kailash Nath - Lokayukta, Uttar Pradesh.
6. Jain Hari Mohan - Professor and Head, Political Science Department, Allahabad University.
7. Mathur Jagdish Kumar - Director, Institute of Judicial Training and Research, U.P.
8. Richharia Om Prakash - Minister of State for Law and Finance, U.P.
9. Vyas R.C. - Former Professor, Head and Dean of Law Department, Lucknow University.

WELCOME ADDRESS

J.K.MATHUR

On behalf of the Department of Legislative & Parliamentary Affairs of the State of Uttar Pradesh and the Institute of Judicial Training and Research we extend our welcome to Hon'ble Mr. Justice M.M. Dutt who was gracious enough to accept our invitation to be the chief guest in the seminar today and to deliver a keynote address. The Supreme Court of India is one of the pillars on which the structure of the Indian parliamentary democracy rests. The Supreme Court has provided collateral support with all the resilience, absorbing the seismic waves whenever working of the parliamentary democracy in any segment has been questioned, by providing one of the most effective grievance redressal mechanism in the world. Hon'ble Mr. Justice Dutt with his long experience of these, and with his belief in the basic values of the parliamentary democratic system, has acquired an in-sight into the dynamics of the system. We are grateful to him for having been able to come to this seminar and we do eagerly await his informed views on the subject.

We welcome Hon'ble the Chief Justice Mr. Justice K.C. Agarwal for being kind enough to agree to preside over the deliberations of this seminar. Hon'ble the Chief Justice has always taken keen interest in the working of this Institute and has always found time to guide its activities. He has been a source of inspiration to the judges of the State because of his keen and incisive intelligence, untiring diligence, open and pleasing manners and empathy.

We also extend our welcome to Hon'ble Mr. Justice K.N. Goyal Lokayukta. He was the first Director of this Institute and steered it from its inception to the present level. He has been one of the finest members of our service and has been very well-known for his learning and dedication. He has always been a source of guidance in the affairs of this Institute.

The Institute also welcomes Sri Baldev Singh Arya, Senior Minister U.P. for having consented to inaugurate the seminar at a short notice. Sri J.C. Dikshit, Chairman of Vidhan Parishad is also welcome to the seminar. His commitment to the cause of democracy and erudition need no introduction.

Hon'ble the Minister of State Sri Om Prakash Richharia is also welcome to this seminar. He has always evinced keen interest in the Institute and its programmes. We are grateful to him for having come and participated in the seminar inspite of his busy schedules.

We also extend our heartiest welcome to all the Hon'ble guests present here.

An officer of the judicial service needs replenishment in his equipment the most. The number of laws and rules made by the legislature and other authorities and the number of the cases decided by the higher courts make him obsolete very quickly. Considering the number of cases pending in the courts and

2 Parliamentary Democracy and Nehru

the tensions created by the contact groups, he gets little time to relax and update himself. Additionally there is need to conscientize him for the emerging challenges. It was a consideration of these factors which led a conference of the Chief Justices, the Chief Ministers and the Law Ministers held in the month of August 1985 in Delhi to recommend establishment of training institutions for the judges. It is creditable that it was only the State of Uttar Pradesh whose Government and the High Court responded to this call and established this Institute which started functioning in April 1987. This Institute had an additional privilege of having Justice K.N. Goyal as its first Honorary Director.

We have been given land and are awaiting sanction to start construction.

The Institute imparts induction training to the persons joining the service and also provides training programmes to the officers on the threshold of crossing levels. In a short span of less than 2½ years, 19 training programmes have already been conducted. Eight training programmes have been conducted so far during this financial year.

In addition to this Institute has tried to fill the specific gaps in the equipment of the judicial officers and structured thematic programmes on the use of Hindi in courts and legislative drafting. The programme on the legislative drafting was conducted under the guidance of Justice K.N. Goyal and was attended by the participants from all over the country.

We have already been able to acquire almost ten thousand volumes for our library and are trying to provide a wide spectrum of knowledge in addition to the laws.

The Institute has also prepared about 100 brochures relating to various subjects which constitute the course material to be given to the trainees. The Institute has also published nine books. A few more books are in the pipeline almost ready to be published.

Research is an important component of training and development of a system. Unfortunately the district judicial system had never been studied in its actual working to locate the defects with a view to remove them. There have been impressionistic and prognostic pronouncements about there being delays and harassments but no specific defects leading to either of the two have been located and as a consequence no effective remedial measures have been taken so far. The Institute has started a research project to locate the dilatory factors in trial of civil cases and will, therefore be able to point out the specific reasons for the delay empirically, as may be useful to rectify them.

Another project taken up by the Institute is to study the process of sentencing. It has been generally found that there are subjective variations in this process. Socially sensitive areas of prevention of food adulteration and rape has been chosen to study the process of sentencing and the factors considered

for its quantification, to discern the deviational factors. As a consequence of this study, we shall be able to inform our officers about the principles which should result in more objectivity in this area.

A judge also administers his office and deals with the litigants and public in that capacity. Personnel, financial and office management and grievance redressal constitute an important segment of inputs in our training programme. We also propose to run a programme for our senior officers on personnel and financial administration. The Institute also proposes to conduct a workshop to evolve institutional responses to the problems facing the system, so that they can substitute the subjective and ad-hoc responses.

This Institute today is already in the forefront of such institutes. We do want to see it as a primary institute for judicial training and research in the country.

This seminar is being organised today in the memory of Pandit Jawahar Lal Nehru in the year of his hundredth birth anniversary. Pandit Nehru was the main architect of the nation. It was he who with Mahatma Gandhi was at the forefront of the struggle for the freedom and led the people to the tryst with destiny. He continued to nurse the nation during its infancy and formative years to shape its system, in which all of us take pride today. He placed this country which had just been freed from centuries of subjugation, at the forefront of all the third world countries. He gave our country a stature, a character and a voice. We gather here today to pay our homage to that great man who left us with a heritage of being almost the biggest and the most sound parliamentary democracy in the world. This system which floundered all around us, still stands firm in this country only because of the sound foundations laid for it by the Architect of the Nation. We have to pause and gather that spirit of dedication and purpose that kept it at this level of excellence all along. We have to pause and recapitulate that zeal and partake of it again today to keep the system working as an effective tool for self actualisation for each one of our countrymen.

Pandit Jawaharlal Nehru was a champion of individual liberty. The focus of his entire political thinking was the betterment of an individual and he found that it was only a democratic system which could possibly provide an ethos suitable for the full realisation of the human personality. He preferred democracy "Because we think", said he, "that in the final analysis it promotes the growth of human beings and of society, because we attach great value to individual system, we want the creative and adventurous spirit of man to grow."

Democracy was not merely one of the systems of governance for him but also fulfilled the requirement necessary to create the right environment for self actualisation. "In the final analysis you come back not to the political terms, not to the economic terms, but to some human terms, or if you like, spiritual terms. We want to produce a good life, a good individual, we go back to the individual being given that opportunity to realise himself and also to institutions and forms of government being so organised as to engage this aspect."

4 Parliamentary Democracy and Nehru

Any form of government was only a means to achieve an end, according to him. His basic desire of development of individual personality was so strong that even freedom to him was also a means to that end. According to him the freedom was a means for achieving human wellbeing and human growth of every individual.

The focal point of his political thought was a common citizen, a man. When the people around him shouted 'Bharat Mata ki Jai', he used to point out that Bharat Mata did not consist of lands and forests and fields or even mountains. Bharat Mata consisted of each one of them and every citizen of the country. Bharat Mata Ki Jai meant nothing but the victory to each one of the citizens of this country.

In the canvas of democracy, the unidentifiable abstract numbers had no place for him. The masses and crowds for him consisted of specific individuals each one of whom was a distinct separate entity. The people of India were real for him in their variety in spite of the vast number. He preferred to think about them as individuals rather than as vague impersonal group.

The democracy he conceived was not only a form of government, but a philosophy which had to permeate the way of thinking and the way of life. As he said, "Democracy is not only political, not only economic but something of the mind. It involves equal opportunity to all people, as far as possible in economic and political domain. It involves freedom to grow and to make the best use of capacity and ability. It involves certain tolerance of others and even of other's opinions when they differ from yours. It is dynamic and not a static thing. Ultimately it is a mental approach to our political and economic problems."

After identifying democracy as the most appropriate system for the actualisation of a human being, the only kind of democracy which could fit in this framework was parliamentary democracy. It alone could promote participation of a citizen or his representative at all decisional levels. He wanted every adult citizen to participate in the governmental process.

Even this for him, was only a starting point for further development. From political democracy, he wanted to achieve economic democracy which in the opinion of Pandit Jawahar Lal Nehru meant working for a certain measure of wellbeing for all in a welfare state. It had also necessarily to lead to equality of opportunity for all in the economic sphere. He was of the opinion that this could only be possible when people were educated. An enlightened group of people was a necessary prerequisite for a healthy democratic system. Unless there was an intelligent exercise of ones right informed with full responsibility, the parliamentary system could not be as effective as he would have liked it to be.

For Pandit Nehru parliamentary democracy was not a immutable concept. It was an adjustable dynamic mechanics which could be tuned to optimise the personality of each one of the citizens - each of the Indians.

Today we have a galaxy of eminent persons whom we will request to inform us about the concept, role and goals of parliamentary democracy as

visualised by Pandit Jawahar Lal Nehru. And thus we pay our homage to Pandit Nehru.

I again welcome you all to this programme.

उद्घाटन भाषण

माननीय श्री बालदेव सिंह आर्य

आधुनिक भारत के निर्माता, युग पुरुष पं. जवाहर लाल नेहरू की जन्मशती के अवसर पर संस्थान में आयोजित प्रथम संगोष्ठी "संसदीय लोकतन्त्र और नेहरू" का शुभारम्भ करते हुए मुझे अत्यन्त हर्ष हो रहा है। भारत के गौरवशाली इतिहास को यदि देखा जाय तो लोकतन्त्र की कल्पना कोई विदेशी कल्पना नहीं है। यह हमारे खून में समाया है। यह हमारी पवित्र भूमि में उपजा है। वैशाली का वैभवशाली गणतन्त्र किसको नहीं पता है ? पं. नेहरू की इतिहास परख दृष्टि ने इसे जाँचा-परखा और इसे पुनर्जीवित किया। प्राचीन के प्रति उनका लगाव सिर्फ गौरवपूर्ण विरासत होने के कारण नहीं था। वे उस परम्परा को स्वीकार करते थे, जो आधुनिक समाज के लिये उपयोगी है। न ही नेहरू जी की युग दृष्टि कोरी सैद्धान्तिकता की मोहताज थी। उनमें बड़ी ऐतिहासिक कल्पना थी जो अमरीकी संविधान संस्थापकों में थी। वे कानून लिखने वाले नहीं थे, लेकिन वे संविधान के पीछे सबसे बड़ी प्रेरक शक्ति और उसके मुख्य संस्थापक एवं जनक थे। यही कारण था कि स्वतन्त्र भारत के पुनः निर्माण हेतु संसदीय लोकतन्त्र की व्यवस्था का उन्होंने चरण किया।

लोकतान्त्रिक संविधान की संरचना में परिष्ठित जी जनता के हर वर्ग का प्रतिनिधित्व चाहते थे, चाहे वे हिन्दू हों या मुसलमान हों, सिख या ईसाई हों और इस प्रकार बनी संविधान निर्मात्री सभा में 13 दिसम्बर, 1946 को पं. नेहरू ने ऐतिहासिक उद्देश्यों का संकल्प प्रस्तुत किया, जिससे भारत स्वतन्त्र, पूर्ण सम्प्रभुता सम्पन्न गणराज्य घोषित हुआ, जो अपनी ताकत जनता से प्राप्त करेगा तथा उसके समस्त नागरिकों को सामाजिक, आर्थिक और राजनीतिक न्याय, विचार, अभिव्यक्ति, विश्वास, धर्म और उपासना की स्वतन्त्रता, प्रतिष्ठा और अवसर की समता प्राप्त होगी।

वस्तुतः नेहरू जी की मनोभूमि में कल्याणकारी राज्य और लोकतन्त्र की भावनाएं एक दूसरे से संलग्न थीं। जहाँ तक वर्तमान संविधान के राजनीतिक और आर्थिक दर्शन का प्रश्न है, जिन प्रमुख व्यक्तियों का उस पर प्रभाव है, उनमें नेहरू जी का नाम अग्रणीय है। संविधान निर्माण में नेहरू जी की रुचि स्वातंत्र्य प्राप्ति से कई वर्ष पूर्व ही जन्म ले चुकी थी। एक तरह से हम यह भी कह सकते हैं कि संविधान निर्माण में

रवि नेहरू जी को उत्तराधिकार में मिली। उनके पिता पं. मोती लाल नेहरू द्वारा सम्पादित "नेहरू रिपोर्ट" में स्वतन्त्र भारत के लिये लोकतन्त्र और संसदीय शासन का सिद्धान्त प्रतिपादित है, जो हमारे संविधान में आकार पा चुका है।

जवाहर लाल नेहरू जी यह मानते थे कि संविधान उसी समय कार्यान्वित हो सकता है, जबकि वह जनता की इच्छा का एक निश्चित उपकरण हो और जिसमें सामाजिक तथा आर्थिक न्याय हो। ऐसे संविधान, जो पढ़ने पर बहुत आदर्श दिखाई देते थे, असफल हो गये, क्योंकि उनसे अपेक्षित परिणाम प्राप्त नहीं हो सके और वे लोकतन्त्र विरोधी शक्तियों के उपकरण बनकर रह गये या दबावों के समक्ष बहुत आसानी से झुक गये। जर्मनी के द्वितीय राइक बाईमार संविधान और स्पेन का लोकतन्त्रीय संविधान इस बात के उदाहरण थे। पं. जवाहर लाल नेहरू यह चाहते थे कि संविधान इस प्रकार का होना चाहिए, जो कि उस समय की सामाजिक तथा आर्थिक स्थिति को प्रतिबिम्बित कर सके तथा आवश्यकता पड़ने पर उसे नियन्त्रित कर सके। संविधानसभा में संविधान के लक्ष्य एवं उद्देश्य के संकल्प को प्रस्तुत करते हुए पं. नेहरू ने कहा, "मैं समाजवाद का समर्थक हूँ और मुझे आशा है, भारत समाजवाद को अपनायेगा और भारत समाजवादी राज्य के संविधान की ओर अग्रसर होगा और मुझे पूर्ण विश्वास है कि सम्पूर्ण विश्व इस रास्ते पर चलेगा। हाँ समाजवाद का कौन का स्वरूप अपनाया जाय, यह आप लोगों के विचार का विषय है।"

संविधान के मुख्य ध्येयों के आलेखन के दौरान संविधान निर्मात्री सभा की प्रथम बैठक में उनके उद्बोधन का सारांश यह था कि सभा से सदस्यों से भारत के लाखों स्त्री-पुरुष अनेक अपेक्षाएँ रखते हैं, अपितु सारे विश्व की मानव जाति इस बात की प्रतीक्षा कर रही है कि यह सभा क्या निर्णय करने वाली है, इसलिये सदस्यों को चाहिये कि भारत की जनता और सारे विश्व को निराश न करें।

भारत का ब्रिटेन से लम्बे समय तक का साथ एवं भारतीय इतिहास व परम्परा का फल संसदीय लोकतन्त्र का जन्म है। 28 मार्च, 1957 को पण्डित जी ने लोकसभा में कहा, "हम लोगों ने जानबूझकर संसदीय लोकतन्त्र को अपनाया है। हम लोगों ने इसलिये नहीं स्वीकार किया कि हम लोग ऐसा सदा कहते रहे हैं, परन्तु इसलिए स्वीकार किया कि यह हमारी परम्पराओं के अनुकूल है।" नये वातावरण एवं

परिस्थितियों के अनुकूल है। हमने इसका वरण किया, क्योंकि अन्य देशों में यह सफल है, विशेषकर ब्रिटेन में।”

लोकतन्त्र का प्रमुख आयाम है वयस्क मताधिकार, स्वतन्त्र चुनाव, नागरिक अधिकार एवं न्यायिक सनीशा।

पं. नेहरू की निगाह में लोकतन्त्र एक जीवन पद्धति है, मात्र शासन का एक रूप नहीं। वे श्री जॉन डेवी (John Devy) और टी.वी. स्मिथ (T.V. Smith) के इस विचार से सहमत थे। लोकतन्त्र में सभी को राज्य का फल मिलना चाहिए। किसी व्यक्ति अथवा वर्ग का एकाधिकार राज्य पर नहीं होना चाहिए, बल्कि सभी को मिलजुल कर राष्ट्र का संचालन करना चाहिए। सत्ता में समान भागीदारी के लिए वे वयस्क मताधिकार के पूर्ण समर्पक थे। स्वतन्त्रता के पहले जवाहर लाल जी ने बालिग मताधिकार के पक्ष में अपनी राय प्रकट की थी। जिस समय मताधिकार मर्यादित था, उनके चुनाव आन्दोलन प्रायः उन गाँव वालों के बीच हुआ करते थे, जिसमें अधिकांश मतदाता नहीं थे। लेकिन सीमित मताधिकार के चुनावों ने ऐसी बुराईयाँ पैदा कर दी थीं, जिन्हें बड़े मतदाता क्षेत्र ही दूर कर सकते थे। एक बड़े मतदाता क्षेत्र की अपेक्षा छोटे मतदाता क्षेत्र में मत को छरीदना ज्यादा आसान था। स्वाधीनता के बाद मतदाता क्षेत्रों में बड़े होने के कारण बड़ा भारी खर्च होने लगा। जवाहर लाल जी ने यह प्रश्न उठाया कि क्या अप्रत्यक्ष चुनाव, जो गांधी जी ने द्वितीय गोलमेज सम्मेलन में प्रस्तावित किये थे, विचारणीय नहीं हैं? लेकिन छोटे मतदाता क्षेत्रों में उनका जो अनुभव था, उनसे उनको यह विश्वास हो गया था कि बड़े से बड़े मतदाता क्षेत्र में ही निष्ठा रखनी चाहिए। वे एक सीमित क्षेत्र के बजाय एक विस्तृत मतदाता क्षेत्र पर विश्वास करने के लिये तैयार थे। वे सीमित क्षेत्र चाहे सम्पत्ति की योग्यता के आधार पर हो, या शिक्षा की योग्यता के आधार पर। उन्होंने साक्षर या थोड़े पढ़े-लिखे आदमियों में ऐसा कोई विशेष गुण नहीं पाया, जिससे उनकी राय को एक किसान की राय से ज्यादा सम्मान दिया जाये। वह किसान भले ही निरक्षर हो, लेकिन उसमें सामान्य बुद्धि काफी होती है।

द्वितीय शासन द्वारा सन् 1909 में भारत में “साम्प्रदायिक निर्वाचन मण्डल” का समावेश किया गया। जिसके द्वारा केवल मुसलमानों को ही नहीं बल्कि अन्य समुदायों को भी अलग किया जा रहा था। श्री नेहरू ने देखा कि अंग्रेजों की “बांटो और राज्य

करो" की नीति इसके द्वारा और मजबूत हो रही है। साम्प्रदायिक विद्वेष फैलता ही जा रहा है। तो उन्होंने कर्पोरी कांग्रेस, 1931 में इसके खिलाफ बहुत ही प्रभावशाली प्रस्ताव प्रस्तुत किया और वह पारित भी हुआ। स्वतन्त्र भारत के संविधान ने पूर्णरूपेण बयस्क मताधिकार को स्वीकार किया। हर प्रकार का भेदभाव समाप्त किया। बुनिया की निगाह भारत के प्रथम आम चुनाव पर लगी हुई थी। देश के बाहर एवं भीतर के कुछ लोगों को चुनाव की सफलता में सन्देह था, वस्तुतः सन् 1952 के आम-चुनावों तक सरकार को बड़ी समस्याओं का सामना करना पड़ा, जैसे शरणार्थियों का पुनर्वास, संविधान निर्माण और राज्यों का एकीकरण। लगभग 17 करोड़ व्यक्तियों द्वारा पहली बार मतदान के अभ्यास के दौरान बड़े-बड़े मतदाता क्षेत्रों का निर्माण करना था। किसी भी लोकतन्त्र के लिये यह चुनौती भरे कार्य थे। लेकिन भारतीय जनता ने सिद्ध कर दिया कि लोकतन्त्र उनके लिए अजनबी नहीं है। चुनाव सम्पन्न हुआ और कांग्रेस को संसद में पूर्ण बहुमत (489 में से 362) प्राप्त हुआ। चार को छोड़कर सभी राज्यों में बहुमत कांग्रेस को मिला और इस प्रकार भारतीय जनता ने श्री विष्टन चर्चिल की गवॉक्ति "भगवान ने हम अंग्रेजों को लोकतन्त्र की पूरी जानकारी चुपके से दी है" को झुठला दिया।

नेहरू जी ने स्वतन्त्र एवं निष्पक्ष चुनाव पर काफी जोर दिया और भारतीय संविधान में चुनाव आयोग को अनुच्छेद 324 द्वारा पूर्ण स्वायत्तता का अधिकार दिया। चुनाव आयुक्त के किसी भी कार्य में हस्तक्षेप के वे पूर्ण खिलाफ थे। इतना ही नहीं सत्तापक्ष के लोग अपने विशिष्ट अधिकारों का प्रयोग करके कहीं बेजा फायदा न उठाने लगे, उन्होंने एक निर्देश जारी किया कि चुनाव के समय अपने प्रशासनिक अधिकारों का प्रयोग न करें। कर्मचारियों को हिदायत थी कि अधिकतम तटस्थता के साथ चुनाव का संचालन करें।

पण्डितजी जातिवाद, सम्प्रदायवाद, क्षेत्रीयता से ऊपर उठकर चुनाव के द्वारा "लोक शक्ति का निर्माण" करना चाहते थे जो एक अविरल धारा बन जाय। यह लोकशक्ति राज्य पर आधारित न रहे वरन् स्वयं में एक शक्ति बने जो राज्य को दिशा प्रदान कर सके। यही कारण था कि उन्होंने स्पष्ट तौर पर घोषित किया कि गलत साधनों का प्रयोग करके चुनाव जीतने की अपेक्षा सिद्धान्तों पर टूटे रहकर चुनाव हार जाना बेहतर है। पण्डित जी यह जानते थे कि लोकतन्त्र का भविष्य उम्मीदवारों के चयन पर निर्भर करता है। उम्मीदवारों को ईमानदार, कर्तव्यनिष्ठ, धर्मनिरपेक्ष एवं खुले दिमाग का होना चाहिए।

यहाँ यह बताना भी आवश्यक है कि वे किसी भी व्यक्ति का चुनाव निर्विरोध होने के विरोधी थे, क्योंकि इसका मतलब था कि उस क्षेत्र को उन नीतियों को चुनने का अवसर नहीं मिला। पण्डितजी के नेतृत्व में तीन-तीन आम चुनाव हुए। कांग्रेस को सदा बहुमत मिला। लेकिन एक बात पण्डितजी को काफी दुःख दे रही थी कि साम्प्रदायिक, जातिगत एवं क्षेत्रीय भावनायें सिर उठा रही थीं। इसके बावजूद उन्हें भारतीय मतदाताओं की राजनैतिक जागरूकता, क्षमता एवं बुद्धिमत्ता पर विश्वास था। संसदीय लोकतन्त्र में राजनैतिक दलों की स्थिति अत्यन्त महत्वपूर्ण है और भारत में राजनैतिक दलों को जवाहर लाल जी ने मुख्यतः चार वर्गों में बांटा था - (1) भारतीय राष्ट्रीय कांग्रेस (2) आर्थिक सिद्धान्तों वाले दल जैसे - साम्यवादी दल (3) साम्प्रदायिक दल (4) क्षेत्रीय दल।

लोकतन्त्रीय जनतन्त्र की यह आवश्यकता है कि एक स्थायी दलीय प्रणाली हो। दुर्भाग्यवश संसद में कोई उत्तरदायी प्रतिपक्ष नहीं था, कोई वैकल्पिक सरकार नहीं थी। फिर भी जवाहर लाल जी प्रतिपक्ष के दृष्टिकोण के प्रति आदर प्रकट करते थे और उसका जवाब देने का कष्ट उठाते थे। वे विरोध और आलोचना का स्वागत करते थे, यद्यपि वे चाहते थे कि आलोचना ऊँचे स्तर की हो और जहाँ तक सम्भव हो व्यक्तिगत न हो। परन्तु वे या कांग्रेस एक प्रतिपक्ष का निर्माण नहीं कर सकते थे। इस प्रकार की किसी तरह कृत्रिम रचना सम्भव नहीं थी। वस्तुतः अपनी आत्मलोचना में वह एक विरोधी दल के बराबर स्वयं ही थे और वे दल में आत्मलोचन को बढ़ावा देते थे, जिसे हम दूसरे शब्दों में "दलीय लोकतन्त्र" कह सकते हैं।

यद्यपि कोई बड़ा और सुसंगठित प्रतिपक्ष नहीं था, फिर भी संसद की सत्ता बढ़ रही थी। भारत में ब्रिटेन की तरह यह सिद्ध हो रहा था कि संसदीय लोकतन्त्र का मुख्य उद्देश्य प्रभावशाली संसदीय सरकार है।

नेहरूजी के सामने पश्चिमी दुनिया का नमूना था। वह नमूना 'राष्ट्र राज्य' का था, बड़ी केन्द्रित टेक्नोलॉजी का था, बड़े व्यापार और बड़ी योजनाओं का था। यह नमूना इस आधार पर सड़ा है कि राज्य ही राष्ट्र है, राज्य से अलग राष्ट्र का न अस्तित्व है और न अस्मिता। नेहरू जी की यह महत्वाकांक्षा थी कि स्वतन्त्र भारत एक शक्तिशाली (राष्ट्र राज्य) बने और दुनिया के बड़े राष्ट्रों के बीच गर्दन ऊँची करके बैठे।

लेकिन समृद्धि की इस होड़ में वह गाँव को नजरअन्दाज नहीं करना चाहते थे। बड़े और छोटे उद्योगों का विकेन्द्रीकरण करके गाँवों में पहुँचाना चाहते थे। इसके लिये संसदीय लोकतन्त्र का उन्होंने सहारा लिया ताकि लोकशक्ति का भरपूर अंकुश राज्य पर रहे। वे जनता की इसी शक्ति को विकसित करना चाहते थे। इसी में वे सच्चे लोकतन्त्र का भविष्य देखते थे। इनकी रचना में जनजीवन के एक ऐसे क्षेत्र की कल्पना थी, जो राज्य की दैनन्दिन हस्तक्षेप से मुक्त हो। उस क्षेत्र में लोकतन्त्र के मतदाता अपने निर्णय और अपनी सामूहिक शक्ति से अपने दैनन्दिन जीवन का नियमन और संचालन करें, और इस प्रकार लोकतन्त्र का प्रत्यक्ष अनुभव और अभ्यास करें। पण्डित जी के नेतृत्व में दासता से निकले देश के पुनर्निर्माण में राज्य शक्ति और लोकशक्ति का सुखद संगम रहा है।

पं. नेहरू के लिए व्यक्ति साध्य है, न कि साधन और इसीलिए भारतीय राष्ट्र की स्थापना को वे व्यक्ति की स्वतन्त्रता एवं सम्मान पर आधारित चाहते थे। उनका यह विचार कर्तोची कांग्रेस 1931 में स्पष्ट रूप से व्यक्त हुआ था। कांग्रेस अध्यक्ष के रूप में नेहरू जी ने कहा था कि "लोकतान्त्रिक आघारशिला वाले क्षेत्रों में सबसे अधिक महत्व नागरिक स्वतन्त्रता को दिया जाता है। परन्तु यह सामाजिक संघर्ष के साथ होना चाहिए, न कि असीमित। उन्होंने एक बार कहा था, "हर चीज की हद होती है। आजादी की भी, स्वाधीनता की भी। अगर हद न हो उस चीज के लिये, जिसकी हम वकालत करते हैं, तो खतरा ही खतरा है।" भारत के संविधान के भाग-3 में मूल अधिकारों का वर्णन है, जिसमें स्पष्ट रूप से कहा गया है कि भारत राज्य क्षेत्र में किसी व्यक्ति को विधि के समक्ष समता से अपवा विधि के समान संरक्षण से वन्धित नहीं किया जायेगा। धर्म, लिंग, वंश, जाति आदि के कारण सारे भेदभाव को समाप्त किया गया। "अभिव्यक्ति", "जीवन एवं व्यक्तिगत स्वतन्त्रता" सुनिश्चित की गयी। उन्होंने अनेकानेक बार कहा कि विचारों एवं मतों के स्वतन्त्र बहाव के बिना जनतन्त्र कार्य नहीं कर सकता। प्रत्येक व्यक्ति द्वारा व्यक्त किया गया विरोध एवं आलोचना, अपना अलग महत्व रखता है। प्रेस की स्वतन्त्रता पर काफी जोर देते हुए नेहरू जी ने कहा था कि रचनात्मक आलोचना द्वारा सरकार की कमियों को उजागर करना प्रेस का ही कर्तव्य है। परन्तु गलत एवं अफवाहों के प्रकाशन पर उन्होंने तीव्र विरोध प्रकट किया था एवं संविधान के प्रथम संशोधन द्वारा अभिव्यक्ति की स्वतन्त्रता पर युक्तियुक्त प्रतिबन्ध लगाने का प्राविधान भी किया था। अभिव्यक्ति एवं विचारों की स्वतन्त्रता के अलावा

लोकतन्त्र कुछ और भी चाहता है। वह है -एकीकृत कार्यवाही। लोकतान्त्रिक पद्धति आत्मानुशासन चाहती है।

“संसदीय लोकतन्त्र की आखिरी मन्जिल अगर कहा जाय तो आर्थिक लोकतन्त्र ही होती है। इसके रूप जुदा- जुदा हो सकते हैं। जिस हद तक वह आर्थिक मसलों को हल करती है, उसी हद तक वह राजनीतिक क्षेत्र में भी कामयाब होती है अगर आर्थिक मसले हल नहीं किये जाते तो राजनीतिक ढांचा भी चरमरा कर चूर-चूर हो जाता है।” इसे मद्देनजर रखते हुए पण्डित जी ने सविधान के चतुर्थ भाग में “राज्य के नीति निदेशक तत्व” का समावेश कराया। निदेशक सिद्धान्तों का उद्देश्य शान्तिपूर्ण ढंग से सामाजिक, आर्थिक न्याय और समता प्रदान करना है। निदेशक तत्वों में कहा गया है, राज्य अपनी नीति का, विशेषतया इस तरह निरूपण और संचालन करे, जिससे सुनिश्चित रूप से सभी नागरिकों के लिए जीविका के पर्याप्त साधनों की व्यवस्था की जा सके, धन के न्यायोचित वितरण एवं केन्द्रीयकरण के विरुद्ध व्यवस्था की स्थापना हो सके ताकि सर्वोत्तम रूप में सामूहिक हित के उद्देश्य को सिद्ध किया जा सके और इसके लिये पण्डित जी ने पंचवर्षीय योजनाओं का सहारा लिया।

जवाहर लाल जी ने स्पष्ट तौर पर बार-बार दोहराया कि राजनीतिक जनतन्त्र और आर्थिक जनतन्त्र में सामंजस्य का रहना जरूरी है। उनके समाजवाद के प्रति दृष्टिकोण में ऐसे अनेक तत्व थे, जिनके कारण उनके आलोचक, पुराणपंथी और साम्यवादी दोनों थे। वे सब उनके समाजवाद को अलग-अलग टुकड़ों में विभाजित करते थे, जबकि नेहरू जी विभिन्न समस्याओं के प्रति अवसर के अनुरूप कार्य की नीति के बावजूद दृष्टिकोण में एक प्रकार की अखण्डता कायम रखते थे। समाजवाद में उनका जो विश्वास था वह मोटे तौर पर वैज्ञानिक तो था, परन्तु वह मानवीय प्रक्रिया के प्रति निरादर करने वाला नहीं था। इनकी व्याख्या उन्होंने अपनी “विश्व इतिहास की झलक”, “आत्मकथा” तथा “भारत की खोज” पुस्तकों में की थी।

उनका विश्वास था कि भारत जैसे देश में लोकतान्त्रिक प्रक्रिया उतनी ही अनिवार्य है, जितना समाजवाद। पण्डित जी के अनुसार उनका मेल हो सकता है, जिससे समाजवाद का अर्थ राजनीतिक लोकतन्त्र के अलावा सामाजिक और आर्थिक लोकतन्त्र भी होगा और समाजवादी पुनर्निर्माण अनिवार्य हो सकेगा। उनका विचार था कि पूंजी के एकीकरण और एकाधिकार के प्रश्नों को आसानी से निपटाया जा सकता है, यदि

राज्य जनता की संगठित शक्ति का प्रतिनिधित्व करता है ।

विधि के शासन एवं न्यायपालिका की स्वतन्त्रता को नेहरू जी व्यक्तिगत स्वतन्त्रता के लिए आवश्यक गारण्टी समझते थे। विधायिका एवं कार्यपालिका के कार्यों की न्यायिक समीक्षा का अधिकार न्यायपालिका को देकर नेहरू जी संसदीय लोकतन्त्र की जड़ें गहरी कर गये ।

इतने वर्ष बाद अब यह बात बहस के परे है कि शान्ति और लोकतन्त्र के लिए नेहरू जी से बड़ा अलंभरदार दूसरा कोई नहीं हो सकता था । आज इस गिरी हुई हालत में भी अगर भारत में वोट से सरकारें बन और बदल रहीं हैं तो मुख्य रूप से इसका श्रेय दो चीजों को है । एक राष्ट्रीय आन्दोलन की अहिंसक परम्परा को और दूसरा नेहरूजी द्वारा स्थापित उदार लोकतन्त्र की जड़ें ।

कालो व कारणं राजो राजा वा कालकारणम् ।

इति ते संशयो माभूद्राजा कालस्य कारणम् ॥

(महाभारत, शान्तिपर्व 69-79)

KEY NOTE ADDRESS

Hon'ble Mr. Justice M.M. Dutt

I have great pleasure in attending this seminar organised by the Institute of Judicial Training and Research. Before I dwell on the subject fixed for this seminar namely 'Parliamentary Democracy and Pandit Nehru'. I may say a few words about the Institute. As far as I know, it is one of the premier Institutes in the country that have been constituted for imparting training to judicial officers. The constitution of such an Institute must be highly appreciated by all. Although, I am not aware of the working of the Institute, yet I am sure the Institute contributes towards maintaining the standard and efficiency of the judicial officers of the State. The training should be in the direction of the dispensation of justice without loss of much time and to prevent accumulation of cases. In view of mounting backlogs, all endeavour should be made for speedy disposal of cases - of course, not at the cost of justice. The training that is imparted to the judicial officers will, I am sure, stand them in good stead and help them to properly discharge their duties and keep up the high tradition and dignity of the judiciary and to strengthen the confidence in the minds of the people in regard to the dispensation of justice by courts of law.

Now coming to the subject, it must be said at the outset that this year being the birth centenary year of Pandit Nehru, the selection of the subject is apposite. It gives us an opportunity to pay our respectful homage to the noble soul who dedicated his life to the cause of the Nation. A great politician and intellectual as he was, he was the architect of modern India. He was the most admirable and charming man and had a personality very rare among statesmen that would inspire persons both at home and abroad with a genuine regard and affection for him. Indeed, John Kennedy, the American President once openly declared "Nehru is the greatest person in the world". Nehru believed in the human values and had the highest respect for the individual and his welfare. He said "I do believe that ultimately it is the individual that counts. Therefore, no individual is trivial. Every individual has an importance and he should be given full opportunities to develop material opportunities, naturally food, clothing, education, housing, health etc." It is thus apparent that Nehru believed that the society cannot flourish unless and until the individuals are taken care of. He believed that good of the individual could best be realised in democracy. He would always insist on the individuality of man, the dignity of human being and the importance of human personality for the progress and betterment of society. Classically, democracy was understood in its etymological sense. That is, a rule of the people, and its exposition is available in the definition of Abraham Lincoln "Government of the people, by the people and for the people". According to Jabanee Sabtorey until a hundred years ago the government of the people was regarded as fatal to individual freedom and to all the graces of the civilised living. But after Rousseau had raised this slogan that all men everywhere by virtue of being men have certain fundamental rights and that among these is the right not to be governed by anyone who has not acquired authority over them with their consent, democracy came to be looked upon with respect.

Nehru's definition of democracy is much broader, covering a wide field. He defined democracy "Democracy is not only political, not only economic but something of the mind, as everything is ultimately something of the mind. It involves equality of opportunity to all people, as far as possible, in the political and economic domain. It involves the freedom of the individual to grow and to make the best use of his capacities and ability. It involves a certain tolerance of others and even of others' opinions when they differ from yours..... It is a dynamic, not static thing. Ultimately it is a mental approach applied to our political and economic problems."

Thus it follows from the definition that Nehru laid great emphasis on the development of the individual, not only his economic and political development but also his development in every respect, and giving him the freedom to make the best use of his capacities. The democracy that has been defined by Nehru is inserted in our Constitution. The preamble to the Constitution assures to the citizens, socio-economic and political justice and liberty of thought, expression belief, faith and worship; equality of status and of opportunity and also dignity of the individual.

But today we are concerned with parliamentary democracy. I have in brief dealt with Nehru's concept of democracy and his definition for the same to show that by and large the principle behind it has greatly influenced his concept of parliamentary democracy too. The Constitution of India has recognised both at the centre and at the state parliamentary democracy by adopting parliamentary system of government which is the most popular form of government today. Adult franchise is the most important aspect of parliamentary democracy. Every adult individual has a right to vote for his representative in the legislature. Parliamentary democracy is the best instrument for ascertaining and expressing the will of the people. It is based on the principle of majority rule. The legislature controls the executive, through legislation but the ultimate control is with the people, for they can remove the party ruling the government, if such party is considered to have acted against their will or against the welfare of the country. Thus parliamentary system of government is not only prophylactic but also deterrent to capricious rule. The question however arises, why Nehru was in favour of parliamentary form of government. It was answered by Nehru himself while speaking in the Lok Sabha in March 28, 1957. He said "We chose this system of parliamentary democracy deliberately. We chose it not only because to some extent we always thought it was in keeping with our old traditions not the old traditions as they were, but adjusted to the new conditions and new surroundings. We chose it also to let us give credit where credit is due because we have approved of its functioning in other countries most specially in the United Kingdom". So Nehru says that they chose parliamentary democracy deliberately. This shows how Nehru was bold and courageous. He did not hesitate to adopt parliamentary democracy *inspite* of the fact that India consists of people of various castes, creeds, religions, customs and cultures and also various languages. It was apprehended that in such conditions parliamentary democracy would not be successful but such apprehension has been found to be untrue. The largest parliamentary

democracy has not only been successful but has thrived over the years even in diversity. This is a very significant aspect of parliamentary democracy in India and bears testimony to Nehru's deep thinking and farsightedness.

I have already stated how Nehru felt for the individuals. He was deeply concerned for the well being of each individual. Indeed to Nehru democracy and individual were inseparable. At this stage I may refer to his view as to the aim of democracy. He said, "Democracy is a means to an end. I do not know if everybody will agree with me but I would say the end is the good life for the individual. What form it should take can be argued about but the good life certainly must imply a certain satisfaction of the essential economic needs, which will release him from continuous oppression, and which will give him a chance to develop his creative faculties". According to Nehru, political democracy was no doubt desirable but in order to have the full effect and realisation of political democracy it was necessary to have economic democracy. He observed, "There could be no real freedom without economic freedom. To call a starving man free, is but to mock him." Political democracy will be meaningless without economic democracy. A real democracy is, according to Nehru, to give an opportunity to a large number of people to profit by the democratic method and they have more or less equal chances to progress. Mahatma Gandhi also thought somewhat in the same lines as Nehru. Gandhiji observed "Democracy must in essence mean the art and science of mobilising the entire fiscal, economic and spiritual resources of all the various sections of the people in the service of common good to all."

In regard to parliamentary democracy Nehru was firmly of the view that it was the function of parliamentary democracy to solve the economic problems. In his speech on the floor of the Lok Sabha on 28th March, 1957, he said, "Parliamentary democracy is inevitably going on in the direction everywhere, of what might be called economic democracy. It may take different forms but only in the measure that it solves economic problems does it succeed even in the political field. If the economic problems are not solved then the political structure is destined to weaken and crack up." Our Constitution not only recognises parliamentary system of government but confers certain privileges on parliament and the legislatures and the respective members thereof for the smooth functioning of the parliamentary democracy. The most important privilege is the freedom of speech. Indeed Article 105(1) of the Constitution provides that there shall be freedom of speech in parliament. This freedom of speech is different from that guaranteed to citizens under Article 19(1) of the Constitution as a fundamental right. The freedom of speech guaranteed under Article 105(1) is wider than the one guaranteed under Article 19(1) which is subject to reasonable restrictions under Clause 2 of Article 19. Clause (2) of Article 105 provides that no member of parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of either house of parliament of any report, paper, vote or proceedings. Thus Article 105(2) inter alia confers immunity in respect of anything said in parliament. Article 194 of the Constitution contains similar provisions in respect of the legislatures of every state. It is of the essence of parliamentary democracy that the peoples' representatives should be

free to express their opinions through debates in parliament or in the state legislatures, as the case may be, without fear of legal consequences. All this effort is to give effect to parliamentary democracy in the true sense of the term.

I shall now deal with a very important aspect of parliamentary democracy. The principles, aims and objects of parliamentary democracy are clear but the question that arises is as to how and by whom parliamentary democracy should be maintained or carried to an ideal or more flourishing level. The further question is, what are the requirements of parliamentary democracy. The answers to these questions are not difficult. In short, it may be said that the entire burden to protect and maintain parliamentary democracy and to comply with all its requirements and to take it to an ideal level, is on the representatives of the people. After the people elect their representatives, they go off the scene for the time being and the entire responsibility is put on such representatives. It should not be understood that functioning of the legislatures is only to enact laws. No doubt, it is the most important function. By enacting laws parliament and legislatures administer the country. But the responsibility does not end there. The responsibility extends to solving the economic problems not only of the country as a whole but also of the individuals in order to achieve the desired object. What is required of the representatives of the people i.e. the members of parliament and of the state legislatures are discipline, self restraint and co-operation. Discipline is the first and the foremost requirement of parliamentary democracy. There can be no doubt that the peoples' representatives who are entrusted with the welfare of the country should themselves be disciplined and guide people to maintain discipline. Any business transacted in a disciplined way will consequently be the result of proper deliberations and subserve the interest of the people. Co-operation among the members is another important requirement of parliamentary democracy. This does not mean that everybody should have the same opinion. Indeed bonafide difference of opinion among different parties is not ruled out by the rules of parliamentary democracy. But what is required is that whatever opinion is expressed it should be in the interest of the people so that when ultimately the house adopts one of such opinions and gives effect to it after thoughtful deliberations, it will be really implementing parliamentary democracy in the true sense of the term. Thus discipline, self restraint and co-operation are necessary for the healthy growth of parliamentary democracy. Nehru said, "Parliamentary democracy demands many virtues. It demands, of course, ability. It demands a certain devotion to work but it demands also a large measure of co-operation, of self discipline, of restraint." It is obvious that a house like this cannot perform any functions without a spirit of co-operation, without a large measure of restraint and self discipline in each group. The virtues which are spoken to by Nehru are really necessary for the smooth functioning of parliamentary democracy. I hope that parliamentary democracy in India, which is the largest in the world will also be the ideal parliamentary democracy by having all the virtues as referred to by Pandit Nehru.

With these words, I resume my seat, but, before I do so I sincerely thank you for giving me a patient hearing.

NEHRU'S ROLE IN THE MAKING OF OUR CONSTITUTION

Hon'ble Mr. Justice K.N. Goyal.

Considerable literature has grown up about the Nehru saga, particularly in this centenary year, and yet not much is known to the present generation about Nehru's role as a founding father of the Constitution.

The Constitution as it finally emerged in 1949 has a long history behind it. The earliest attempt at Constitution making took place only four years after the Indian National Congress was born. A hundred years ago, in 1889, at its Bombay session, which was attended amongst others by a well known British M.P. Charles Bradlaugh, the Home Rule Bill, reputedly inspired by Lokmanya Tilak, was approved. It merely provided for greater association of Indians in the government. A Bill was, in fact, introduced in the House of Commons on those lines by Bradlaugh, but the effort was predictably infructuous.

When the sympathetic Labour Party led by Ramsay Macdonald came into power a convention of representative Indians presided over by former Law Member Sir Tej Bahadur Sapru met in Bombay in 1924 to consider a draft Constitution. This was finalised in May 1925 and was sent to England by Mrs. Annie Besant. It was called the Commonwealth of India Bill. The defeat of the Labour Party in late 1925 however altered the situation.

The Simon Commission, appointed by the British Government to examine the question of constitutional reforms, was boycotted by Indian nationalists on the ground that it did not comprise any Indian representatives. As decided at the Madras Congress session an all-parties conference was instead convened in 1928, and a committee headed by Motilal Nehru and comprising among others Sir Tej and Subhash Chandra Bose was asked to determine the principles of the Constitution for India. Its report is known as the Nehru Committee report.

When nothing came out of the efforts to secure dominion status for India, the Congress under Jawahar Lal Nehru's lead declared at its Lahore session on 26th January 1930 that nothing short of complete independence would satisfy us. It was in this resolution that for the first time the inalienable right of the people to have freedom was unequivocally propounded by the Indian nationalist movement.

In 1934 for the first time a demand was made, first by the Swaraj Party (the Parliamentary Wing of the Congress, formed by C.R. Das and Motilal Nehru) and then by the Congress Working Committee, that the Constitution for the country should be drawn up by a Constituent Assembly representative of all sections of the Indian people. It was Jawahar Lal Nehru, who alone among the top national leaders had a world view of history and was thus well aware of the manner of

Constitution making in other countries. In France on obstacles being put by the Monarchy to the Constituent Assembly meeting in the regular chamber it had shifted to an open Tennis Court, where the members took the famous Oath of the Tennis Court. In America the Constitution was adopted at the Philadelphia convention. Nehru thus first conceived the idea of a Constitution being made for us not by British Parliament but being given by us to ourselves. At the 1936 Faizpur session of the Congress, Jawahar Lal Nehru as the President persuaded the Working Committee to recommend to the Congress that a convention of all Congress members of the legislatures and other selected persons should meet, soon after the general election under the Government of India Act 1935, to put forward the demand for a Constituent Assembly. The convention met in March 1937 and demanded the withdrawal of the 1935 Act and declared that the people desired to frame their own Constitution based on national independence through the medium of a Constituent Assembly elected by adult franchise. The convention declared that the Indian people did not recognise the right of any external power or authority to decide the political and economic structure of India. Following this, resolutions were passed in the Provincial Legislative Assemblies of Bihar, Bombay, C.P., Orissa, U.P. and Madras besides Sind and NWFP (now in Pakistan) demanding replacement of the Government of India Act by a Constitution for a free India framed by such a Constituent Assembly. A similar resolution was moved in the Central Assembly.

In connection with this demand, Gandhiji had this to say in an article entitled 'The Only Way' which appeared in the 'Harijan' dated 19 November 1939:

"Pandit Jawahar Lal Nehru has compelled me to study, among other things, the implications of a Constituent Assembly. When he first introduced it in the Congress resolutions, I reconciled myself to it because of my belief in his superior knowledge of the technicalities of democracy. But I was not free from scepticism. Hard facts have, however, made me a convert and, for that reason perhaps, more enthusiastic than Jawahar Lal himself."

With Gandhiji's wholehearted support so secured demands for a Constituent Assembly came to be reiterated from time to time. It was accepted in an indirect way, though with reservations, in the Viceroy Lord Linlithgow's statement of August 8, 1940. This "August Offer" however proved to be infructuous. Subsequently, the Cripps Mission came to India in 1942. Cripps was known to be a leftist and a sympathizer of Indian nationalism. But despite tortuous negotiations the whole exercise proved abortive and the Quit India movement had to be launched in August 1942.

It was only after the Allied victory in Europe in 1945 that negotiations were resumed between the British Government and Indian representatives. The Wavell Plan and the Shimla Conference followed, though again with little success. Japan also later surrendered, and in March 1945 the Cabinet Mission arrived from Britain. Cripps was again a member of the Mission but not its leader. The redeeming feature this time was that the Labour Party headed by Clement Attlee was in power and seemed quite sincere about transfer of power. The Cabinet

Mission in May 1946 declared its plan which ultimately led to independence.

The plan provided for the convening of "a Constitution making machinery". The existing Provincial Legislative Assemblies formed its electoral college, the number of representatives allotted to each province being proportional to its total population. Proportional communal representation was also provided for among Muslim, Sikh and 'General' categories. The plan and the offer for forming an Interim Government at the Centre were accepted by the Congress party on June 25 but not by the Muslim League. The League later entered the Interim Government by making a show of accepting the plan. Ultimately however it backed out of its acceptance of the Constituent Assembly. A public declaration of Nehru that the Constituent Assembly could not be fettered by anything contained in the plan provided the League with a ready-made excuse for the *volte face*. Maulana Azad in his 'India Wins Freedom' has expressed the view since endorsed by Seervai, that this indiscreet statement of Nehru was one of the factors that made partition of the country inevitable. This however is one of the big *ifs* of history. Perhaps a combination of factors and circumstances had conspired to make partition of the country inevitable.

The Congress Working Committee in July 1946 appointed an Experts Committee under the Chairmanship of Nehru to prepare material for the Constituent Assembly. It was this Committee which laid down the procedure of election and the powers of the Chairman of the Assembly. At Nehru's suggestion it was expressly laid down that the Chairman shall have no powers to dissolve the Assembly. The right of dissolution was to rest with the Assembly itself. The Assembly was to elect a number of specified committees, among others an Advisory Committee on Fundamental Rights, Minorities etc. The Assembly had its inaugural session on December 9, 1946.

One of the first decisions of the Constituent Assembly was the adoption of a national flag and a national emblem. Maulana Azad was the Chairman of this committee and although Nehru was not among its members, the resolution for adoption of the flag was moved on its behalf by Nehru in an epic speech on July 18, 1947. Another memorable speech was his "tryst with destiny" oration on the midnight between the 14th and 15th August 1947.

Much more solid work than making inspiring pieces of oration however fell to Nehru's lot. The very first hurdle that was being faced by the Constituent Assembly related to its composition. The Muslim League was a non-participant. That ceased to be of any consequence after the country's partition was reluctantly agreed upon. The more formidable problem was that of securing the participation of representatives of the princely states. A committee to negotiate the matter with the Chamber of Princes was appointed with Nehru as Chairman. This committee, called the States Committee, had its joint meetings with the princes in February 1947. The negotiations seemed initially deadlocked on the question of recognition of monarchy. Nehru spoke powerfully and pointed out that the Constituent Assembly could not be dictated to or be asked to accept any conditions precedent to the princes entering it. He warned them that if the princes tried to dictate conditions then public opinion will react against it. "I try to control that public opinion

to the extent I can, but, he added "I cannot control it more than that, nor do I wish to control it." However, with the invaluable support of Sardar Patel the problems of States' accession, integration and participation were also amicably resolved to a large extent.

Before the Assembly could set about the task of framing the Constitution it was necessary for it to be clear about its aims and objects. On 13th December 1946 Nehru moved the famous Objectives Resolution which he rightly characterised as "an undertaking of ours with the millions of our brothers and sisters who live in this great country," - as a sort of solemn pledge to them. It was this resolution which ultimately formed the basis of the draft of the Preamble, which is rightly described as the key to the Constitution. It is often resorted to by the courts for throwing light in various grey areas of interpretation. It declared the Assembly's firm and solemn resolve to proclaim India as an independent sovereign republic wherein shall be guaranteed and secured to all its people justice, social, economic and political; equality of status, of opportunity and before the law, freedom of thought, expression, belief, faith, worship, vocation, and association, subject to law and public morality. It also spoke of safeguards for minorities, backward and tribal areas and depressed and other backward classes.

In this resolution it was also contemplated that constituent units would be autonomous with residuary powers and exercise all powers and functions except such powers and functions as were vested in or assigned to the Union. This was, in fact, a concession to the Muslim League point of view in order to persuade it not to insist on partition. But, when partition became a reality, and the country was faced with large scale disturbances and other problems arising out of mass exodus of people from across the borders, besides external aggression, it was felt that the country must have a strong centre. This part of the resolution was accordingly given a go by.

Nehru was also appointed Chairman of the Committee on the principles of the Union Constitution which submitted its report on 21st July 1947. It dealt with matters relating to citizenship, fundamental rights and the federal executive. In regard to the federal executive the basic thing considered was the kind of governmental structure to be adopted, - whether it was to be a system of ministerial responsibility as in England or the presidential system as in the U.S.A. Another question was whether the President should be directly elected as in the U.S.A. That was opposed by Nehru. After all, the Legislatures would be directly elected and the cabinet would be formed from directly elected representatives of the people. It was, therefore, not necessary to have a direct election for the President who was to be a constitutional head. Nehru also opposed the idea of members of Parliament alone electing the President, for in that case he will become "even more a dummy than otherwise. The President and the Ministry will represent exactly the same thing." Accordingly, a middle course was adopted and all the members of all the legislatures all over India in all the units were made electors. A formula was also worked out to see that weightage of votes was according to the population of the units concerned.

During the course of discussion on the clauses relating to the federal executive suggestions were made by some former members of the Muslim League that the ministers should be elected by proportional representation. This was strongly opposed by Nehru who observed that he could think of nothing more conducive to "Creating a feeble ministry and a feeble government than this business of electing them by proportional representation." It was inconsistent with the basis of parliamentary democracy which the Assembly had already accepted."

A similar question came up on whether the Governor should be elected or be nominated by the President. Nehru opposed the proposal for election as it would make the provincial Governor much more of a provincial figure than he need be. He would be intimately connected with the local politics of the province and with the factions in the province. He advocated that eminent people from outside should be appointed as Governor, sometimes people who have not taken too great a part in politics. On line with his stand on the issue of direct election of President, he again observed, "We must base democracy on the electoral processes. We have done it. But the point is whether we should duplicate it again and again."

Amongst the controversies that dogged the deliberations, mention may be made of the famous language row, the acrimonious debates on the question of compensation for compulsory acquisition of property, and on the question of the Indian Republic joining the Commonwealth, not to mention Professor K.T. Shah and Sibban Lal Saxena's valiant attempts to get the word 'Socialist' inscribed in the Preamble. The word 'Socialist', introduced in the Preamble much later through the Forty-second Amendment in 1976 during the Emergency, was unacceptable to the founding fathers as it smacked of party politics and was accordingly considered unworthy of mention in the national Constitution. All these problems were however, happily resolved in an amicable atmosphere. No one tried to score a point over another, and it was the interest of the country at large the long term interest, that prevailed, due largely to the vision, sagacity and broad mindedness of Nehru, Patel and Ambedkar.

While speaking on what later came to be adopted as Article 31, when the Zamindar members were very upset about acquisition of their estates without proper compensation, Nehru reminded them of the historical concept of property. The conception had changed through the ages. There was, he said, a period when there was property in human beings. The king owned everything, -the land, the cattle, the human beings, -as we have been recently reminded through the game of dice lost by Yudhishthir. There were times when in defence of slavery arguments were advanced in the United States (and even accepted by its Supreme Court) in regard to right to property in human beings, as were being advanced then with regard to Zamindari. "Slavery ceased to exist", Nehru added with a flourish.

In the same context the role of the judiciary in regard to judicial review of principles of compensation also came up. He pointed out that the judiciary cannot sit in judgment over the sovereign will of the people in regard to basic issue. But he agreed, "If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come

in the way. And if it comes in the way, ultimately the whole Constitution is a creature of Parliament... But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the detached atmosphere of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term. Therefore, if such a thing occurs, they should draw attention to that fact, but it is obvious that no court, no system of judiciary can function in the nature of a third house, as a kind of third house of correction. So it is important that with this limitation the judiciary should function."

The consensus in the Assembly was that it should be easy to amend the Constitution in the coming years. As Nehru observed, "Does anyone in the house imagine that when a free India emerges, it will be bound down by anything that even this house might lay down for it? A free India will see that bursting forth of the energy of a mighty nation. What it will do and what it will not, I do not know, but I do know that it will not consent to be bound down by anything.....This house cannot bind down the next generation, or the people who will duly succeed us in this task."

Often voices of criticism are heard that our Constitution is too long and it has been amended too frequently while the American Constitution is beautifully brief and it has been amended so rarely during the last two hundred years. This is not the fault of our Constitution makers. We cannot deny that we are the most litigious people in the world. The American Supreme Court accepts only about a hundred cases in a year for oral hearing, - that too a very brief hearing, - while the rest, - several thousand, - are all disposed of on mere perusal of briefs without anyone appearing or arguing before the Justices. And yet no one objects to it. In our country, on the other hand, we want the Supreme Court to function as a general court of appeal and also to hear each and every petition, - running into hundreds of thousands, - in open court. In spite of detailed provisions on every conceivable subject, controversies are raised time and again even in regard to settled propositions not merely at the bar but even by Judges themselves. So the Constitution makers could not afford to take the risk of omitting to provide for any topic which had earlier been covered by the 1935 Act.

Dr. Ambedkar is rightly given credit as the chief architect of our Constitution. He was the Chairman of the Drafting Committee, who with the able assistance of other legal stalwarts, not only finalised the draft but steered the Constitution through the Assembly, convincing almost all members and securing a rare unanimity, within a space of three years. He was not merely a legal expert but an established political leader representing the weakest section of the people. In earlier days he had even challenged Gandhiji. His contribution to the Constitution making process was marked by maturity, wisdom and clarity of vision. All credit is thus due to Dr. Ambedkar besides his associates. Alladi Krishnaswami Ayyar, Gopalaswami Ayyanagar, T.T. Krishnamachari, K.M. Munshi, B.N. Rau and others who bore the brunt. Credit is no less due to constructive critics like Hridaya

Nath Kunzru, Hari Vishnu Kamath, Prof. K.T. Shah, Naziruddin Ahmad and Mahavir Tyagi who managed to keep the Drafting Committee always on its toes. But, as was pointed out by President Rajendra Prasad in his closing speech at the time of adoption of the Constitution, the foundations for the Constitution were laid down in the reports of the Union Powers Committee and the Union Constitution Committee headed by Nehru and of two Committees headed by Sardar Patel, one on the principles of the Provincial Constitution and second, the Advisory Committee on Fundamental Rights, Minorities, Scheduled Tribes etc.. They were visionaries with a sense of destiny and were able to complete the onerous task of Constitution making in a spirit of give and take in spite of so many conflicting and divergent interests and viewpoints, so many controversies, arising from time to time.

संसदीय लोकतन्त्र एवं नेहरु पर कुछ विचार

माननीय श्री जगदीश चन्द्र वीक्षित

भारत वर्ष में संविधान का निर्माण किस तरह से हुआ, इस पर लोकप्रिय महोदय अपने विचार आपके सामने प्रस्तुत कर चुके हैं। आप परम आदरणीय दत्ता साहब, जो उच्चतम न्यायालय के न्यायाधीश हैं, उनके विचार भी सुन चुके हैं। हमारे बीच में श्रेष्ठ अग्रज बलदेव सिंह आर्य जी भी अपने विचार रख चुके हैं। इस समय मुझे केवल दो-चार बात ही कहनी हैं। क्योंकि पीले दो बज गये हैं अभी अन्य को भी बोलना है।

ध्यान देने योग्य बात यह है कि जवाहर लाल जी ने पार्लियामेन्ट्री डेमोक्रेसी की स्थापना में क्या भूमिका निभायी है? जवाहर लाल जी कांग्रेस के नेता थे, रिप्रिजेन्टेटिव थे। उन्होंने जो भी किया, वह कांग्रेस के प्रवक्ता के रूप में किया है। अधिक ध्यान देने योग्य बात यह है कि जवाहर लाल जी का पार्लियामेन्ट्री डेमोक्रेसी के सम्बन्ध में क्या दर्शन था।

इन बातों पर विचार करने के पूर्व यदि आप चार आयामों पर दृष्टि डालेंगे तो जवाहर लाल जी का राजनीतिक दर्शन स्पष्ट हो जायेगा। मनुष्य अपने वातावरण से प्रभावित होता है, जिसमें वह जन्म लेता है और रहता है। वह उन घटनाओं से भी प्रभावित होता है, जो उसके चारों तरफ घटती हैं। यह चार आयाम जिनकी बात मैं कर रहा हूँ वह जवाहर लाल जी से सम्बन्धित हैं और उनका प्रभाव जवाहर लाल जी के जीवन पर पड़ा है।

जिस समय जवाहर लाल जी पैदा हुए थे, उसी समय इलाहाबाद में तीन घटनाएं घटी थीं। पहली घटना यह थी कि पहली बार इम्पिडियन नेशनल कांग्रेस का अधिवेशन उत्तर भारत में इलाहाबाद में हुआ था। इससे पहले कांग्रेस के जो अधिवेशन हुए थे, वह सागर तट पर हुये थे, बाहेबह बम्बई का सागर तट हो चाहे कलकत्ता या मद्रास का। चूंकि कांग्रेस का अधिवेशन इलाहाबाद में हुआ, इसलिए स्वतः मोतीलाल जी वहाँ उपस्थित हुए। आचार्य नरेन्द्र देव जी के पिता जी भी वहाँ उपस्थित थे। जवाहर लाल जी के जन्म के समय यह पहली घटना थी, जिसने उनके जीवन को प्रभावित किया।

उसी समय के आसपास दूसरी घटना यह थी कि इलाहाबाद विश्वविद्यालय ने जन्म लिया। विश्वविद्यालय को आप ज्ञान का, विज्ञान का, दर्शन का और प्रयोगों का प्रतीक मानते हैं। तीसरी घटना यह है कि 7 जनवरी, 1887 से थोड़ा पहले लेजिस्लेटिव कौन्सिल का जन्म हुआ। इस तरह से जवाहर लाल जी के पैदा होने के साल भर पहले ही पार्लियामेन्ट्री इन्स्टीट्यूशन भी इलाहाबाद पहुँच गया। वेस्टर्न एजुकेशन भी इलाहाबाद पहुँच गयी थी और इम्पियन नेशनल कांग्रेस की राष्ट्रीयता की ध्वजा भी संगम तट पर सहराने लगी थी, तब यह स्वाभाविक था कि जवाहर लाल जी इन बातों से प्रभावित होते।

अब कुछ पर के वातावरण को देखिए। हमें गर्व है कि हम दत्ता साहब का स्वागत लखनऊ में कर रहे हैं। आप लोगों को शायद यह जानकारी न हो कि हिन्दुस्तान में हाईकोर्ट के पहले भारतीय जज या यों कहिए कि कलकत्ता हाईकोर्ट के पहले भारतीय जज श्री शम्भू नाथ पण्डित लखनऊ के ही थे। श्री प्राण चन्द्र उनके पौत्र हैं। हुआ यह था कि श्री राम मोहन राय के बड़े पुत्र, जो गवर्नमेंट एडवोकेट थे, को जज होना था। जब उनका अप्पाइंटमेंट हुआ, वह 15 दिन के भीतर चल बसे। श्री शम्भू नाथ पण्डित उनके जूनियर थे और वह उनकी जगह पहुँच गये। उसी खानदान के पं. बिशन नारायण दत्त थे, जो हमारी बार के बड़े बैरिस्टर थे। वह इम्पियन नेशनल कांग्रेस के प्रेसिडेंट भी रहे हैं। मेरे कहने का मतलब यह है कि लखनऊ का जुडीशियरी से और जुडीशियरी से चलकर राष्ट्रीयता से बढ़ा गहरा सम्बन्ध है। यह बात मैं इसलिए कह रहा हूँ, क्योंकि जवाहरलालजी पर इसका असर पढ़ना स्वाभाविक था। उनके पिता मोतीलाल जी के बड़े भाई, जब हिन्दुस्तान में कम्पनी राज्य खत्म हुआ और विक्टोरिया महादानी के राज्य की घोषणा हुई और आगरे की सदन अदालत हाईकोर्ट में बदली, उसमें वह बंशीधर जी पेशकार थे। पेशकार होने के नाते फिर वह इलाहाबाद आये और उन्हीं के साथ मोतीलाल जी 1870 में पढ़ने आये थे उसके बाद मोती लाल जी वकील हो गये तो इस प्रकार हाईकोर्ट की शुरुआत के साथ ही नेहरू परिवार के उद्भव की शुरुआत हुई। इसलिए जवाहर लाल जी पर लॉ का, कान्सटीट्यूशन का, लॉ पुल मीन्स का असर पढ़ना स्वाभाविक था।

जवाहर लाल जी जब इंग्लैण्ड पहले पहल पहुँचे तो उन्होंने लिबर्टी को अपनी आँखों से देखा और जो लॉ का ज्ञान व भाव उनके अन्दर था, उसका इंग्लैण्ड पहुँचकर लिबर्टी से परिणय हुआ और उसने एक नया रूप बदला और फिर जब राष्ट्रीय आन्दोलन

का विकास हुआ, गांधी जी के चमत्कार पूर्ण आध्यात्मिक नेतृत्व ने उसको एक तीसरा जामा दिया। इस तरह से जहाँ एक ओर यूनीवर्सिटी के विज्ञान, सेजिस्लेटिव काउन्सिल की संवैधानिकता और कांग्रेस की राष्ट्रीयता के समय में उनका जन्म हुआ। ये तीनों चीजें उनके व्यक्तित्व के विकास में आगे बढ़ती चली गयीं और फिर चौथी बात जिसका उनकी विचारधारा बनाने में योगदान है, वह यह कि एक ओर मोतीलाल जी के साथ वह आल पार्टीज कान्फ्रेंस की रिपोर्ट लिखने में लगे रहे। साधना की, योगदान दिया, वहीं दूसरी ओर वह नवम्बर, 1927 में मोतीलाल जी के साथ मास्को गये और मास्को से लेनिन का कुछ प्रभाव साथ लाये और हिन्दुस्तान वापस आकर गांधी जी के प्रभाव में मंजे। इस तरह से मोती लाल नेहरू, लेनिन और गांधी जी के प्रभाव से परिणाम यह निकला कि उनकी एक विद्या बन गयी समझने की और समझाने की। इसी विद्या के कारण पहले उन्होंने दुनियाँ के इतिहास को पढ़ा और समझा और "मिल्म्पसेस आफ वर्ल्ड हिस्ट्री" के नाम से ग्रन्थ लिख दिया। फिर उन्होंने आत्म चिन्तन किया। अपना व अपनी मनसा का इतिहास लिख डाला, जो 'आटोबायोग्राफी' कहलायी। फिर उन्होंने हिन्दुस्तान के इतिहास के मर्म को समझा और लिखा, जो 'डिस्कवरी आफ इण्डिया' कहलायी। विश्व और हिन्दुस्तान के इतिहास और आत्मा की आवाज को मिलाकर जो चीज बनी, उसने नेहरू के दर्शन का रूप लिया।

अब उनकी पार्लियामेन्ट्री डेमोक्रेसी को लीजिए। मार्च, 1957 का जवाहर लाल जी का भाषण, जिसको अभी माननीय गोयल साहब व पूज्य दत्ता जी ने उद्धृत किया है उस भाषण में जवाहर लाल जी ने स्पष्ट कहा कि पार्लियामेन्ट्री डेमोक्रेसी हमने इसलिए स्वीकार की थी, क्योंकि हम यह मानते थे कि बदले हुए वातावरण में, बदले हुए वातावरण से हमारा यह मतलब है कि प्राचीन भारत से आधुनिक भारत की तुलना, यहाँ सापेक्ष जनतन्त्र सम्भव नहीं है, इसलिए पार्लियामेन्ट्री डेमोक्रेसी कांग्रेस ने एक्सेप्ट की थी। नेहरू जी ने पार्लियामेन्ट्री डेमोक्रेसी जिस रूप में देखी थी, वह इंग्लैण्ड की डेमोक्रेसी नहीं थी।

जिस रूप में प्रियम्बल को प्रियम्बल कहा जाता है, वह रूप ठीक नहीं है। इतिहास में हम बहुत सी बातें ऐसी कह जाते हैं कि किसी का श्रेय किसी और को दिया जाता है, लेकिन इससे इतिहास नहीं बनता बल्कि कन्फ्यूजन पैदा होता है। 9 अगस्त, 1946 का दिन था। रफी अहमद किदवई ने सूची, असेम्बली में प्रस्ताव किया था कि जमींदारी मिटा दी जाय। कमेटी बनी, मुकदमा चला, इलाहाबाद हाईकोर्ट का फैसला

हुआ, सुप्रीम कोर्ट गया। संविधान को बदलने की बात आयी तब जवाहर लाल जी ने एक बात कही थी, लेकिन यहां रफी अहमद किदवाई को श्रेय दिये बिना कैसे रहा जा सकता है क्योंकि यह बात 9 अगस्त को हुई थी और कान्सटीट्यूट असेम्बली दिसम्बर, 1946 में बनी थी। यह 9 अगस्त 1946 की बात में कर रहा हूँ। 13 अगस्त को प्रियम्बल की क्या बात थी। कान्सटीट्यूट असेम्बली बनी, शपथ ली। शपथ लेने के बाद, जो हिन्दुस्तान की चिन्तित आकांक्षी जनता जानना चाहती थी कि यह लोग जो आजादी की लड़ाई में आगे बढ़े हैं, संविधान बनाने आये हैं, यह कैसा संविधान बनायेंगे यह क्या चाहते हैं, तब 13 दिसम्बर, 1946 को घोषणा करनी पड़ी थी कि जस्टिस इकोनॉमिक, सोशल, पालिटिकल की, लिबर्टी इक्वलिटी, फेडरनिटी की, गणराज्य की। प्रियम्बल तो बाद में बना, वह घोषणा की थी गुलाम हिन्दुस्तान में। उस समय हिन्दुस्तान आजाद नहीं हुआ था। वह फिलास्फी जवाहर लाल जी की थी, वही फिलास्फी है गांधी जी की। जवाहर लाल जी को आप गांधी जी से अलग नहीं कर सकते हैं।

रह गई बात अंग्रेजों की पार्लियामेन्ट्री डेमोक्रेसी की, तो उसे जब आप इन्वेट करना चाहेंगे तो व्यवहारिक रूप में बराबर करना चाहेंगे तो उसका रूप सोशल जस्टिस का हो जाता है। बड़ी अदालतों में बार-बार हम यह देखते हैं कि यह होना चाहिए, वह होना चाहिए। सब कुछ सॉल्व है ठीक है लेकिन प्रिन्सिपल ऑफ नैचुरल जस्टिस का उल्लंघन हो गया है तो यह ठीक नहीं है इसको फिर देखा जायेगा। फिर नैचुरल जस्टिस तो इंग्लैंड का एक हिस्टोरिकल इवोल्यूशन है जहाँ परंपरम्पराओं से और इतिहास के सहारे सारा कार्य चलता रहता है। जहाँ न अभी तक संविधान लिखा गया है और न शायद लिखा जायेगा, लेकिन वहां पर भी उस नैचुरल जस्टिस के बाद भी तलवारें उठ गयीं, क्रांति हो गयी, तब पालिटिकल जस्टिस को सामने आना पड़ा। महाकवि शैली के समुर आस्टिन गॉडविन ने इस शब्द का निर्माण किया था। पालिटिकल जस्टिस उनकी पहली कृति थी। पालिटिकल जस्टिस में केवल इतनी बात है कि जब हम टैक्स देंगे तो हमारा पार्टिसिपेशन होना चाहिए, लेकिन उस पार्टिसिपेशन के नाते जब अनेक वर्ग सत्ता में आये, यह वर्ग विभिन्न प्रकार से उठते और उभरते दिखायी दिये। फिर जब युद्ध हुआ और युद्ध होने के बाद सन् 1918 में ट्रीटी ऑफ वारसाई हुई। उसी ट्रीटी ऑफ वारसाई में यह स्पष्ट था और उसी के कारण लीग ऑफ नेशन्स के कान्सटीट्यूशन के प्रियम्बल में स्पष्ट था कि अब अगर विश्व को फिर युद्ध से बचाना है तो दुनिया के अन्दर सोशल जस्टिस को लागू करना होगा। यह वह वक्त था जब ब्रेविस ने कहा कि आज डेमोक्रेसी को रियाइज करनेकी

जहरत आ गयी है। यह वह वक्त था जब लेनिन रुस में क्रान्ति कर चुका था यह वह वक्त था जब नये हिन्दुस्तान का उदय हो रहा था, इसलिये नेचुरल जस्टिस जो हिन्दुस्तान की कान्टीशन में सोशल जस्टिस होता है और आज सोशल जस्टिस और नेचुरल जस्टिस को अलग करने का वक्त आ गया है। अलग करने से मतलब यह है कि हिन्दुस्तानी सविधान के विकास को जानने के बाद भी हम इंग्लैण्ड के इतिहासीय विकास की नजरों से देखकर उसका विश्लेषण कर उसे अपनाना चाहते हैं। इंग्लिश जूरिसप्रूडेन्स में जो स्थान नेचुरल जस्टिस का रहा और बना है, वह स्थान हिन्दुस्तान के अन्दर सोशल जस्टिस का हो गया है। इस सोशल जस्टिस में जस्टिस की उतनी बात नहीं है, जितना कि जस्ट की है। राइट की उतनी बात नहीं है, जितनी कि राइटियसनेस की है। सोशल जस्टिस एक प्रकार की राइटियसनेस है।

एक बार पंजाब नेशनल बैंक के केस में सुप्रीम कोर्ट ने फैसला दिया कि स्ट्राइक हो सकती है, इल्लीगल हो लेकिन यह इल्लीगल स्ट्राइक जस्टीफाईड हो सकती है, लेकिन फिर सुप्रीम कोर्ट ने कहा कि जस्टीफाईड होते हुए भी चूकि स्ट्राइक इल्लीगल है, इसलिये इन लोगों को इण्ड मिलेगा।

मैं श्रम आन्दोलन से आता हूँ। फ्रीडम मूवमेंट में मैंने हिस्सा लिया है। मैं एक प्रश्न पूछना चाहता हूँ। कहा जाता है कि हमारी जुडीशियरी बड़ी इनडिपेण्डेंट है। जब चोर चोरी करता है तो पुलिस मुकदमा चलाती है अगर वह साबित न कर सके तो बेनिफिट आफ डाउट चोर को मिलता है और वह छूट जाता है और हमारा इण्डस्ट्रियल जूरिसप्रूडेन्स जो इवाल्ब हुआ है उसमें वर्कर यह बिओण्ड डाउट साबित करे कि उसने मिसकण्डेक्ट नहीं किया है। अगर कोई भी डाउट रह जाता है तो हमारी जुडीशियरी बेनिफिट आफ डाउट मालिक को देती है, मजदूर को नहीं। यह साहब कैसा लॉ है ? मैं नेहरू जी की फिलास्फी बता रहा था। जजों की फिलास्फी को मैं उस आदने में पढ़के देख रहा हूँ अब दूसरी बात, इण्डस्ट्रियल डिस्प्यूट्स एक्ट में कम्पलसरी आरबिट्रेशन है, लेकिन इस कम्पलसरी आरबिट्रेशन में वकील नहीं फरीक एपीयर होंगे। सर विमन मिस्तर, जे. एम. मजूमदार ट्राइबुनल में हुआ करते थे। मैं एक कार्यकर्ता के रूप में ट्राइबुनल में गया। देखा कि सर बोस एपीयर हो रहे हैं। किसी में सर इकबाल एपीयर हो रहे हैं, क्योंकि वह डाइरेक्टर हैं। डाइरेक्टर होकर सर इकबाल तो पार्टी बन गये और हमारे जैसे लोग मजदूरों के ट्रेड यूनियन के प्रेसीडेण्ट होने के नाते बहस कर रहे हैं तो अगर जजों के पास

शब्दों का ही अर्थ लगाने की बात है, कोई फिलॉसफी नहीं है तो गाड़ी कैसे चलेगी। हमारा कहने का मतलब यह है कि हम जवाहर लाल जी के फार्मल आस्पेक्ट को न देखकर उनकी फिलॉसफी को समझें और फिलॉसफी समझने के बाद जिस प्रकार से 1921 में ऑस्ट्रेलिया में हिंगिन्स ने जूरिसप्रूडेन्स बदलने की चेष्टा की थी, ए न्यू प्रोविन्स आफ लॉ लिख करके जिस प्रकार से जस्टिस होम्स ने अमेरिका के सुप्रीम कोर्ट में एक प्रयास किया था उसी प्रकार से आवश्यकता यह है कि अगर जुडीशियरी जवाहर लाल जी का प्रभाव मानती है या हमारा भार मानता है तो जो हमारा न्याय दर्शन है, उसे हम एक सोशल आउटलुक दें और हम ऐसी जगह पहुंच जायें, जहाँ नेचुरल जस्टिस और सोशल जस्टिस इक्वेट हो जायें और वहाँ केन्द्र बिन्दु इक्वीलिब्रियम प्राप्त कर लें।

ग्रन्थ तो बहुत लिखे गये हैं, लेकिन एम.एन. दास का एक ऐसा ग्रन्थ है, जिस पर 1960 में लन्दन विश्व विद्यालय ने उन्हें पी.एच.डी. की डिग्री दी थी उसके 4 वर्ष बाद जवाहर लाल जी दिवंगत हुए थे। उसमें उन्होंने यह कहा है कि साय सेनट्रल प्वाइंट यही था कि समाज के अन्दर इक्वेट करके इक्वीलीब्रियम लाया जाय। तो अब आखिरकार क्या हमारी प्रतिभा, हमारा जूरिसप्रूडेन्स कोई इन्कलाब लाकर पियोसा-फिसिकल जगह पहुंच सकता है। जहाँ पर हम जवाहर लाल जी की पार्लियामेन्ट्री डेमोक्रेसी के सींगल कान्सेप्ट को एपीव करके जनता को राहत पहुंचा सकें। यही मैं आपसे कहना चाहूँगा। क्षमा करियेगा। आशा है कि मेरी बात पर आप ध्यान देंगे।

ग्रन्थवाद

संसदीय लोकतन्त्र के लाभ

माननीय श्री ओम प्रकाश रिछारिया

विभिन्न विषयों पर अभी आपने चर्चाएँ सुनीं। लेकिन इन सारी चर्चाओं के बाद भी एक चर्चा रह गयी है। वो है कि जिस वक्त देश स्वतन्त्र हुआ था तब ऐसी कौन सी परिस्थितियाँ थीं, जिनके कारण जो हमारी वर्तमान संसदीय प्रणाली है, उसी को अपनाने के लिये पण्डित जी ने सोचा था। अभी आपने लोकायुक्त श्री गोयल की तकरीर से, जब वह अपना पेपर पढ़ रहे थे, यह जाना कि सविधान कब व कैसे बनाया गया। उन्होंने फ्रांस की मौजूदा प्रेसीडेंटशिप की पद्धति, अमरीका की पद्धति का उल्लेख किया। इसके अलावा उस वक्त दुनिया में बहुत सारी संसदीय प्रणालियाँ प्रचलित थीं। कुछ संसदीय प्रणाली अपने देश में गणतन्त्र स्थापित होने के तत्काल बाद दुनिया में आईं। यदि आप इन प्रणालियों को देखें तो उनमें भी एक आकर्षण सा लगता है कि सम्भवतः यह प्रणाली बड़ी अच्छी है। अगर आप उदाहरण के लिये लें तो कुछ देशों में इस तरह की प्रणाली है कि इलेक्शन के बाद जो मन्त्रि परिषद् बनती है, वो मन्त्रि परिषद् केवल सरकार के पक्ष में होती है, बाकी सारे जो मेम्बर पार्लियामेंट होंगे, वो सब सरकार के विरोध में सामने बैठेंगे और जब भी कोई बिल आयेगा तो उस पर खुली चर्चा व मतदान करेंगे। यदि वो चाहें तो बिल को फेल कर सकते हैं इसके बाद दुबारा संशोधन करने के बाद यदि वह बिल फिर लाया जाता है तो उस पर पुनः मतदान होगा और यदि वह चाहें तो उसको वह पुनः फेल कर सकते हैं।

कुछ देशों में दूसरे प्रकार की प्रणाली है, उसमें राजनैतिक दल अपने प्रतिनिधि चुनकर भेजेंगे और जो बहुमत का दल आयेगा वह सरकार बनायेगा। इसके बाद वह देखेंगे कि विरोध पक्ष में कोई इस स्तर का आदमी तो नहीं है, जो अपने देश में एक अघोरिटी रखता हो। यदि कोई ऐसा व्यक्ति है तो बहुमत का दल उस दल को पत्र भेजकर अनुरोध करेगा कि यह बड़े सौभाग्य की बात है कि आपके दल में एक फर्लॉ-फर्लॉ-... न्यायविद् चुनकर आया है। हमारे दल की कार्यकारिणी यह चाहती है कि उसको आप आदेशित करें कि वह आकर न्यायमन्त्री का पद ग्रहण करें। मेरा कहने का मतलब यह है कि इस तरह की बहुत सी पद्धतियाँ उस समय विश्व के विभिन्न देशों में प्रचलित थीं, लेकिन आखिरकार क्या वजह थी कि अपने देश में संसदीय लोकतन्त्र की पद्धति को ही अपनाया गया।

यदि आप उस समय के तत्कालीन वातावरण को देखें तो यह पायेंगे कि उस समय संविधान बनाने वालों के ऊपर तीन-चार तरह के प्रेशर थे। 19वीं सदी के प्रारम्भ में औद्योगीकरण के बाद यूरोप में श्रम व मजदूरों के शोषण के कारण संघर्ष पैदा हुआ था। उससे समाजवाद सारी दुनिया में तेजी से फैल रहा था। उसका प्रेशर अपने देश की मानसिकता पर था। उसी वक्त देश में जो तत्कालीन पुराने लोग थे, जिन्हें कट्टरपंथी कहना चाहिये, वैसे हकीकत तो यह है कि उस वक्त हम हर व्यक्ति को कट्टरपंथी कहते थे, वह चाहे दक्षिणपंथी हो या वामपंथी हो या जिसमें साम्प्रदायिकता हो वे सभी लोग कट्टरपंथी थे। लार्ड माउन्टबेटेन ने "आधी रात की स्वतन्त्रता - फ्रीडम एट मिड नाइट" में कहा है कि जिन्ना बहुत अच्छे मित्र थे बहुत व्यवहारिक थे, बोलने में बड़े मृदुल थे, लेकिन वह अपनी बात के मामले में मुस्लिम लीगियों से भी ज्यादा जिद्दी थे। कहने का आशय यह है कि उस समय हर वर्ग में कट्टरपंथी पैदा हो गये थे, चाहे वह दक्षिणपंथी हों, या वामपंथी, चाहे वह समाजवादी हों या उदारवादी हों। उदारवादी उस समय आर्य समाजी लोग थे। इन सभी का संविधान बनाने वाले लोगों के ऊपर एक प्रेशर था, समाजवादी क्रान्तियों का एक प्रेशर था, उदारवादियों का एक प्रेशर था, ओल्ड जनरेशन कांग्रेस में जो थी, उसका भी एक प्रेशर था। ये जो सारे प्रेशर थे, जो सारी चीजें थीं, इनमें प्रश्न यह था कि इस देश में ऐसी संसदीय प्रणाली कैसे चलायी जा सकेगी, जो न केवल उन राज्यों को जो किसी फ्लोर या राजा-महाराजा के अण्डर में थी या तालुकेदार के अण्डर में थी, बल्कि उन सारे मज़हबों, उन सारी जातियों, उन सारी भाषाओं के लोगों को भी सामान्यतः पसन्द आये। ऐसी प्रणाली केवल यही हो सकती थी, जो कि पण्डित जी ने इस देश में प्रचलित की और चलायी। आपने देखा होगा कि यह प्रणाली न केवल चली बल्कि आज तक के बदले हुए वातावरण में, जैसे ही वातावरण बदला, इस देश में संसद ने संविधान में संशोधन करके यह सिद्ध कर दिया कि यह प्रणाली लम्बे समय तक चलते रहने के लिए सक्षम है। आज तक संविधान में 65 संशोधन हो चुके हैं और प्रत्येक संशोधन अपने समय की देश की बुनियादी आवश्यकता के कारण किया गया है।

जब संसदीय प्रणाली शुरू हुई थी, उस वक्त देश की बुनियादी आवश्यकता थी कि हम कैसे अपना आर्थिक डेवलपमेंट करें, हम कैसे अपनी विदेश नीति तय करें, हम कैसे भविष्य के लिए तय करें कि कौसी बुनियाद डाली जाय। यही कारण है कि उस समय संसद ने लम्बे डिस्कशन के बाद जो भी निर्धारित किया, उसको हम लोग मान्यता देते रहे। जो लोग उसका विरोध भी करते थे, वहां पर मैं एक छोटा सा उदाहरण देना

चाहूँगा कि जब भी संसद में विदेश नीति के उमर या उसके मन्त्रालय के बजट के उमर बहस होती थी, तब एक माननीय सांसद विदेश नीति की आलोचना करते थे और पण्डित जी पर आक्षेप करते थे कि उन्होंने इजराईल को जबरिया इग्नोर कर रखा है और इजराईल को मान्यता दिया जाना अल्पधिक आवश्यक है। पार्लियामेंट ने इजराईल को पालिटिकल कारणों से या इकोनोमिक कारणों से, जो भी हो मान्यता नहीं दी थी। फिर एक वक्त आया जबकि वह सांसद स्वयं विदेश मन्त्री हुए, तब उनसे हिमांशु जोशी ने जो उस समय साप्ताहिक हिन्दुस्तान के एडीटर थे, एक इन्टरव्यू में पूछा कि आप हमेशा सदन में इजराईल को मान्यता देने की बात कहा करते थे, अब आप स्वयं इजराईल को मान्यता देने कब पारहे हैं। तब उन्होंने उत्तर दिया कि उस समय मैं विपक्ष में था और अब मैं विदेश मन्त्री हूँ। मेरे इस उदाहरण देने का आशय यह है कि पं. नेहरू ने इस पार्लियामेंट के अन्दर जो बुनियाद डाली है, वह बुनियाद इतनी अपरिवर्तनीय है, उसको इतना सोच समझकर अपनाया गया है कि जो उनके प्रमुख आलोचक हैं, ओहदे पर आने के बाद उसको उसी रूप में स्वीकार करते हैं। यही बात पंचवर्षीय योजना और दूसरी चीजों के बारे में भी है।

आपको याद होगा कि 1958 में पंचायती राज्यों व सामुदायिक विकास की चर्चा बड़ी तेजी से हो रही थी। उन दिनों खुरशेव हिन्दुस्तान आये हुये थे। खुरशेव को यहां दिल्ली के आसपास सामुदायिक केन्द्र दिखाया गया था। चूँकि यह बात काफी पुरानी है, इसलिये मैं स्मरण के आधार पर बता रहा हूँ। उनसे सौटने के बाद जब यह पूछा गया कि जो सामुदायिक केन्द्र दिखाने के लिए आपको ले जाया गया था, वह आपको कैसा लगा। आपकी उस पर क्या प्रतिक्रिया है तो खुरशेव ने कहा मैंने जब पण्डित जी से पंचायती राज्य सिस्टम के बारे में पूछा तो पण्डित जी ने कहा कि हम अपने देश का किसी एक केन्द्र स्थान से विकास नहीं करना चाहते हैं। हम चाहते हैं कि देश में प्रत्येक स्थान के उमर अपनी एक यूनिट हो, एक इकाई हो और वहां से सभी कुछ संचालित हो, सारी व्यवसायें संचालित हों। उन्होंने यह भी कहा कि मुझको केन्द्र देखने के बाद यही लगा कि इस देश में जो सामुदायिक पंचायती राज्य की नींव डाली जा रही है, इसी पर आने वाले देश का उज्ज्वल भविष्य स्वर्णिम भविष्य निश्चित रूप से निर्भर करता है और निश्चित रूप से वह वक्त आयेगा, जब यह देश इसी बुनियाद पर खड़ा होकर एक ऐसा महल तैयार करेगा, जिसकी ओर सारी दुनिया देखेगी।

यह एक अजीब सी बात रही है कि अपने प्रदेश में पंचायती राज्ज सिस्टम लागू हुआ लेकिन वह एकदम से जिस रूप में लागू होना चाहिए था लागू नहीं हुआ और अब जाकर उसी संसद ने उसको जिस रूप में लागू होना चाहिए, उस रूप में पारित किया है और वह सारे देश में लागू होने जा रहा है। इसके पीछे क्या कारण थे, इस समय उनमें विस्तार से जाने का अवसर नहीं है मेरा कहने का मतलब यह है कि इस संसदीय प्रणाली ने हमेशा अपने समाज को जिस चीज की आवश्यकता हुई, जिन परिवर्तनों की आवश्यकता हुई, उनके लिये न केवल मॉरल सपोर्ट दिया बल्कि एक संवैधानिक ताकत देकर आपको शक्ति दी, जिससे आग देश को मुबारक रूप से उन दिशाओं में ले जा सकें, जिन दिशाओं में आप ले जाना चाहते हैं।

जैसा कि अभी लोकायुक्त महोदय ने संविधान के निर्माण के सम्बन्ध में कहा था कि पं. मोतीलाल नेहरू की जो रिपोर्ट थी, उस वक्त जो एक संविधान का प्राक्कन बनाया गया था, चूंकि यह ठिक आ गया है, इसलिये मैं इस संबंध में भी अपनी एक बात कहना चाहता हूँ। अपने देश के संविधान के बारे में एक बात कही जाती है कि यह संविधान स्वित्जरलैण्ड, ब्रिटेन, कनाडा, आस्ट्रेलिया आदि के संविधानों पर आधारित है, लेकिन यदि आप देखें कि जब मोती लाल नेहरू की कमेटी की रिपोर्ट आयी, तो उस वक्त उन देशों में से किसी देश में संविधान नहीं था। अर्थात् जिन देशों के प्रति आधारित हमारा संविधान कहा जाता है, उन देशों में से किसी भी देश में संविधान नहीं था। किसी भी तरीके का संविधान नहीं था। अतः हमारा यह निश्चित रूप से मत है कि तत्कालीन नेताओं ने जिनमें पं. जवाहर लाल नेहरू, श्री पटेल, डा. अम्बेदकर जैसे दूसरे महान नेता आते हैं, उन सभी की सोच-समझ, इन संविधानों पर आधारित नहीं थी, जिनका कि प्रचार किया जाता है, यह मेरा दृढ़ मत है। उनकी अपनी जो बात थी, वह मोती लाल नेहरू की कमेटी की रिपोर्ट पर आधारित थी। सन् 1935 का जो एक्ट बना था, उस पर आधारित थी, अब 1935 के एक्ट को आप कह सकते हैं कि वह चाहे किसी भी देश के संविधान से प्रभावित हो, लेकिन चूंकि वह इसी देश के लिए बना था, इसी देश में चल रहा था, इसीलिये उनके विचार उन देशों से आए नहीं माने जा सकते, जिन देशों से आने की बात कही जाती है, मेरा अपना यह सोचना है। यह बात विषय से सम्बन्धित नहीं थी, लेकिन चूंकि यह विषय आया था, इसलिये मैंने अपनी बात कही थी।

मैं नहीं समझता कि इतने विद्वता पूर्ण आलेख्य पड़े जाने के बाद अब कुछ ऐसा रह जाता है, जिसके बारे में विस्तार से कहा जाय। वैसे भी जो अन्तिम वक्ता होता है,

उसके लिये विषय बहुत कम रह जाता है और सबसे ज्यादा समस्या अध्यक्ष जी को होती है, जिन्हें अध्यक्षीय भाषण करना होता है क्योंकि उनके लिये कोई विषय तो रह ही नहीं जाता। आप लोगों ने शान्ति पूर्वक हमारी बात ध्यान से सुनी, इसलिए आपका धन्यवाद।

जयहिन्द ।

PRESIDENTIAL ADDRESS

Hon'ble Mr. Justice K.C. Agarwal

We are thankful to the Hon. Mr. Justice M.M. Dutt, who has taken the trouble of coming over to Lucknow to grace this function. His speech has been illuminating. The Institute and myself express our deep sense of gratitude to him. We also thank Sri Baldev Singh Arya, Nagar Vikas Mantri of our State for coming in our midst.

Pt. Jawahar Lal Nehru played a decisive, distinct and dominant role in the fashioning of the Indian Constitution. In the famous Objectives Resolution, which he moved in the Constituent Assembly on December 13, 1946, the fifth day of its first meeting, he set forth in clear terms the goals aimed to be attained through the Constitution. The resolution, he said, was a declaration, a firm resolve, a pledge and an undertaking, and, for all, a dedication. As Chairman of two important committees of the Constituent Assembly, the Union Constitution Committee and the Union Powers Committee, he helped in the formulation of principles of an enduring Centre-State relationship. Speaking on the draft Constitution in the Assembly on November 8, 1948, he referred to the transitions and changes India had passed through since he moved the Objectives Resolution:-

"India after a long period of being dominated over has emerged as a free sovereign democratic independent country....Freedom brings responsibility; of course, there is no such thing as freedom without responsibility. Irresponsibility itself means lack of all freedom. Therefore, we have to be conscious of this tremendous burden of responsibility, which freedom has brought, the disciplines of freedom and the organised way of working freedom."

And, it was in this background that he viewed the task of Constitution making and gave positive direction in determining the fundamentals.

Pt. Nehru considered essential, for the development of democracy, the inclusion of Fundamental Rights and the dynamic concept of Directive Principles of State Policy, in the Constitution. Occasions may arise, he thought, when the dynamic movement and the static concept of Fundamental Rights may not fit in with each other, and then a solution would have to be found by evolving a balance between the two. This problem did arise before the Supreme Court later and the previous approach to the Directive Principles was given up. Certain government measures were found justified on the basis of the Directive Principles and it was held that they were not a mere paper-tiger.

Pt. Nehru's faith in the parliamentary system was abiding and deep-rooted. Speaking at a seminar in December, 1957, at Delhi, he said:-

"We prize the parliamentary form of government because it is a peaceful method of dealing with problems. It is a method of argument, discussion and

decision, and of accepting that decision, even though we may not agree with it."

He believed :-

"The parliamentary system" has the virtue that it can fit in with the changing pattern of life."

These observations couched in simple language contain in them what one may describe as the basic features of a stable parliamentary system.

If we recall the days of Nehru in Parliament, we can have an idea how he nurtured and nourished the parliamentary system and laid its firm foundations in our country. He played an important part in the maintenance of harmonious relations between the two houses of Parliament. In the very early years of our Parliament, a conflict arose between the Rajya Sabha and the Lok Sabha consequent on the certification by the Speaker of an Income-Tax Amendment Bill as a Money Bill. This led to strong passions being roused in both the houses over their respective rights, powers and privileges. Nehru's intervention, after speaking to the Chairman and the Speaker, resolved the situation quickly. He said:

"Each House has full authority to regulate its own procedure within the limits of the Constitution. Neither House, by itself, constitutes Parliament. It is the two Houses together that are the Parliament of India. The Constitution treats the two Houses equally, except in certain financial matters, which are to be the sole purview of the House of People (Lok Sabha)".

Nehru was quite hard-hitting. He was good at repartee. Once in the course of a debate, he said, "India is a predominantly agricultural country, but we do not grow enough food to feed our people. Some people say that we are an industrial country, but where are our industries?". He then came out with a poser, "What shall we say?". A poet member of opposition interjected: "Dhobika Kutta Gharka Na Ghatka". Nehru retorted: "Hon. Member has good experience of himself." Even the opposition could not help joining the laughter.

Dealing with the question of land reforms in the Constituent Assembly, Pt. Nehru spoke on the role of the judiciary:

"No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community". As wise people, however, the duty of the courts was to see that in a moment of passion, in a moment of excitement, even the representatives of the people did not go wrong. In the detached atmosphere of the court, they should see that nothing was done that may be against the Constitution and the good of the country. If such a thing occurs, they should draw attention to that fact, but "it is obvious that no court, no system of judiciary can function in the nature of a third House, as a kind of Third House for Correction".

I am of the firm conviction that only a good man can make a good parliamentarian, a good minister, or a good administrator. Goodness in Nehru was in abundance. Shri R. Venkataraman says, it was his innate gentleness and his gentlemanliness that made Nehru an ornament to Parliament. He used to speak with passion, but not with malice.

On the bed of Pt. Nehru, when he died, the following lines from a poem by an American poet Roberts Frost were found:

"The woods are lovely, dark and deep;
But I have promises to keep;
And miles to go before I sleep;
And miles to go before I sleep."

He was a 'Karmyogi' in the true sense, devoted to the service of mankind. Not only the people of India, but the whole world owe an irrepayable debt to him.

To conclude, I would like to quote the following words of a poet, which apply to the great personality of Pt. Nehru fully:

"His life was gentle, and the elements so mixed in him that nature might stand up and say to all this was a Man."

NEHRU AND INDIAN DEMOCRACY

Dr. H.M. Jain

The two outstanding leaders of the Indian national movement were Mahatma Gandhi and Jawahar Lal Nehru. If it was Gandhiji who turned the Congress into a mass movement, it was Nehru who instilled into it an ideology and gave it a direction and a purpose. Nehru was destined to mould the shape of free India during the first 17 years (1947-1964) and this period will be remembered after his name. He was the Prime Minister, the Foreign Minister and the Chairman of the Planning Commission. Besides these key positions in the Government, Nehru was also for most part the President of the ruling (Congress) party. Many scholars have criticised Nehru for combining in his person the posts of the party President and the Prime Minister and cited this as evidence of undemocratic trait in Nehru's character. But this is taking too literal and technical a view of democracy. The truth is that Nehru voiced the deepest urges and aspirations of the people and he wanted to actualise them through the instrumentality of the party and the Government and this is why he received full support from the party and the people in his policies and programmes, whether it be economic planning or non-alignment in foreign affairs. It is somewhat a tribute to Nehru's genius that both planning and non alignment have stood the test of time and have become non-variables in India's economy and foreign policy respectively.

The first and lasting contribution of Nehru to the making of modern India is the Constitution itself in the framing of which Nehru played a leading role. The Constitution embodies the highest, the noblest and the finest of his dreams. It contains his vision of the free Republic of India. It is the vision which he had longed for during the days of freedom struggle. Nehru was the moving spirit of the Constituent Assembly. He was its most authentic spokesman and its ideologue.

As Granville Austin wrote, "Nehru brought to the Assembly the mind of a humanist and wide reading in political theory. He was the Assembly's idealist. He and Azad possessed its most speculative minds. Nehru frequently approached problems from a theoretical starting point, but the theories had to meet the test of facts: he was rarely, if ever, doctrinaire". Austin further writes, "Nehru, Patel, Prasad, and Azad, in fact constituted an oligarchy within the Assembly. Their honour was unquestioned, their wisdom hardly less so. In their god-like status they may have been feared, certainly they were loved. An assembly member expressed the belief prevalent in the nation that the Government rested "in the hands of those who were utterly incapable of doing any wrong to the people" (Brajeshwar Prasad). Such was the esteem in which Nehru was held by his partymen, colleagues, and the people alike. If he appeared to behave autocratically there was implicit in this behaviour the willing consent of the people.

The Objectives Resolution which Nehru moved in the Constituent Assembly on 13th December 1946 speaks of his high idealism and lofty vision which he wanted his countrymen to share. In the beauty of its language, in the eloquence of its narration and in the nobility of its thought, this Resolution is without parallel. It was Nehru's drafting. It was from this Resolution that the Preamble to the Constitution of India was adapted. This Preamble beautifully and succinctly sums up the aspirations of a long suppressed people and brings them close to the main currents of western civilization. This is what attracted the notice of the eminent scholar, Sir Earnest Barker, who reproduced it as an Introduction to his book, *Principles of Social and Political Theory*.

The Preamble of the Indian Constitution embodies those high principles of politics and society which Nehru had long cherished and which it was his dream should govern the free Republic of India. These principles may in brief be summarised as liberalism, secularism, democracy, socialism and internationalism. These principles underlie parts iii and iv of the Indian Constitution, spelling the Fundamental Rights of the people and the Directive Principles of State Policy respectively. It was Nehru's hope and endeavour that the free Republic of India should shape according to them. During his stewardship of the Republic for 17 years he strove hard for it. He was eager to see that people in India should enjoy those great and basic rights and freedoms which alone make life worth living. He had faith in the democratic process and full trust in the people. He made the ballot box the sovereign in India. This faith was vindicated in 1977 when Indira Gandhi was unseated from power by the electorate. Nehru saw to it that elections were free and fair, judiciary was impartial and independent, the press was not gagged, and political parties including the communists were under no restrictions or restraints. In this way Nehru firmly laid the foundations of the parliamentary system of government. He respected the opposition and their leaders, consulting them regularly on issues of public importance and accepted the electoral verdict, to the extent of allowing the communists to form the Government in Kerala in 1957. However the dismissal of this Government in July 1959 under the subterfuge of the provisions of Art. 356 raised question of constitutional propriety then, and continues to be cited against him as an instance of abuse of constitutional power. It is not certain as to what drove Nehru to this act which was apparently a constitutional outrage but the dismissal of the Government was fully justified by the subsequent electoral verdicts against the Communists.

Nehru fought relentlessly against the forces of communalism. Nothing caused him greater pain than the thought that Indian people should still shed blood in the name of religion. He firmly believed that the state should be neutral in regard to the religion of its people who should enjoy full freedom of conscience and liberty to practice, profess and propagate any religion. While the neighbouring countries of Pakistan, Bangladesh, Nepal and Ceylon have adopted the religion of the majority community as the state religion, India prides in her secularism. This is in no small measure due to Nehru's broad vision and catholicity. He regarded it as somewhat mediaeval that the state should identify itself with any particular religion.

Above all, Nehru realised that people in this country would little value freedom unless it brought them economic emancipation. He had a profound historical perspective. He was clear in his mind that economic power and wealth should not concentrate in a few hands or houses. He was an advocate of social control over the means of production, exchange and distribution. He saw the need of land reforms and abolition of zamindari. He had no doubt that in independent India the institution of private property should be strictly limited and controlled. Since his return from the Soviet Union in 1927 he had been the exponent of socialism in the Congress party. He had been much impressed by the changes in the Soviet Union following the October Revolution of 1917. He felt convinced that there was no alternative to socialist path for the countries in Asia, Africa and Latin America. These ideas found expression in the resolution adopted by the AICC at Karachi in 1931 in the form of an Economic Programme, which advocated, among other things, a fair deal to workers and peasants and nationalisation of key industries. However when the time came for cashing these promises on the eve of Constitution making of free India, Nehru found himself handicapped and helpless. The majority opinion in the Congress party was opposed to his socialist beliefs. The socialists had decided to boycott the Constituent Assembly. Nehru found himself the lone supporter of the socialist cause. Even so, he took in his own hands the task of formulating the draft provision of the Constitution dealing with the right to property. The draft which he made did not satisfy his conscience but he had to make compromise with the right reactionary elements within the Congress and the Constitution actually ended with giving the right to property a double baralled protection in the provisions of Art.31 and Art.19(1) (f). But Nehru was not disheartened. He bade his time and waited for the right moment to strike. Through constitutional amendments of Art.31, beginning from 1951, Nehru sought to push through the land legislation, abolition of zamindari, ceiling on landholdings, consolidation thereof etc. He even gave constitutional protection to measures of nationalisation without giving compensation at the market rate by pushing forth the Fourth Amendment. In this way Nehru sought to make the Constitution a fitting instrument for bringing in socialism by peaceful, constitutional and lawful means, without the necessity of a bloody revolution.

It was Nehru's firm belief that the answer to India's social and economic ills lay in socialism. He was profoundly influenced by the Soviet experiment though he abhorred its violence and regimentation. At heart he was a democrat. He sought to combine democracy and socialism in a single system and called it democratic socialism. He believed that democratic socialism should combine the best of both socialism and democracy. In practice, however, socialism gave way to democracy and democracy overpowered by vested interests has failed to "Prevent the concentration of wealth and means of production to the common detriment" or to ensure that "the ownership and control of the material resources of the community are so distributed as best to subserve the common good". The result is that Nehru's democratic socialism was in practice only a bourgeois democracy though a reforming and a liberal one. It must however be said to Nehru's credit that the states which have experimented with Marxian socialism, such as the USSR and China, have found it impossible to keep the democratic aspirations of the people in check for long. In the USSR the policies of *glasnost*

and perestroika spearheaded by Mikhail Gorbachev are evidence of tampering socialism with bourgeois democratic values and norms. In China, currently (May-June 1989) there is almost a state of civil war in which hundreds of thousands of students, boys and girls, have taken to the streets to fight for restoration of democracy, even though in the years following Mao's death, there had been gradually introduced in China under the leadership of Deng Xiao Ping a policy of De-Maoisation which had the effect of slowly diluting socialism with market economy, profit motive, foreign capital and know-how in the desire for modernisation and rapid growth.

With all his admiration for the Russian Revolution and Marxian socialism, Nehru was a liberal and an individualist in the western tradition. The individual was the centre and focus of his thought. He therefore opted for mixed economy wherein private enterprise will co-exist with Public Sector, the latter being poised to acquire strategic heights of the national economy. He also opted for planning in economy and the Planning Commission which was set up in 1950 under his chairmanship and the successive five year plans will ever remain a testimony to his economic farsightedness. The theory and practice of democratic planning has by now become the accepted technique in all free and developing nations and in no small measure the credit for it goes to Nehru. It is through planning in economy, rising public sector, public control and regulation of industries, land reforms, abolition of zamindari, land ceilings, consolidation of holdings, cooperative farming, community development and national extension services, and an extensive programme of social security and labour legislation that Nehru aimed to curb, cabin and confine the bourgeois, capitalist state so that it could be devotaled into the goal of democratic socialism.

It speaks of Nehru's vision and foresight that he never thought of abandoning human values for the sake of socialism. He was above everything else a humanist and a democrat, believing whole heartedly in the dictum of T.H. Green that the basis of the state was "will, not force". It is heartening to note that Nehru's ideas have been fully vindicated by the growth in western Europe of the philosophical movement called Euro-Communism and rise of Existentialism sponsored by such thinkers as Sartre, Camus, Jaspers and Kierkegaard. It has further been re-inforced by the contemporary developments in the Soviet Union and the People's Republic of China. It may be noted that the Deng reforms in China, aiming at De-Maoisation, were nothing else than slow injection of bourgeois liberal capitalist principles in Chinese economy. The current revolt by Chinese students (May-June 1989) in Beijing and other towns is really speaking a protest against the evils of corruption, inefficiency and nepotism that have already invaded the Chinese economy, society and politics during the brief period that China has toyed with Deng reforms, abandoning the Maoist orthodoxy.

Nehru was essentially a man of peace. He clearly saw that world peace was indispensable for India's progress and economic development. More than that, he regarded war as something wrong in itself. It was a crime against humanity. It was a sign of barbarism. It was a failure of civilization. He fought hard to preserve peace in the world. During the last days of his life the world came to look upon him

as the messiah of peace. Nehru and peace almost became convertible words. He propounded five principles (Panchsheel) of international behaviour. He believed that nations should pledge themselves to disarmament, peaceful settlement of international disputes and disbandment of all military blocs. He kept aloof from all military alignments and introduced in world politics the concept of non alignment. Thanks to Nehru non alignment is today the prevailing creed of a large majority of Afro Asian states and has taken on the dimensions of a world wide movement, the Non Alignment Movement, or NAM.

Nehru could not take firm action against wrong doers, delinquents, erratics, and misfits. That was not due to weakness in his character, but mainly due to peculiarities of the democratic process. At critical moments Nehru was seen compromising with his adversaries. Perhaps he was too good himself to see vile or craft in others. This is why he hastened to appeal to the United Nations against the tribal invaders from Pakistan in Kashmir, believing in the mechanism of the United Nations to do justice and punish the aggressor. He agreed to cease fire in Kashmir even though half of that state was under Pakistani occupation, believing that the United Nations will see to it that the aggression is vacated. If he so wanted he could have exploited the difficulties in which King Tribhuvan of Nepal found himself in 1950, but that was not in his nature.

Bargaining was for him out of question. This is why he did not ally the question of Sino Indian boundaries with that of Tibet. At home, he failed to put down the reactionaries within the party. This is why the apple cart of socialism which he drove did not seem to make much headway. He suffered colleagues in the Cabinet whom he knew were corrupt, inefficient, and incompetent. He could not gear even his ambassadors abroad to his own line of thought. He came to believe indeed that corruption was inevitable in democracy.

The truth is that Nehru was always bubbling with high and brilliant ideas and had boundless passion for the welfare of the people. But he did not at times know how to realise them. His greatness lay in seizing upon the right end. His misfortune was that when the time came for translating them into action he could not withstand opposition. He could not push his ideas to their logical conclusion. He would very often yield to pressures and was prone to make compromises of convenience. He was essentially a philosopher and a thinker. He was not a man of action. The tragedy of Nehru was that with a few exceptions his colleagues were not equal to him either in intellect or character, with the result that his plans and policies were carried out by those who did not really understand them, and what is worse, who did not believe in them. It is therefore hardly surprising that with the passing away of Nehru in 1964 his successors have slowly and steadily abandoned the principles of politics and economics with which the first Prime Minister of India identified himself.

NEHRU, PARLIAMENTARY DEMOCRACY AND THE JUDICIARY

Dr. R.C. Vyas

It is a tribute to the memory of Pandit Jawahar Lal Nehru to remember his contribution in the birth centenary year, for the creation and growth of parliamentary system of government and a free, fair and independent judiciary under the Constitution

PRE-REQUISITES

There are certain pre-requisites for the working of a parliamentary system. To quote from the Report of Joint Committee of Parliament on Indian Constitutional Reform (1934):

"Parliamentary Government... works by interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy rather than by sectional interests; and finally, the existence of a mobile body of political opinion owing no permanent allegiance to any party and therefore able, by its instinctive reaction against extravagant movements on one side or other, to keep the vessel on an even keel"

If the aforesaid pre-requisites do not exist or if any one of the links is weak, the working of parliamentary system suffers to that extent. An appreciation of these pre-requisites assume significance in the backdrop of surcharged political atmosphere in the country. The framers of our Constitution adopted the British model of government by a cabinet, that is an executive responsible to and removable by the legislature.

The working of the parliamentary system of government, during the last four decades, brought political stability and socio-economic growth not only to the country's needs, but also endowed the entire South Asian region with a sense of confidence and pride in the working of the institutions, involved in the system.

PARLIAMENTARY VERSUS PRESIDENTIAL SYSTEM

Nehru strongly pleaded for a parliamentary system in preference to the presidential system of the U.S.A. or the French system. The system of parliamentary form of government was adopted in Nehru's words, "not only because to some extent we had always thought on those line previously, but because we thought it

was in keeping with our own old traditions also".¹ According to him most perfect constitutions have been upset because they lacked reality, because they lacked dealing with the real problems of the day. Citing the example that the Constitution of the Weimar Republic - the German Constitution, was perfect in wording, phraseology, balance and adjustment yet the whole Constitution, lock, stock, and barrel - vanished into the dustbin of history. The Constitution of the Republic of Spain was magnificent. It went so far as to say that it would not go to war with any country or make treaty with any foreign country unless the League of Nations of the day permitted it to do so or agreed to its doing so. It was a Constitution of fine ideals. Yet these fine ideals are spread over the various corners of the world and that the Constitution has no place in Spain.² The Constitution of the Fifth French Republic was condemned as being "obscure and ill ordered". Parliamentary system was Nehru's choice because it is flexible, it could provide effective leadership in emergencies; it ensures harmony between the executive and legislative and finally unlike the U.S. system it gives more responsibility.

The assessment of the responsibility of the executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, resolutions, noconfidence motions, and debates on addresses. Periodic assessment is done by the electorate at the time of elections which may take place every five years or earlier. Nehru considered daily assessment of responsibility necessary in a country like India.

A clear description of the difference between the presidential system and the cabinet system in Baghot's *The English Constitution* (Introduction to 1928 edition) indicates why the Constituent Assembly in its wisdom preferred parliamentary system:

" Under the Presidential System the effective head of the national administration is elected for a fixed term. He is practically irremovable. Even if he is proved to be inefficient, even if he becomes unpopular, even if his policy is unacceptable to his countrymen, he and his methods must be endured until the moment comes for a new election."

" He is aided by Ministers, who, however able and distinguished have no independent political status, have probably had no Congressional (i.e. parliamentary) training, and are by law precluded from obtaining any during their term of office."

" Under the cabinet system everything is different. The head of the administration, commonly called the Prime Minister (though he has no statutory position), is selected for the place on the ground that he is the statesman best qualified to secure majority in the House of Commons. He retains it only so long as that support is forthcoming; he is the head of his party. He must be a member of one or the other of the two Houses of Parliament; and he must be competent to lead the House to which he belongs. While the Cabinet Minister of a President are merely his officials, the Prime Minister is *primus inter pares* in a Cabinet of which every member must, like himself, have had some parliamentary experience and

gained some parliamentary reputation. The President's powers are defined by the Constitution and for their exercise within the law he is responsible to no man. The Prime Minister and his Cabinet, on the other hand, are restrained by no written Constitution: but they are faced by critics and rivals whose position, though entirely unofficial, is as constitutional as their own; they are subject to perpetual stream of unfriendly questions, to which they must make public response, and they may at any moment be dismissed from power by a hostile vote".

CONSTITUTION AS AN INSTRUMENT OF SOCIAL CHANGE

Constitution was relevant to Nehru as an instrument of socio-economic change. He told the Constituent Assembly that its first task was to "free India through a new Constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity" "I trust", Nehru said, "the Constitution itself will lead us to the real freedom we have clamoured for and the real freedom will bring food to our starving people, clothing for them, housing for them and all manner of opportunities of progress".¹ And, what Nehru said in the Constituent Assembly remains as relevant today as it was then:

"At present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper Constitution will become useless and purposeless."²

The Objectives Resolution which later took the form of Preamble to the Constitution was Nehru's handiwork and laid down the basic ideals or the fundamental principles on which the entire edifice of the Constitution was to be built. To quote: "... it is our firm and solemn resolve to have an independent sovereign republic. India is bound to be sovereign, it is bound to be independent and it is bound to be republic."³ "...Sovereignty belongs to the people. Final decision should rest with the people of the states. This is a tremendous responsibility: Freedom brings responsibility, there can be no freedom without responsibility. Therefore, the people have to be conscious of the tremendous burden of responsibility which freedom has brought: the discipline of freedom and the organised way of working freedom".⁴ The Preamble was adopted by the Constituent Assembly after the entire Constitution had been adopted. It secures to all citizens, justice, liberty and equality implemented through various provisions of the Constitution:

Nehru did not subscribe to the philosophy of the Constitution being sacrosanct and a static document. In his view it does not bind succeeding generations. "It is a vehicle of people's aspirations - solid and lasting but not rigid. If it is rigid and loses touch with the people's life and aspirations, it becomes empty and drags the people down."⁵

1. C.A. Deb. Vol. II P. 316-17. 2. Ibid. 322. 3. Moving the Objectives Resolution. C.A. Deb. Vol. I pp. 57-65. 4. C.A. Deb. Vol. VII pp. 316-23. 5. C.A. Deb. Vol. VII p. 318

With the diverse linguistic and socio-religious groups of Indian polity and the traumatic experience of partition, there was near unanimity in the Constituent Assembly in regard to the need of a strong Union to enable it to maintain and protect the unity and integrity of the country. In the federal structure of our Constitution, the proponents of the proposal to assign the residuary powers to the units drew their inspiration from the Constitution of the U.S.A. and of the Commonwealth of Australia. The Constitution of these countries gave enumerated powers to the National Government and the undistributed residuum to the units.

In our Constitution, the central theme of current criticism levelled against the working of the Union - State legislative relation is "over centralisation". Rajmanner Committee appointed as far back as 1969 by the Government of Tamil Nadu reported in 1971 that the whole scheme of central state relations under the Constitution was such as to negate the federal principle and recommended the manner and the areas in which the powers of the states may be increased to ensure them complete autonomy.

Prof. P.K. Tripathi an eminent academic lawyer of Delhi Law School has expressed the view that Indian federalism is illusory since there is not a single item in the scheme of distribution of legislative powers on which federal government, with impunity, may not encroach upon items allocated to regional governments.¹ In *West Bengal V. Union of India*², the Supreme Court has taken the view that the unitary features in our Constitution are so many that the federal features almost disappear. In *Rajasthan V. Union*³, Beg C. J. said:

"In a sense, therefore, the Indian Union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically co-ordinated, and socially, intellectually, and spiritually uplifted."

Mr. H.M. Seervai does not agree with the view expressed in the Supreme Court judgment. In his view Indian Constitution is federal and it is no objection that the states were not independent before they became parts of a Federation. A federal situation existed, first, when the British Parliament adopted a federal solution in the Government of India Act, 1935 and secondly, when the Constituent Assembly adopted a federal solution in our Constitution. Distribution of legislative power is an essential and a dominant feature of federalism and our Constitution possesses that feature.⁴

Sarkaria Commission (1988), in its Report recommended that residuary powers of legislation in regard to taxation matters should remain with Parliament, while the residuary field other than taxation should be placed on the Concurrent List. And the Constitution may be suitably amended to give effect to this recommendation.

1. India Federalism: Illusory or Reality, Bar Council Rev. 2. AIR 1977 S C 1361.
3. AIR 1977 S C 1382. 4. Constitutional Law of India 2nd Ed. Vol. III p.1607-8

PARLIAMENT - A UNIQUE POSITION

The founding fathers of Indian Constitution accorded a unique position to our Parliament. It is both, a Constituent Assembly and an ordinary law making body. It is picturesquely described as a "Constituent Assembly in perpetual session".¹ When it functions under Article 368, it assumes the character of a Constituent Assembly but when it exercises function under Articles 245 to 255 it acts as an ordinary law making body. And the distinction between the laws passed by the two lies in the criterion of validity. An ordinary law depends on a higher law for establishing its validity. A provision of the Constitution does not so depend for validity on another law and generates its own validity. It is valid because it exists. The validity of the Constitution lies in the social fact of its acceptance by the community. The constitutional rules are themselves the basic rules of the legal system. The Constitution prevails over any other form of law not because of any provision to that effect either in the Constitution or else where but because of the underlying assumption to that effect by the community.²

*.... Constitutional law is the source of all legal validity and is itself always valid. Ordinary law on the other hand must derive its validity from a higher legal source, which is ultimately the Constitution. Law in Art. 13(2) of the Constitution could only mean that law which needs validity from a higher source and which can and ought to be regarded invalid when it comes in conflict with higher law. It cannot possibly include a law which is self validating and which is never invalid. The definition of law in Art.13 enumerates more or less exhaustively all forms of law which need validation from higher source and which are invalid when they are in conflict with the Constitution. The definition does not mention constitutional amendment. It is because an amendment being the Constitution itself can never be invalid. An amendment is made if the procedure is complied with. Once the procedure is complied with it is a part of the Constitution".³

JUDICIARY: A PRE-EMINENT POSITION

The framers of our Constitution in their wisdom accorded pre-eminent position to the Supreme Court, the highest judicial organ of the government, and ensured independence of judiciary. The Supreme Court of India has the most extensive jurisdiction conferred upon it, unparalleled in any federal system of the world.

1. Prof. P.K. Tripathi, Some Insights into Fundamental Rights, University of Bombay (1972) Ch. 1,

Golaknath: A Critique, p.17

2. Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

3. ibid. para 773

The Supreme Court is the highest court of appeal from the decisions of the High Court in civil and criminal matters.¹ It is a court of exclusive original jurisdiction in disputes between the Union and the states or a dispute between the Union and the states on the one side and one or more states on the other or a dispute between one more states inter se.² It has extensive writ jurisdiction for the enforcement of fundamental rights.³ It has advisory or consultative jurisdiction which is partly discretionary and partly mandatory.⁴ And finally, it has power to grant special leave to appeal "from any judgment decree, determination, sentence, or order in any cause or matter passed or made by any court or tribunal in the territory of India."⁵ In contrast to the United States Supreme Court, which is almost exclusively a constitutional court, the Supreme Court of India is the final court of appeal in all matters.

Nehru firmly pleaded for an independent and powerful judiciary as the fundamental basis of our Constitution, at the same time laying down of political, social, and economic laws for the country is entirely for Parliament. To quote:

".... There is no question of challenging, modifying, limiting or minimising the authority of the judiciary in this country. That should be understood, and therefore, what the judiciary, the High Courts or the Supreme Court, decide we inevitably accept, and we act upon it, that thing. On the other side, if I may say so with all respect to the judiciary, they do not decide about high political, social or economic or other questions. It is for Parliament to decide. It may be, and it often is, that in interpreting a law of Parliament, or in considering how far that law is in their opinion in conformity with the provisions of the Constitution, they may indirectly decide on social and economic and like matters. In some countries, great countries, the Supreme Court has by its interpretation widened the strict provisions of the Constitution; it has actually widened them. It may restrict them too. That is true. But the ultimate authority to lay down what political, social or economic laws we should have, is Parliament and Parliament alone; it is not the function of the judiciary to do that".⁶

Interpretation of the Constitution is the right and privilege of the highest court of the land but at the same time it is the duty and authority of the legislature to change the Constitution and to give effect to its intentions.

To quote Nehru:

"..... so far as interpretation of the Constitution is concerned, it is the right and privilege of the highest courts of the land to do it, and it is not for us as individuals or even as Government to challenge that right. The judiciary must necessarily stand above, shall I say, political conflicts and the like, or political interpretations. They have to interpret it in the light of the law with such light as they can give to it. We respect that and we must obey that. But having followed that interpretation, it becomes our business as Parliament to see whether the purpose we aimed at

1. Arts 133 & 134,
5. Art 136

2. Art 131,
6. L.S. Deb. Vol. II, Col. 1947-48

3. Art 32

4. Art 143

is fulfilled. Because if it is not fulfilled, then the will of the community does not take effect. And if the will of the community ultimately does not take effect, then serious difficulties might arise at any time. And more so at a time like this when powerful and dynamic forces are at work; not merely in India, not merely in Asia, but all over the world, when changes take place and when we cannot think in terms of anything being static or unchanging. Therefore, fully respecting what the courts of the land have laid down and obeying their decisions, nevertheless it becomes our duty to see whether the Constitution so interpreted was rightly framed and whether it is desirable to change it here and there so as to give effect to what really, in our opinion, was intended or should be intended."¹

Nehru was fully aware that conventions of the Constitution take a generation or two to develop while the Parliament cannot wait to deal with the immediate problems and situations. Nehru said:

"I have no doubt that in course of time with the help of the highest courts in the land we would develop conventions eventually which would widen the authority of the Legislature to deal with them as the United States of America has done. The unfortunate part is that we cannot wait for a generation or two for these conventions etc. to develop. We have to deal with the situation today and tomorrow, this year and the next year. Therefore the safest way is not to pass a legislation in a hurry but to enable Parliament to have authority to deal with such matters."²

JUDICIAL REVIEW

The lessons of American experience of judicial review were not lost on the framers of our Constitution, who wished to avoid the grave consequences which flowed from an abuse of judicial review in that country.

1. Speaking on the Constitution (First Amendment) Bill, 1951, Parl. Deb., Vol. XII-XIII; Col. 8816-18. 2. Ibid. 9792-93.

President Franklin D. Roosevelt was elected as President of the United States in the darkest period of the economic crisis, the country was passing through owing to the great world wide depression. In order to deal with the grim situation he initiated a large number of measures which came to be called "the New Deal". The court struck down, the Railroad Retirement Act, 1934 providing for a compulsory pension scheme for railroad employees; the Frazier Lemka Act providing for the relief of farm debts.; the National Industrial Recovery Act empowering the President to approve codes of fair competition for a trade or industry; National Recovery Act for excessive delegation of legislative power and as violative of the Commerce Clause; Agricultural Adjustment Act of 1933 and a number of other enactments passed by the Congress in order to extricate the agriculture, industry and labour from economic chaos in which the whole country was plunged. In *U.S. v. Butler*¹ Mr. Justice Stone in a classic dissent said:

"While unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self restraint. For the removal of unwise laws from the statute book appeal lies not to the Courts but should go to the ballot and to the process of democratic government. Courts are not the only agency of the government that must be assumed to have capacity to govern".

Subsequently, in a number of decisions even the United States Supreme Court regarded the use of "due process clause" as a judicial usurpation of legislative power.

A distinguished author of American Constitution Prof. Schwartz, who is an ardent admirer of the Supreme Court has thus stated the position regarding judicial review:

"It should not be forgotten that, no matter how we may gloss over it, judicial review is basically undemocratic institution. Through the exercise of its review power the Supreme Court may enable the will even of the great majority of people to be frustrated..... If the democratic bases of our system are to be respected, the review power of the one non-democratic organ in our government should be exercised with self-restraint".²

In view of the American experience the founding fathers of our Constitution deliberately provided for detailed restrictions on the exercise of fundamental rights and also replacement of "due process of law" with "according to procedure established by law" in Art.21 as it now stands.

It has never been a formidable problem for the court to decide what constituted "reasonable restrictions". The phrase had already acquired definite connotation in Anglo-American jurisprudence.

1. *U.S. v. Butler* (1936) 297 U.S. 306

2. Schwartz, A Basic History of the U.S. Supreme Court p.87

In *State of Madras v V.G. Row*¹, Sastri C.J. said:

"... The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the line to limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for the people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the restrictions, considered them to be reasonable".

In Gopalan's case,² strong emotional pleas were made to equate "procedure established by law" with the "due process of law" as understood in the United States. However, the judges trained in the high traditions of the British system of jurisprudence refused to interpret "procedure established by law" to mean "due process of law" which would have introduced through backdoor a concept which the framers of our Constitution deliberately rejected. They firmly took the position that the court "will not strengthen, but only derogate from its position, if it seems to do anything but declare the law". Be that as it may, the judicial activists of the Bench and the Bar spared no occasion to condemn Gopalan's case, but no one can predict where the ball set rolling in *Maneka Gandhi*³ will now stop. One wonders what line demarcates the judges who want to be reformist preachers from those who are shapers of policy?

The founding fathers of our Constitution did not intend to create the courts to act as a kind of Third House of correction or revising chamber. However the fears came true in respect of property rights guaranteed under the Constitution and the agrarian reforms. To quote Nehru extempore:

"..... within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in judgment over the sovereign will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, ultimately, the whole Constitution is a creature of Parliament. But we must respect the judiciary, the Supreme Court and other High Courts in the land. As wise people, their duty it is to see that in moment of passion, in a moment of excitement, even the representatives do not go wrong; they might. In the detached atmosphere of the

1. 1952 S.C.R. 597 at p.605-6 2. AIR 1950 SC 27 3. AIR 1978 SC 597

courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term. ultimately the legislature must be supreme and must not be interfered with by the courts of law in such measures of social reform. Otherwise, you will have strange procedures adopted.... one is the method of changing the Constitution. The other is that the executive, which is the appointing authority, begins to appoint the judges of its own liking for getting decisions in its own favour, but that is not a very good method".

INDEPENDENCE OF JUDICIARY

An independent judiciary is a cornerstone of parliamentary form of government with federal Constitution, maintaining the delicate scheme of distribution of powers between the centre and the units and preserving certain basic rights of the people. A society under Rule of Law presupposes, firstly, the existence of certain norms of judicial process and procedure and secondly, institutions which are in a position to administer them and to exercise independent judgment. A judicial institution is supposed to exercise the best of independent judgment. Independence of judiciary "is one of the deepest gulfs between constitutional government and all forms of totalitarian rule"

Sir Kenneth Robert Wray has suggested a four-fold answer to the question how independence of judiciary is preserved.¹

"First, by appropriate machinery for appointment of judges; secondly, by giving judges security of tenure of office; thirdly, by such general acceptance of, and respect for, judicial independence that the members of the judiciary can rest assured that it is not likely to be challenged and has not continually to be fought for; fourthly, by the terms of service of members of the judiciary".

The framers of our Constitution have provided for a coherent scheme aimed at ensuring independence of judiciary.

(1) Appointment of Judges:

As to the method of appointment, Art. 124(2) provides, that a judge of the Supreme Court shall be appointed by the President after consultation with such of the judges of the Supreme Court as he may deem necessary. In case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted, such consultation is obligatory. So far as the Chief Justice is concerned, the practice so far has been to appoint the most senior member of the Supreme Court as Chief Justice, although it is not required by the Constitution. However, this practice was not followed in 1973 on retirement of Chief Justice Mr. S.M. Sikri. Mr. Justice A.N. Ray was appointed the Chief Justice superseding three of his senior colleagues, Mr. Justice J.M. Shelat, Mr. Justice

1. Changing Law in Developing Countries, J.N.D. Anderson, (1963) p.63.

A.N. Grover and Mr. Justice K.S. Hedge, who in protest resigned. Reliance for departure from the practice was placed on the Fourteenth Report (1958) of the Law Commission of India. The Report said:

"For the performance of the duties of Chief Justice of India, there is needed, not only a judge of ability and experience but also a competent administrator, capable of handling complex matters that may arise from time to time, shrewd judge of men and personalities and above all, a person of sturdy independence and towering personality who could on the occasion arising be a watchdog of the independence of judiciary..... It is therefore necessary to set a healthy convention that the appointment to the offices of Chief Justices rests on special considerations and does not as a matter of course go to the senior most puisne judge. If such convention was established it would be no reflection on the senior most puisne judge if he be not appointed to the office of Chief Justice."

The Law Commission said that regional and communal influences, and interference of the executive, had procured appointments to the Supreme Court and that the best talent had not been mobilised.

As to the appointments to the High Courts, the Law Commission drew a grim picture for it and said that merit alone as the basis for selection to the High Court judiciary seems to have been completely over-looked. The Chief Justice Kania. In his evidence before the Law Commission lamented that the voice of the Chief Justices did not carry a great weight as it used to, and that the recommendation of the Chief Justice had been ignored. To quote:

"This unedifying prospect had brought about some demoralisation in the minds of the Chief Justices and therefore before making their recommendations they ascertain the views of the Chief Minister so as to be sure that recommendation to be made by him, the Chief Justice, will eventually go through, and he will be spared the discomfiture and loss of prestige in having his nomination unceremoniously turned down".

In view of lack of empirical data, it may be difficult to assess the problem in all its magnitude and dimension, facing the subordinate judiciary. However, during the last four decades, the pattern of criminal litigation has substantially changed. The emphasis now has shifted from the conventional offences like theft, robbery or assault to socio-economic and white collar crimes like violation of foreign exchange rules, smuggling of gold, and the corruption involved in procuring contracts with public authorities, in which the stakes are very high. While these cases are attended to by Magistrates and Sessions Judges the remuneration paid for the services is shockingly low. This encouraged judicial corruption at all levels. A handsomely paid subordinate judicial service will attract the best talents, who will discharge the functions fearlessly, efficiently and expeditiously.

The framers of our Constitution avoided the power of judicial appointments being exclusively rested with the executive, legislature or judiciary. It strikes a balance by making provision for "consultation" and co-operation between judiciary and the authority making appointments. In this respect it modifies the British system, where appointments of High Court Judges are made by the Queen on the advice of the Lord Chancellor, who is identified politically with the party in power. The Lord Chief Justice, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, the Lord Justices and the Lord of Appeal in ordinary are appointed by the Queen on the advice of the Prime Minister.

In the United States the President nominates a Judge or Chief Justice of the Supreme Court. Appointments to the federal judiciary have been made on party lines and President's programme. There is the further requirement that the Senate must confirm the President's nomination of a Judge or Chief Justice. On several occasions Senate rejected the nominations made by the President.

A distinguished author of Constitutional and Administrative Law, Prof. S.A. de Smith has warned that "the principle of distrusting the executive may be carried too far and that it would be wrong for the Government of the day to be denied any effective voice in judicial appointments".¹

(2) Security of tenure:

The security of office requires harmonising differing principles of non-interference in judicial functions and at the same time providing for removal on sufficient grounds. The tenure of office of a Supreme Court or a High Court Judge is not held at "pleasure" under the Constitution. The framers of the Constitution provided that the office of a judge terminates only (a) on attaining the age of sixty five years or sixty-two years as the case may be (b) on resigning his office by writing under his hand addressed to the President or (c) by an order of the President passed after an address by each House of Parliament supported by a majority of not less than two thirds of the members present and voting.²

Nehru was for a higher age limit for the retirement of judges. He was of the view that with regard to judges we cannot proceed on the lines of normal administrative services. To quote Nehru:³

"...The type of work that a judge does is some what different. It is, in a sense, less physically tiring....he does not have to face storm and fury so much as an administrative officer might have to. But at the same time it is highly responsible work, and in all countries, so far as I know age limits for judges are far higher. In fact there are none at all. In America the greatest judge that I believe the Supreme Court produced went on functioning till the age of ninety two for thirty or forty years running. If you go to the Privy Council of England... patriarchs sitting there with long flowing beards; and their age might had been anything up to a hundred years, so far as looks were concerned. ...When you need the best men, obviously age cannot be criterion... the point is if an old man has experience and is thoroughly fit, mentally and otherwise, then it is unfortunate and it is a waste from the states' point

1. J.N.D. Anderson, *ibid* p.85. 2. Arts. 124 & 217. 3. C.A. Deb., Vol VIII pp.246-47

of view to push him aside, or force him to be pushed aside, and put in some one in his place who has neither the experience nor the talent, perhaps.... It is important that these judges should be not only first rate but should be acknowledged to be first-rate in the country, and of the highest integrity, if necessary, people who can stand up against the executive government, and whoever may come in their way..... So, I beg the House to accept the age limit of sixty five for Federal Court Judges that has been suggested."

(3) Terms of service:

The framers of our Constitution, provided for the special terms of service, so as to secure the dignity and responsibility of the high office, and to compensate for the loss which the obligations of the high office imposes.

The salaries of the judges of the Supreme Court and the High Courts are fixed by the Constitution in the Second Schedule and cannot be varied to his disadvantage¹ except during the proclamation of emergency, when the President may issue directions for the reduction of salaries and allowances.² The Parliament is empowered to make laws from time to time for the privileges, allowances, leave and pension of the judges, but after the appointment the terms of service cannot be varied to his disadvantage.³ The salaries, allowances, leave and pension of the judges of the Supreme Court are charged on the Consolidated Fund of India and are not subject to vote of Parliament.⁴ Similarly, appointment of officers and servants of the Supreme Court are made by the Chief Justice or under his directions.

The framers of our Constitution in their wisdom debarred judges of the Supreme Court and the High Courts from pleading or acting before any court or authority in India. The judge may easily be tempted to behave on the bench so as to secure clients for himself on retirement. However, in view of inadequate judicial salaries, by an amendment of Art.220 of the Constitution, a permanent High Court judge is permitted to plead or act before the Supreme Court and any High Court, other than that of which he had been a judge. The amendment, it is submitted is a retrograde measure which will pervert the course of justice and obstruct independence of judiciary. The Law Commission disapproved the amendment and recommended that the Constitution should be amended and the bar against practice reintroduced. The reasons can best be given in the words of the Commission:

"To allow the judges to practice either in the courts or by way of giving advice is an extremely retrograde step gravely affecting the independence of the judges... There are big clients appearing before you as a judge and you contemplate them as your future clients and the fact that you are shut out from going to court or arguing has not prevented opinions being given charging Rs.10,000 or Rs.15,000 or even Rs.20,000. But if you give him (the judge) substantial pension and made his tenure otherwise satisfactory, there is no temptation for him to practise".⁵

1. Art. 125 2. Art. 360 (4) (b) 3. Art. 125 (2) 4. Art. 112 (3)

5. Law Commission of India, XIV Report, Vol. 1, p p. 87-88

The practice of appointing the Chief Justice of a state High Court to act as a temporary Governor in that state in the vacancy caused by death, disablement or resignation in the high office, is opposed to the concept of independence of judiciary. Recent developments in the functions of the Governor to dismiss ministries and to invite a party or a group of parties to form a ministry, makes it imperative that a Chief Justice should not be appointed as Governor, so as to avoid him being dragged into political controversy. It is submitted that this provision should be deleted from the President (Discharge of Functions) Act, 1969 so that no finger could be raised against the Chief Justices of political bias. No greater injury could be inflicted on independence of judiciary than to offer political appointment to judges when they are on the Bench or even after retirement.

The Law Commission was also called upon to consider whether the power to transfer a judge from one state to another could result in breaking up social and personal contacts of the judge including his friendship with members of the Bar. The Law Commission noted in its Report the evidence given by witnesses that some judges did not maintain the detachment expected of them; that private members of Bar gave dinners and lunches in public places to judges in order to create impression that the judges were very friendly with them; that judges were too free in their contacts with State Ministers, and a transferable cadre of judges would breakup these undesirable social contacts of a judge.¹ However the Commission did not see much force in the view that a transferable cadre would have the effect of breaking up social contacts of a judge, for, :

"Even persons appointed to the High Court Bench from outside would in course of a few months form connections in the state to which they are appointed though perhaps not to the same extent. It would, we think, be unjust to treat the members of the Bar or the service appointed to the High Court judiciary as suspects who need to be moved from place to place to keep them to correct standards".²

In Judges Transfer Case,³ the validity of a circular letter asking the Chief Ministers of various states to get the advance consent of sitting additional judges and future incumbents to the post for being appointed as permanent judges outside their state was challenged. The Supreme Court by a 4:3 majority held, that the circular letter was valid and it did not affect the independence of judiciary.

It may be asked if a judge who stands in election for any political office including President and Vice President of India, violates independence of judiciary. This is not a hypothetical question, because Mr. Justice Subba Rao, the then Chief Justice of India, having resigned judgeship at short notice rushed to stand for the office of President of India, with avowed view to give effect to his socio-economic philosophy propounded in Golaknath.⁴ It being a political office, a keen contest between the candidates, professing different socio-political-economic ideology is inevitable. Independence of judiciary is bound to be shaken if a judge becomes a participant in such a political propaganda.

1. Law Commission of India, XIV Report, Vol. 1, pp 98-110 2. *Ibid.* p.99

3. *S.P. Gupta v. President of India*, AIR 1982 SC 149

4. *Golaknath v. State of Punjab*, AIR 1965 SC 845

Independence of judiciary is also affected by subtle forms of corruption such as showing favours to a litigant in order to improve chances of success of a near relative or friend of the judge. Exposure for such practices is a formidable task for the litigant in the face of apprehension of contempt of court proceedings, risk of ruining his own case and the expenses and time involved in the whole process.

(4) Respect for judicial independence:

A general respect and faith in the minds of the people for judiciary, is a sine qua non of judicial independence. It is secured by certain provisions of the Constitution. Art.129 declares that the Supreme Court shall be a Court of Record, and shall have power to commit for contempt of itself. Art. 121 provides that "No discussion shall take place in Parliament with respect to the conduct of any Supreme Court or of a High Court judge in the discharge of his duties except upon a motion presenting an address to the President praying for the removal of the judge as hereinafter provided". The immunity is expressed in unqualified and absolute terms and extends to judicial as well as administrative duties of a judge. If therefore a judge in the discharge of his duties commits contempt of the House the only remedy against him is to move a motion for presenting an address to the President praying for the removal of the judge.

Gajendragadkar C.J. said:¹

"The existence of a fearless and independent judiciary can be said to be the very basic foundation of the constitutional structure in India, and so, it would be idle...to contend that the absolute prohibition prescribed by Art.211 should be read as merely directory and should be allowed to be reduced to meaningless declaration by permitting the House to take action against judge in respect of his conduct in the discharge of judicial duties"

Nehru had admiration, respect and faith in the working of parliamentary democracy and the institutions involved in it. He said: ²

".... the fundamental basis of this Constitution and our general practice in this country is to have an independent and powerful judiciary. We have respected that, and I hope we will continue to respect it. We have to trust Parliament in certain things and we have to trust the judiciary, and ultimately you have to trust yourself and the people. If our people or if we as Parliament do not function as we ought to, or go to pieces -- if I may use a colloquialism -- then no amount of Constitution will save us, no provision or anything."

1. *In re under Article 142*. AIR 1965 SC 745 p. 770.

2. *Parl. Deb.*, Vol. XII-XIII, 8616-18.

ABOUT THE INSTITUTE

The Institute of Judicial Training and Research was established in April 1987 with the object of imparting training to the judicial officers, the law officers of the State and also for the officers in the other departments.

TRAINING:

The Institute conducts induction training for the judicial officers at the time of their joining the service. It also imparts training to the judicial officers at each of the levels, especially when the officer is likely to be promoted to the next level.

It was discovered that the judicial officers needed training in certain specific areas about which no training had been imparted to them earlier. For this purpose some thematic training programmes were organised in the Institute.

They relate to:-

- (1) Financial and personnel management in the courts,
- (2) Use of standard Hindi in the courts,
- (3) Juvenile Justice with specific reference to sociological and psychological aspects,
- (4) Legislative drafting.

More thematic training programmes on Forensic Science and Administrative Law are contemplated. The training programme on legislative drafting was started in this country for the first time by this Institute. Draftsmen were sent to England for this training earlier. These programmes have been attended by participants from all the States and also from the Union Government.

The Institute has also conducted legal orientation programmes for senior members of other services. Two such programmes were conducted for the officers of the level of the Chief Engineers and above in U.P. State Electricity Board.

RESEARCH:

Research is an important component of training and development. The Government of Uttar Pradesh also established a Research Chair in the memory of late Pt. Govind Ballabh Pant in this Institute. The Institute has engaged itself in a number of research projects.

They are,

- (i) The sentencing in the cases of rape and food adulteration,
- (ii) Rationalisation of Bail Consideration,

- (iii) The causes of delay in civil cases, and
- (iv) Judicial System in Ancient India.

MATERIAL:

For each of its training programmes background material is prepared by the Institute for distribution amongst trainees. Brochures are also prepared on the subjects as are also useful for the officers in their day to day work. More than 100 such brochures have already been prepared and distributed by the Institute.

The Institute has also started preparing general reading material for the officers of the service. Three brochures have already been prepared and distributed.

PUBLICATION:

The Institute also publishes books to cater to the needs of the judicial officers. Fourteen books have already been published by the Institute. The list of the books is given at the end of this book.

LIBRARY:

- o It has more than fourteen thousand volumes. They include Halsburys Laws of England, Corpus Juris Secundum, All England Reports, American Law Reports, Canadian Law Reports & Canadian Supreme Court Reports in addition to a number of Indian Law Journals.
- o Books on law, history, culture, management, literature etc. are also available.
- o All leading newspapers are subscribed to.
- o All important news magazines & journals are made available.

FACULTY:

1.	Sri Jagdish Kumar Mathur	Director
2.	Sri Shiv Prasad Agarwal	Additional Director
3.	Sri Mukteswar Prasad	Joint Director
4.	Sri Ram Shiromani Singh	Joint Director
5.	Sri Virendra Kumar Dixit	Deputy Director
6.	Sri Vinod Kumar Singh	Deputy Director
7.	Sri Pratyush Kumar	Deputy Director
8.	Sri Surendra Nath Srivastava	Assistant Director