

## DIRECTOR'S NOTE

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**PROF. DR. I.P. MASSEY\***

India being a former British colony has always faced the taint of borrowing its Constitutional Law from common law. The Indian Constitution despite being the longest and the most detailed in the world is often accused to be un-Indian or insufficiently Indian. However, a study of our Constituent Assembly Debates proves otherwise. The makers of the Constitution, indulged in constitutional gardening, picking certain principles from around the world and ignoring the ones that did not suit the needs of India. A conscious choice of undertaking a comparative study of several Constitutions was made and then the principles and provisions were tailored for their use in India. We learned from both the success and failure of Constitutions across the world. I believe this laid down the foundation for India, to keep up with global advancements in constitutional law, through its comparative vision.

Dr. Ambedkar envisioned a living Constitution, which continued to adapt and change, with every generation, instead of being bound by an archaic understanding. While traditionally, this vital task was vested in the Parliament, the mantle shifted to the Courts in the later years. Through its decisions, the Courts have acted as the *sentinel qui vive*, which step in to protect the rights of the people, where other organs fail to do so. This has especially been true in the area of human rights, where the Courts have incorporated novel judicial tools for better redressal. Inspiration for these tools has often come from judicial decisions of Courts across the world. I believe, this comparative approach of the Courts, has kept the Indian

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Constitution alive, unlike its counterpart in several countries where it has undergone a complete overhaul. Therefore, as members of the legal fraternity, it is imperative on us, to study and appreciate the comparative stance the Courts of India have taken for years.

It was with this vision, that the Comparative Constitutional Law and Administrative Law Quarterly (**'CALQ'**) was established in 2013. The aim was to initiate academic discourse in the subject of Constitutional Law and Administrative Law and the developments therein, both domestic and global. I believe the journal has served its purpose well, with regular issues carrying contributions from leading practitioners and students alike. The issues have respectfully critiqued topical developments that impact the lives of the citizens.

CALQ was first started as an online journal, however, on the demand from our esteemed readers the Editorial Board has decided to make the Journal available in print also. Hence, the copy in your hands is the first printed copy of CALQ.

At the very outset, I would like to express my sincere gratitude to the members of the Editorial Board of the Journal i.e. Aiswarya Murali, Subarna Saha, Athira Sankar, Gagan Singh, Tamizhoviya IT, Soumya Dwivedi, Aditya Nair, Akhil Shandilya, Anmol Jain, Shreshtha Mathur, Aditya Jain, Sandhya Swaminathan, Sayak Bannerjee and Shreya Daggar. Without their hard work and dedication, this issue would not have been possible.

We also place on record our sincere gratitude to Prof. (Dr.) Poonam Saxena, Vice Chancellor and Chief Patron for her encouragement and guidance.

Any democratic Constitution besides being a transformative document also lays down the structure and values of governance on the basis of which the relationship of the people with the state is regulated. Survival of a constitutional democracy largely depends on sagacity of the people, political morality of the ruling class and the creativity of the judiciary. Dr. Ambedkar had rightly remarked while signing the Constitution, that *'However good a Constitution may be, it is sure to turn out bad because who are called to work on it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good, if those who are called to work it, happen to be a good lot.'*

In most of the democracies having a parliamentary system of governance, the judiciary assumes centrality. This is especially true for developing countries as separation of powers in such countries simply means independence of the judiciary. The judiciary assumes the role of an interpreter of the Constitution, enforcer of constitutional values and morality and protector of human rights of the people.

Though the Indian Constitution did not envisage a very active central role of the judiciary, yet, the judiciary assumed its present activist role, to accept the challenges thrown by a developing constitutional democracy in India. It is a fact that when other organs of the state are in disarray only the judiciary is moving forward, though, at times, haltingly. It will not be an exaggeration to say that if a constitutional democracy is active and kicking today, the credit goes to the constitutional judiciary.

In every constitutional crisis, including those which posed existential threat to its existence, the judiciary rose to the occasion and saved the Constitution. History showed us that whenever a single party government came to power, it either tried to pack the Court or influence its working. However, the judiciary, standing like a pillar, always acted as a break on this authoritarianism. The Court also warded off threats of tyranny of the majority, by acting as a counter-majoritarian force. It not only interpreted the Constitution progressively but also imaginatively shared the transformative passion of the Constitution for social change. For this purpose, the judiciary creatively deviated from originalism and textualism and moved towards living contextualism as a tool of interpretation of constitutional provisions, values and morality. Thus, the Apex Court 'did not merely recite the words of the Constitution, but also played its tune'.

The Apex Court has proved beyond doubt that it is a representative and responsible organ of the state. 'Representative' in the sense that it has been created by 'We, the People of India' through a Constitution which they have given to themselves and 'Responsible' in the sense that its survival depends on people's faith and trust in it.

However, it is rightly said that 'citadels never fall except from within'. Therefore, the judiciary must take care of certain problems which may appear to be of an existential nature. Such problems include rationalization of the collegium system for appointment of judges; Roster

Management; Post-retirement appointments; allowing its shoulder to the executive, to shoot; Involvement in governmental appointments which have political saliency. Certainly, the judiciary has the capacity and capability to deal with the 'self-coup and sabotage'.

In my opinion, the Apex Court has already committed a self-coup when it agreed to raise its strength to 31. The fact remains that meritocracy, excellence and commitment to constitutional values are virtues not evenly spread by the nature throughout the spectrum.

The Apex Court is considered the *sentinel qui vive* of justice in the country. I sincerely hope that it resolves its internal conflicts and wards off the question of its legitimacy, a concern being raised as of late. Nevertheless, it is heartening to note that in spite of its all limitations from within and outside, constitutional judiciary in India has always tried to push India into a right direction set by the Constitution and has kept alive the hope of the people in a constitutional democracy. The fact remains that if our direction is right, speed does not matter, which is mediated by various and varied societal factors.