

## **Future Of Indian Democracy And The Constitutional Governments: A Reflective Thinking From The Past To Future In The Light Of Present**

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***“Government and Judges might come and go but democracy; basic features of the Constitution should remain eternal” – Justice Y. V. CHANDRACHUD.***

### **ABSTRACT**

A democratic government is run by the elected representative of the people. It is a form of government of the people, by the people and for the people. An attempt is made in this paper to explore the current political system from the past to future based on the experience gained in the present situation. India is well known for its unity in diversity. The people in India belong to various religious, ethnic, cultural, linguistics groups and they are living with the notion of being the common brotherhood as enshrined in Preamble to the Indian Constitution. Being the situation, the authors like to discuss as to how the modern approach in India on the slogan “*Save India and Save Democracy*” would in future affect the democratic setup established by the framers of the Constitution in the past. Because, the purpose of a CONSTITUTION is to define the distribution of power among the three pillars of the government *namely*, the legislative executive, and judiciary with certain checks and balances among them. Moreover, the authors further tries to assail the mind-set of the governments, both Central and States, with regard to the rights guaranteed by Article 19 (1) (a) of the Constitution of India over and above the Central Government outlook towards the State Governments. In yet another discussion, the authors are about to argue the future of the judicial democracy also, in view of the recent differential judicial understanding on various statutory concepts in India, as the courts in India, in recent, instead of reflecting the constitutional mandate, reflects the change in its verdict that existing in the society. Finally, the authors *inter alia* try to suggest as to how the future of the democracy would be in the politics, legislature and judiciary? What are the steps to be taken to prevent the threat to the democratic setup? The conclusion would be that the authoritarian approach by any Union Government either by threat or by usurping the powers of the State and judiciary would lead to autocracy, thereby the constitutional goals and objectives would be defeated. The loom of autocracy would not only keep the democracy at peril but also lead the failure of rule of law.

**Key words:** Future of Democracy – Union Government – State Governments – Judiciary – Social Change – Constitutional Morality.

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## WHAT IS DEMOCRACY<sup>3</sup>?

No consensus arrived at in defining what democracy is. Legal equality, political freedom and rule of law have been identified as the *sine-qua-non* characteristics of democracy. The word “democracy” is derived from the Greek word “*demokratia*.” “*Demo*” means “*people*” and “*kratos*” means “*rule*”. Democracy<sup>4</sup> means rule by the people. Democracy denotes the sovereignty of the people. This sovereignty is exercised in free election, held on a regular basis, in which the people choose their representatives, who in turn represent their views. This type of democracy is embedded in majority rule. In India, this system is followed. Put in another words, Democratic government implies a democratic state but a democratic state does not necessarily mean a democratic government. Democracy is more than a set of constitutional rules and procedure that determine how a government functions.

## NATURE OF INDIAN POLITY

According to Indian Constitution, with regard to the nature of Indian polity, the preamble to the Indian Constitution declares that “India is a **Sovereign**<sup>5</sup>, **Socialist**<sup>6</sup>, **Secular**<sup>7</sup>,

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<sup>3</sup> At the outset, the author wish to state that the entire paper is based on a famous Tamil proverb “**you may know by a handful the whole**” since the determination of the future democracy in all spheres is not possible in a research paper with limited words. Therefore, the authors have made, as per the above proverbs, an attempt to discuss only one or two examples in all spheres to speak about the future of the democracy. For not discussing rest of the happening, the authors highly regret.

<sup>4</sup> “One of the three forms of government - that in which the sovereign power is neither lodged in one man, as in a monarchy, nor in the nobles, as in an oligarchy, but in the collective body of the people.” P. Ramanatha Aiyar’s Concise Law Dictionary, with legal maxims, Latin Terms and words and Phrases, 4<sup>th</sup> Edi, 2012, Lexis Nexis Butterworths Wadhwa, Nagpur, P.346.

<sup>5</sup> The term “sovereign” denotes that “India is subject to no external authority and that that state has the power to legislate on any subject in conformity with constitutional limitations.” Taken from M.P Jain, Indian Constitutional Law, 7<sup>th</sup> Edi, Reprint, (November) 2016, Lexis Nexis, India, P.12.

<sup>6</sup> The word “Socialist” was not there originally in the preamble. It was added to the preamble by the 42<sup>nd</sup> Amendment to the Constitution in 1976. The term “socialist” has not been defined in the Constitution. In India, there has always been emphasis on mixed economy. The government accepts the policy of mixed economy where both public and private sector co-exist side by side. However, the private enterprises has so far been rigorously controlled by the government, but the signs are appearing on the horizons that in future the private enterprise is going to play a pivotal economic role than it has played so far - M.P Jain, Indian Constitutional Law, 7<sup>th</sup> Edi, Reprint, (November) 2016, Lexis Nexis, India, P.14. To know the Effect of “socialist”, See *Excel Wear Vs Union of India*, (1979) 1SCR 1009. According to the Apex Court of India, “the principal aim of socialism is to eliminate inequality of income and status and standards of life, and to provide a decent standard of life to the working people” - *D.N. Nakara Vs Union of India*, AIR 1983 SC 130. Another idea propounded by the Court is that “socialism” means “distributive justice so as to bring about the distribution of material resources of the community so as to subserve the common good” - M.P Jain, Indian Constitutional Law, 7<sup>th</sup> Edi, Reprint, (November) 2016, Lexis Nexis, India, P.14.

<sup>7</sup> See *infra* heading “Secularism and Democracy in India: Peoples Perspective”.

**Democratic** and Republic<sup>8</sup>”. Though the preamble does not tell us what kind “democratic” is established in India<sup>9</sup>, The term ‘democratic’ signifies that India has a responsible and Parliamentary form of government, both at the Centre and States, which are accounted to an elected legislature<sup>10</sup>. This system is considerably differs from the presidential form of government which are prevailing in USA. No doubt, the Indian system is, based on the principles of co-ordination and co-operation of the two organs. In a real democratic society, the Constitution is the fundamental and highest law (*lex superior*). The word “secular” may be opposed to “religious” in the sense that a secular State can be anti religious State. The word “secular” may mean that “so far as the State is concerned, it does not support any religion out of public funds, nor does it penalize the profession and practice of any religion or the right to manage the religious institution as guaranteed under Article 25 and 26 of the Indian Constitution<sup>11</sup>”.

## **PARLIAMENTARY FORM OF GOVERNMENT: PAST AND PRESENT**

The Constitution of India establishes a Parliamentary form of Government<sup>12</sup> both at the Centre and States. The essence of the Parliamentary form of Government is its responsibility to the Legislature. As we already discussed, the Indian Parliament is not sovereign. It is the Constitution which is supreme and sovereign and the Parliament has to act in accordance with the limitation imposed by the Constitution. As regards the State legislature, every legislature consists of the Governor, and the two houses of legislature or the one as the case may be.<sup>13</sup> Where there are two houses of the Legislature of the State, one shall be the Legislative Council and the other as the Legislative Assembly<sup>14</sup>. With respect to the above, the authors are not confronted but the thing is for the past two decades, a debate has

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<sup>8</sup> The term Republic denotes that “the head of the state is not a hereditary monarch, but an elected functionary. Taken from M.P Jain, Indian Constitutional Law, 7<sup>th</sup> Edn, Reprint, (November) 2016, Lexis Nexis, India, P.12.

<sup>9</sup> H.M Seervai, Constitutional Law of India, 4<sup>th</sup> Edition (Re printed in September, 2015), Vol. 1, Universal Law Publishing, P. 280.

<sup>10</sup> The Supreme Court of India had time and again declared that ‘democracy’ as the basic feature of the Constitution.

<sup>11</sup> Constitution of India is not secular, because the right to freedom of religion is a guaranteed fundamental rights – Refer Article 25 – 28 of the Indian Constitution.

<sup>12</sup> Article 79 of the Indian Constitution, “There shall be a Parliament for the Union which shall consist of President and two houses to be known respectively as the Council of States and the House of the People.” For the composition of ‘Council of States’ and ‘the House of the People’, see Articles 80 and 81 of the Indian Constitution.

<sup>13</sup> See Article 168 of the Indian Constitution.

<sup>14</sup> Article 168 (2) of the Indian Constitution, For the composition of the Legislative Council and the Legislative Assembly, see Articles 171 and 170 of the Indian Constitution.

been going on in the country whether the present parliamentary system should be continued or should be replaced with the presidential system under which the President elected directly by the people for a fixed term, will function as the nation's executive unhampered by the legislature in taking administrative decision. The things to be clarified here is that the framers of the Constitution preferred the parliamentary form of government mainly for two reasons - (1) the system was already in existence in India and people were well familiar with it, (2) it provides for accountability of ministers to the Legislature. However, this hope of the framers has been belied. The happening during the last two decades clearly demonstrate that the parliamentary form of government have almost failed<sup>15</sup>. Efforts to remove its drawbacks have not yielded any success. The drawbacks are as follows<sup>16</sup>:

1. Multiplicity of political parties
2. Party politics (Malevolence of defection of members from one party to another party)
3. Lack of unity and leadership in National parties
4. Illiteracy of voters – National and local issues
5. Growth of regional parties and criminalization of parties.

The above views belong to Dr. J. N. Pandey. In addition to the discussion made by him, we the authors like to add few recent happening in India, to make it known to the public as to how the parliamentary form of government failed to account the people at large, as follows:

### **FEARISM OF DEFECTION: A THREAT TO FUTURE DEMOCRACY - A GLANCE**

The issue of defection preoccupied the national conscience from 1960s. The evil of political defection has been a matter of a national concern. Political defections motivated by lure of office or rather similar consideration endanger the foundation of our democracy. Undemocratic and illegal practices within the political arena should be curtailed<sup>17</sup>. Horse trading and corrupt practices associated with defection for change of loyalty for lure of office or wrong reasons also shaken our democratic value<sup>18</sup>. So to curb the menace of defection, the

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<sup>15</sup> Dr. J.N Pandey, The Constitutional Law of India, 15<sup>th</sup> Edition, 2013, Central Law Agency Publication, Allahabad, P. 25,26 and 27. The authors are in concurrence with the Dr. J.N Pandey.

<sup>16</sup> Source: Dr. J.N Pandey, The Constitutional Law of India, 15<sup>th</sup> Edition, 2013, Central Law Agency Publication, Allahabad, P. 25,26 and 27. The authors are in concurrence with the Dr. J.N Pandey.

<sup>17</sup> Shiv Sena and Others Vs Union of India and Others, WP (C).No. 1393 of 2019, Date of order: 26<sup>th</sup> Nov, 2019.

<sup>18</sup> Shrimanth Balasaheb Patil Vs Hon'ble Speaker, Karnataka Legislative Assembly and Others, WP(C) No.992 of 2019, Reportable, SC, Date of Judgment: 13<sup>th</sup> November, 2019.

legislature introduced the tenth schedule<sup>19</sup> and further to support the tenth schedule the Constitutional (Ninety First Amendment) Act, 2003 by inserting Article 75 (1) (B)<sup>20</sup>, 164 (1) (B)<sup>21</sup> for the member of the Legislative Assembly and Article 361 (B)<sup>22</sup>. Under the above articles, “any person who is disqualified under the tenth schedule, will be barred from being appointed as a minister or from holding any remunerative political post from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the House before the expiry of such period, till the date on which he is declared elected, whichever is earlier.” Further, the Hon’ble Supreme Court of India, in the case of **Shrimanth Balasaheb Patil Vs Hon’ble Speaker, Karnataka Legislative Assembly and Others**<sup>23</sup>, held that “disqualification proceeding would not become infructuous upon tendering resignation.” Though the law is well settled and the provisions are clear, what happens in the current political scenario? The authors wish to discuss only the recent incidents that happened in India. After the demise of former AIADMK supremo, and the former CM of Tamil Nadu, veteran Dr. Selvi. J. Jayalalitha, the Tamil Nadu’s political scenario, as we all known, witnessed an unprecedented drama. At last, nearly 120 MLAs taken to resort where they kept by one group, for more than 10 days, with a view to prevent them from joining the other rival group. In yet another incident, the Karnataka MLAs were put up in Bangalore hotel in fear of poaching by opposite parties<sup>24</sup>. All the incidents, we can

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<sup>19</sup> The purpose behind the enactment of the tenth schedule were clearly stated in *kihoto Hollohan Vs Zachillhu*, 1992 Supp (2) SCC 651. According to this judgment, “The main purpose underlying the Constitutional (Fifty Second Amendment) Act and the introduction of the tenth schedule is to curb the evil defection which was causing immense mischief in our body politic.”

<sup>20</sup> According to this Article, “A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.”

<sup>21</sup> “Disqualification for the member of the Legislative Assembly to be appointed as a minister for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.”

<sup>22</sup> Under Article, 361B, “A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier”.

<sup>23</sup> WP(C) No.992 of 2019, Reportable, SC, Date of Judgment: 13<sup>th</sup> November, 2019, for details see Para 51 of the judgment.

<sup>24</sup> To avoid poaching, Congress, JD (s) MLAs Now Hold up at Hyderabad hotel ahead of tomorrow’s floor test, Times of India, May 18, 2018.

assume that, were happened only for the monetary achievement or political gain. The above incidents show that the elected representative failed to account the people in accordance with the Indian Constitution<sup>25</sup>. *Per contra*, they themselves think that they are above the law.

In a democratic set up like India, the authors with heavy heart wish to pose or raise the following questions. 1. Whether the MLAs are free to stay in any resort without properly discharging their public duties for which they have been chosen by the public? 2. Whether the MLAs are being elected only to act in accordance with their own wish? 3. Whether the election commission has not spent public money for conducting the election? 4. If the MLAs stay in any hotel or restaurant, whether their salary can be deduced or whether salary deduction would suffice? 5. What action can be imitated against the erring MLAs? Etc. These are the questions to be addressed in near future. Failing which, the democracy in future would be in danger. What is to be noted here is or what the authors wish to state here is that “if any government servant is abstaining from service or duties, demanding their needs, the government are cutting the salary or threatens the employee with dire consequences.” Why not the same method or any aggressive method shall be adopted to protect the future parliamentary form of government? The Constitutional Courts in India are also not exemption in this attitude.

### **QUIZZICAL OF FEDERAL STRUCTURE: UNION GOVERNMENT ATTITUDES TOWARDS THE ‘CONCURRENT LIST’ UNDER SCHEDULE VII TO THE CONSTITUTION**

Article 1 of the Indian Constitution says that “India, *that is Bharat*, shall be a Union of States.” The States and Territories thereof shall be specified in the first schedule. In other words, India is a Union of States and it adopts a federal structure with a strong centre. The States have no right to relinquish themselves from the federation. Any act from such cessation would be considered as unconstitutional. The Union is divided into a number of states based on the convenience of the administration, religion, linguistic, etc. Further, the

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<sup>25</sup>One more incident, the authors want to discuss is that the local body election to the Panchayat must be completed before the expiration of 5 years as stipulated in Articles 243E (1) and 243 E 3 (a) of the Indian Constitution. But, what is happening in the State of Tamil Nadu? Whether by amending the Tamil Nadu Panchyats Act, 1994 and appointing a special officer to monitor the local Panchayat is tantamount to fulfillment of true spirit of the Articles 243E (1) r/w 243 E 3 (a) of the Indian Constitution? For further details see Tamil Nadu Government Gazette, Extra Ordinary, Part IV, Section 1, Dated January 8, 2019, Tamil Nadu Bill No.10 of 2019 namely, The Tamil Nadu Panchayats (Amendment) Act, 2019.

Union and States are enjoying their distributive legislative powers<sup>26</sup> and administrative relation<sup>27</sup> under the Indian Constitution. Under this part, the authors intend to analyse the transformation of certain subjects from the State List to Concurrent List which thereby, in due course of time, according to the authors, would lead to unification of power in one authority *namely*, the Union Government and at last, the federal structure of the Indian constitution would become as a vanishing point and the vanishing point would *in turn* shake the existing democratic set up. For example, the authors desire to take the 42<sup>nd</sup> Constitutional Amendment Act, 1976<sup>28</sup>. Though the amendment was carried out, *according to the statement and reasons of the Amendment Act, 1976*, to make the Constitution to be living and growing document, the amendment instead of making the Constitution as living and growing one was subjected to criticism. This is the only most controversial and debatable Constitutional amendment that ever undertaken in India since its inception<sup>29</sup>. The major purposes of the amendment *inter alia* include “to strengthen the Central Government *vis-à-vis* State Governments and its compatibility to rule the country as a unitary, not a federal system.” Under this amendment, five subjects from the State List transferred to Concurrent List. One among the five subjects is **education**. The other subjects are forest<sup>30</sup>, weight and measures except establishment of standards<sup>31</sup>, protection of wild animals and birds<sup>32</sup> and administration of justice; Constitution and organization of al courts, except the Supreme Court and High Courts<sup>33</sup>.

In this part, the authors like to discuss the only one aspect *that is* education. How the transfer of education from State List to Concurrent List affects the democracy and the federal structure?

As we already discussed, the 42<sup>nd</sup> constitutional amendment invited national wide attack since it provides a sweeping powers to prime minister’s office. More significantly, it ignited a debate whether the amendment attack the very basic structure of the constitution.

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<sup>26</sup> See Article 245 – 255 read with Schedule 7 of the Indian Constitution.

<sup>27</sup> See Article 256 – 263 of the Constitution.

<sup>28</sup> The 42<sup>nd</sup> Amendment in the Constitution was enacted during the emergency period by the Indian National congress government under the headship of Indira Gandhi. This amendment had brought most widespread modification in the existing Constitution and this amendment is popularly called as “Mini Constitution”.

<sup>29</sup> [legalserviceindia.com/article/I40-42<sup>nd</sup>-Constitutional-amendment.html](http://legalserviceindia.com/article/I40-42<sup>nd</sup>-Constitutional-amendment.html), Last assessed on 20.11.2019.

<sup>30</sup> List III Entry 17A of the Indian Constitution.

<sup>31</sup> List III Entry 33A of the Indian Constitution.

<sup>32</sup> List III Entry 17B of the Indian Constitution.

<sup>33</sup> List III Entry 11A of the Indian Constitution.

No doubt, the authors even now accepts that this amendment in one way or other would, in future, affects the basic structure of the Constitution<sup>34</sup>. The introduction of “NEET Examination<sup>35</sup>” for admission into medical college, according to the authors view, is a challenge to the federal character of India<sup>36</sup>. Under the cooperative federalism, Union and States are constitutionally indebted to cooperate with each other on the matters specified in the VII Schedule to the Indian Constitution. The VII schedule consisting of three lists namely, Union List, State List and Concurrent List. ***“The education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List – I; ..... comes, after the 42<sup>nd</sup> Amendment in the Constitution, under the concurrent list<sup>37</sup>.”***

For the sake of discussion, the authors like to take only the entries 65 and 66 of List – I (since the other entries i.e, Entries 63 and 64 of List – I are not relevant for the discussion). Entry 65 of Union List – I states about (i) *the Union agencies and (ii) Union Institution for (a) professional, vocational or technical training including the training of police officers; or (b) promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.* Entry 66 states that *“co-ordination and determination of standards in institutions for higher education or research and scientific and technical institution.”*

From the above it is crystal clear that as per the concurrent list, the education (irrespective of any kind of education), including the technical education, technical universities, medical education and medical universities *subject to the provisions of entries 63, 64, 65 and 66 of List – I* are the subjects of both the Central and State Government. In these subjects both the Central and State Government are having the powers to make laws<sup>38</sup> and the Union Government can exclusively make laws only with respect to the institution

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<sup>34</sup> The federal character of the Constitution is no doubt, a basic feature of the Constitution, See: Kesavananda Bharati Vs State of Kerala.

<sup>35</sup> NEET is the uniform entrance examination to all medical educational institution at the U.G level and shall continue to the uniform entrance examination to all medical educational institution at the U.G level.

<sup>36</sup> Federalism is derived from the Latin word “foedus” which means agreement. In fact federation is an agreement between two types of governments sharing powers and controlling their respective spheres. Though the term “federal” has not been mentioned in our Constitution, the working of Indian democracy is essentially federal in nature and in structure.

<sup>37</sup> See Enter 25.

<sup>38</sup> Article 246 (2) of the Indian Constitution “Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have the power to make laws with respect to any of the matters enumerated in List –III in the seventh schedule to the Constitution.”

which is financed by the Government of India wholly or in part and declared by law to be an institution of national importance<sup>39</sup> or for the Union agencies and Union institution which is providing professional training<sup>40</sup> and it may coordinate and determinate the standards in higher education<sup>41</sup>. According to the authors view, mere amending and inserting section 10 d of the Medical Council of India Act, 1957 as amended in 2016, does not give a constitutional validity of the NEET examination<sup>42</sup>. Why because, the MCI Act, 1957 enacted only for the purpose of re constitution of medical council of India and the maintenance of a medical register for India and matters connected therewith<sup>43</sup>. Further, as far as the knowledge of the authors is concerned, the medical education has not been declared as national importance. In yet another aspect, we would like to say that *“where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contain any provisions repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such state shall, **if it has been reserved for the consideration of the President and it has received his assent, prevail in that State**”*<sup>44</sup>. Being the Constitutional position, why not the State Governments in India, who were opposing the introduction of the common entrance examination for the medical admission, able to bring separate legislation, exempting their States from common entrance test for medical admission to protect the interest of their own students?

In the above backdrop, the authors, with respect to future democracy, like to conclude that the introduction of NEET examination *is an initial step by the Union Government* for taking the powers of the state in the field of education and thereby affects the federal nature of the Indian Constitution since it violates upon the State rights to determine the admission policies into medical education<sup>45</sup>. In yet another steps, the Union Government initiated steps to bring all the National Law School established by the State Governments into its purview<sup>46</sup>.

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<sup>39</sup> Entry 63 of Union List – I

<sup>40</sup> Entry 65 (a) of Union List – I.

<sup>41</sup> Entry 66 of Union List – I.

<sup>42</sup> See Section 10 D of the Medical Council of India (Amendment) Act, 2016.

<sup>43</sup> The authors request the readers to refer the order passed in “Varun Bhagat v Union of India & Ors”. WP (C) No. 68/2006 to know the admission into National Law Schools is done by the National Law Universities/Schools. The same method may be adopted.

<sup>44</sup> Article 254 (2) of Indian Constitution.

<sup>45</sup> Refer: The Tamil Nadu Admission in Professional Educational Institution Act, 2006 (Act No. 3 of 2007). This Act received the assent of the President on 3<sup>rd</sup> March, 2007.

<sup>46</sup> See the preamble to the National Law Universities of India Bill, 2016 (Bill No.249 of 2016) as introduced in Lok Sabha.

At last, we the author again reiterate and presume that in near future, not only the medical admission but also all the education would go into the hands of the Union Government. The authors conclude that this kind of attitude of the union government is nothing but, a step for unification of powers in the central government as opposed to the division of powers enshrined under the Indian Constitution. It is to be remembered that any act against the spirit of the Constitution is a threat to the future democracy.

### **SECULARISM AND DEMOCRACY IN INDIA: PEOPLES PERSPECTIVE**

As we all known, India is a country of religion. The word “Secular” was not there originally in the preamble. It was added to the preamble by the 42<sup>nd</sup> Amendment to the Constitution in 1976. The concept of secularism is very tough to define and thus has not been defined in the Constitution. The object of insertion is to maintain the integrity of the nation. There is no official religion in India. The state does not identify itself with, or favour, any particular religion. The State is enjoined to treat all the religions and religious sects equally<sup>47</sup>. Article 25 to 28 of the Indian Constitution guarantees the right to freedom of religion. Whether this right to freedom of religion is absolute or subjected to certain restriction?

No doubt, this right is not absolute and it is subjected to the certain restriction i.e, subject to public order, morality and health and to the other provision of Part – III of the Indian Constitution<sup>48</sup> and every religious denomination or any section thereof, subject to the above restrictions, shall have the right mentioned in Article 26 of the Indian Constitution.

In this context, we the author refer the judgment of the Sabarimala Lord Ayyappa deity and accept the minority opinion given in Indian Young Lawyers Association & Ors Vs State of Kerala.

### **JUDICIAL DEMOCRACY: PAST, PRESENT AND FUTURE**

According to the Indian Constitution, the Judiciary is separated from the executive in the public service of the state. The Constitutional Courts are not only the Guardian of the fundamental rights but also the interpreter of the Constitution. If any injustice is caused by the Legislature and the Executive, the people approach the judiciary for redressing their

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<sup>47</sup> M.P Jain, Indian Constitutional Law, 7<sup>th</sup> Edi, Reprint, (November) 2016, Lexis Nexis, India, P.15.

<sup>48</sup> Article 25 of the Indian Constitution.

grievances. The Constitutional Courts especially the Apex Court is addressing their grievances in letter and spirit and Judiciary was above subjected to criticism. No doubt, the judiciary plays a pivotal role in socio, economic and political affairs of any democratic system. Independence of judiciary and the rule of rule are the two sides of a same coin. Independence of judiciary plays a crucial function in society. But recently the judiciary are not only comes within the purview of criticism but also comes within the purview of threat. The criticism, *for example* is the way of giving interpretation to the Constitutional provision particularly “the right to life” in the following judgments. *i.e*, the Constitutional Bench judgment passed in ***Joseph Shine vs Union of India***<sup>49</sup> striking down Section 497 of IPC as unconstitutional as being violative of Article 14, 15 and 21 of Indian Constitution and also the Apex Court declared Section 198(2) of Cr.P.C as unconstitutional to the extent that it is applicable to the offence of adultery under Sec 497 of IPC. In this context, the author submits that the right to privacy under Article 21 does not include the right of two adults to enter into a sexual relationship outside the marriage. It is the Constitutional mandate of the Apex Court to secure and protect the morality, decency and dignity for which the Indian culture is named. Simply because two adults wished to have sexual relation outside wedlock, it shall not be permitted in view of Constitutional morality. Constitution never ever allows such an inhumane, indecent and unacceptable covetousness interpretation. Therefore in order to protect the democracy, the judgment rendered in this case has to be relooked and reviewed in the light of the in the true ambit of Article 21 of Indian Constitution.

Further, the judgment rendered in ***Navtej Singh Johar & Ors Vs Union of India***<sup>50</sup> striking down Sec 377 of IPC to the extent of consensual homosexual between adults, is also to be revisited and relooked in the ambit of Article 21 of Indian Constitution. The “right to privacy” needs reconsideration. If the interpretation continues by the Apex Court which is the guardian of the fundamental rights then there will be a shaken to the democracy in future. Once upon a time, the Supreme Court was worshipped and it, in turn, tried to establish the rule of law by its wisdom interpretations given to the true spirit of the provisions of the Constitution<sup>51</sup>.

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<sup>49</sup> WP (Crl) No. 194 of 2017, Date of Judgment: 27<sup>th</sup> July, 2018.

<sup>50</sup> WP (Crl.) No. 76 of 2016, Date of Judgment: 6<sup>th</sup> September, 2018.

<sup>51</sup> The authors request the reader of this paper to remember the following judgments: 1. Sankari Prasad Singh vs. Union of India (AIR 1951 SC 458); 2. Sajjan Singh Vs State of Rajasthan (AIR 1965 SC 845); 3. Golak Nath

**RECENT THREAT TO JUDICIARY: A THREAT TO FUTURE DEMOCRACY**

Recently the former Supreme Court Judge wrote a letter to the former CJI Deepak Misra expressing the concern over the unprecedented delay in the appointment of two judges by the government. He, in his letter stated that “the very life and existence of Supreme Court is under threat<sup>52</sup>” and a senior judge told that nobody including the jurists is worried about what is going on in SC<sup>53</sup>. The former CJI Justice Ranjan Gogoi when he was alleged with the sexual harassment by the former employee of the top court, also said that the independence of the judiciary is under threat and he further alleged a conspiracy behind the allegations and said that there has to be a bigger force behind this, they want to deactivate office of the Chief Justice. Further, he stated that the allegation had cropped up as he was scheduled to hear the important cases<sup>54</sup>. Solicitor general Tushar Mehta said that allegation appear to be a black mail technique. Justice Mishra said “the faith of people in judiciary will be shaken by such unscrupulous allegations<sup>55</sup>. But here the notable thing is after the allegation “the job of the husband and brother – in- law of the women who leveled sexual complaint against CJI were reinstated<sup>56</sup>”.

All the above lines, inch by inch and word by word, are very significant and imperative to know that the judiciary *that too* the Highest Court in India is under threat. If the toppest Court is under threat, can anyone of the reader imagine that the future of the judicial democracy are safe and fine?

**FUTURE OF DEMOCRACY IN GOVERNMENT AND THE JUDICIARY: A REFLECTION FROM PAST TO FUTURE**

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Vs. State of Punjab (AIR 1967 SC 1643); 4. Kesavananda Bharati Vs. State of Kerala (AIR 1973 SC 1461) etc. In all the cases the Supreme Court fought for establishing the essential rights of the people and gave tough fight against the Parliament to secure the rule of law.

<sup>52</sup>This statement was made in view of pending appointments to the SC. Source <https://www.youtube.com/watch?v=PZxynanbMsg>, last visited on 25.11.2019.

<sup>53</sup> Source <https://www.youtube.com/watch?v=PZxynanbMsg>, last visited on 25.11.2019.

<sup>54</sup><https://www.ndtv.com/india-news/judiciary-under-threat-says-chief-justice-ranjan-gogoi-denying-sexual-harassment-allegation-in-speci-2025901>.

<sup>55</sup><https://www.ndtv.com/india-news/judiciary-under-threat-says-chief-justice-ranjan-gogoi-denying-sexual-harassment-allegation-in-speci-2025901>, last visited on 25.11.2019.

<sup>56</sup> Source: <https://www.indiatoday.in/india/story/gogoi-chief-justice-supreme-court-sexual-harassment-complainant-husband-kin-1552407-2019-06-20>, last visited on 25.11.2019.

From the above analysis and according to a famous Tamil proverb as stated above ***“you may know by a handful the whole”*** the authors, as their reflective thinking, wish to state that all the organs *i.e* the Constitutional Governments (Legislative, Executive and the Judiciary) must work for the welfare of the people rather than their self interest. The MPs and MLAs should think that they have been elected by the people only for representing on behalf of the people and for not leading a sophisticated life. The Parliament should not try to overlook the Legislature thereby leading the failure of the concept of the federalism. Concept of competitive federalism is unknown to Indian Constitution and which would affect the interest of the large number of people in a democratic society like India. Judiciary must give interpretation in accordance with the Holy Spirit of the Indian Constitution and it should try to uphold the modesty, integrity, morality, decency, dignity and individuality of the society. India is having its own individuality and we are not in westernization culture to live according to the whims and fancies of the minds. “Right to life” does not include right to lead immoral life or indecent life. “Right to life” means the right to live an “impeccable life”.

## **SUGGESTIONS AND CONCLUSION**

There is no iota of doubt that both the Parliamentary form and the presidential form of lead to democracy only but a country like India with different political setup suits the best with the Parliamentary form as it was rightly stated by the Dr. B.R. Ambedkar. He supported the parliamentary form of government than the Presidential form of government as because the former is the more responsible to the people than the later. The authors with respect to Parliamentary form of Government in present structure conclude that the Parliamentary form of Government should provide both daily responsibility and the periodic assessment and with respect to the legislative matter, for maintaining the cooperative federalism, the authors are strictly against the movement of competitive federalism. Moving the subjects from State List to Concurrent List is nothing but the encroachment and oppression on the State Government by the Union Government. This attitude of the Union Government is nothing but a predominant attitude over the State Government which never the framers of the Constitution thought. Last but not least, for the proper working of democracy, there should be a healthy opposition, educated electorate, independent judiciary, and above all, impeachable moral integrity. Does the Indian democracy in present structure possess all the essential attributes? The authors left the answer to the readers.

Though the answer is left to the reader, as a paper formality, the authors recommend the below suggestions to save the future democracy:

In these circumstances discussed above, the authors suggest following stringent amendments in The Constitution of India as well as in The Representation of Peoples Act, to curb the menace of the evil of defection.

- (i) The MLAs or MPs who resigns during his initial tenure (probably within two years from the date of election) should be prevented for a period of 10 years (*i.e.*, consecutively for 2 terms in any kind of election) from the period of expiration of the tenure for which he is elected.
- (ii) The MLA or MPs who jump from one party to another party for his monetary gain or for horse trade or for any political advantageous, shall be prevented life time from contesting any kind of election and his family members or relatives should be prohibited from contesting election for 20 years (*i.e.*, consecutively for 4 terms in any kind of election).
- (iii) In case of bulk jumping, the party's recognition, to which the MLAs or MPs are jumping, has to be cancelled with immediate effect for a period of 10 years (*i.e.*, consecutively for 2 terms in any kind of election).
- (iv) The Entry 25 of the Concurrent List to be transferred to the State List, since the education is only the state importance and particularly, the medical colleges are established only by the State Governments and not by the Union Governments. If the Union Government wants to bring uniform entrance examination for medical examination, it may bring the exam only for AIIMS and JIPMER and not for the medical institution established and run by the State Governments<sup>57</sup>. But here the things are totally contrary and the institution like AIIMS and JIPMER are exempted from the purview of NEET examination<sup>58</sup>.

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<sup>57</sup> State Government medical colleges are not like that of NIT, IIT and etc.

<sup>58</sup> It is to be noted that there is a proposal to bring these institution within the purview of NEET. Source: <https://www.ndtv.com/education/neet-mandatory-for-admission-to-mbbs-at-aiims-jipmer-from-2020-harsh-vardhan-2111921>, Last assessed on 26.11.2019.

- (v) The Sections 10 – D and 33 (mb) may be deleted from the Medical Council of India Act, 1956 as amended in 2016<sup>59</sup>.
- (vi) The order passed in *Medical Counsel of India Vs Christian Medical College, Vellore*<sup>60</sup> and others may be again reconsidered in the light of the federalism and fundamental rights guaranteed by the Constitution.

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<sup>59</sup> The authors request the reader to read the *Christian Medical College, Vellore & others Vs Union of India and Others*, T.C (C ) No. 98 of 2012, for more clarification and understanding as to how the introduction of NEET would affect the federal structure of the Indian Constitution and if the reader reads the judgment they will be able to understand as to how the introduction of NEET affects the fundamental rights guaranteed by the part –III of the Indian Constitution. The authors dissent from the dissenting opinion by Justice Anil R. Dave.

<sup>60</sup> Review Petition No. 2159-2268 of 2013. In this review petition the Hon'ble Apex Court did not give any reason as to why the judgment was recalled. In the interest of student's community and to protect the spirit of the Constitution, a detailed reason may be furnished.