



# IDEALS OF DEMOCRACY AND ACTUAL OPERATION OF ITS INSTITUTIONS IN INDIA

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**Abstract:** *We live in the age of democracy. This means that democracy provides us the touchstone by which political actions and processes are judged as beneficial or otherwise. The virtues of democracy as an ideal of social and political life are acknowledged even in regimes that are at least formally monarchical. For many the main virtue of democracy is that it gives the common people a place in the sun. It reduces the gap between the rulers and the ruled by restricting the powers of the former and enlarging those of the later. In a monarchical or imperial regime in the true sense of the term, the common people are subjects and not citizens. The advance of democracy transforms subjects into citizens. It is a paradox of our time that the rights of citizenship are better respected in monarchies such as Britain and the Netherlands than in democracies such as India. Democracy is animated by the lofty ideals of liberty, equality, and fraternity. These were the ideals of the French Revolution which inspired people in many countries to challenge the absolutist monarchies of the past. We too invoked them as our nationalist leaders challenged their colonial rulers. After the attainment of independence we inscribed those same ideals in the Preamble to our Constitution, and added to them social, economic, and political justice. In this research paper my focus is to examine the ideals of democracy and the actual operation of its various institutions in India, especially on those political institutions that began to emerge from the middle of the nineteenth century onwards. This paper focuses at Parliament, Legislatures, Rule of numbers and Rule of law, the Supreme Court, and strong leaders, as well as the maladies by which the basic institutions of democracy are beset in India today.*

**Keywords-** *Parliament, Legislatures, Supreme Court, Rule of numbers, Rule of law.*

## 1. INTRODUCTION : -

We are all familiar with the idea that democracy is a government of the people, by the people, and for the people. The idea of democracy came to India with colonial rule. The aspiration of Indians to become a nation of free and equal citizens, which was kind led by colonial rule, was given a distinct focus with the formation of a political party, the Indian National Congress, as early as in 1885. Indian National party became the vehicle for the aspirations of the nationalists against their colonial rulers. Their leaders could ask for national independence only by mobilizing the Indian people as a whole against the colonial regime. They found it natural to use the language of democracy in their fight for independence. Democracy emerged in India out of a confrontation with a power imposed from outside rather than an engagement with the contradictions inherent in Indian society. Those contradictions remained deeply embedded in the Indian social order even as the country opted for a democratic political order on the attainment of independence. They are giving Indian democracy a very different character from democracy in the West which grew and advanced by confronting a succession of internal social contradictions.

In India, the political argument for democracy was adopted by the leaders of the nationalist movement from their colonial rulers and adapted to their immediate objective which was freedom from colonial rule. The building of new political institutions took second place, and the creation of the economic and social conditions for the successful operation of those institutions, such as education, health care, and other social services, lagged well behind. Ministers, legislators, and even judges never tire of speaking of the need to put service to the common man first. It is a habit of speech that was acquired during the struggle for national independence, and now serves as a mantra on all public occasions. The common people themselves are not sure how much they can depend upon those repeatedly invoke the ideals of democracy in their name.



## **2. PARLIAMENT:**

In India Parliament enjoys the pride of place among the institutions of democracy. This is particularly true of the Lok Sabha. Its very name, the House of the People, signals its popular and representational character, and it is not without reason that our form of democracy is known as the parliamentary form. It is true that the President is, constitutionally, the head of both houses of Parliament, but for all practical purposes the conduct of the Lok Sabha is the responsibility of the elected members themselves, and they conduct their affairs in public view.

Direct election by the people gives to the members of the Lok Sabha their distinctive democratic legitimacy. The formal composition of the two houses of Parliament and their powers and functions are laid down in some detail in the Constitution of India. In addition to Parliament, we also have the state legislatures whose organization mirrors in many ways the organization of Parliament. This is a natural point of departure not only because of the obvious importance of Parliament as a political institution but also because of its high visibility. Nothing that happens in Parliament remains a secret. From the very beginning, the press and the public were given access to Parliament when it was in session. Today one can see the proceedings in Parliament on television without having to leave one's drawing room. Live telecasts have led to the demystification of Parliament and, as we shall see, to a certain devaluation of it in the public eye. Along with the central and state legislatures, the Supreme Court and the high courts are the other great institutions of democracy. Courts of justice, no matter how high their standing, are of course not unique to democracies. There have been royal courts of justice, and the British set up courts of justice when they began their rule in India. The courts of justice in independent India have continued many of the conventions and practices established under colonial rule and have been criticized, unfairly in my judgement, for being more colonial than democratic. Those who direct their barbs at the Supreme Court for its colonial antecedents tend to forget that our Lok Sabha itself is modeled in more ways than one on the house of Commons in Westminster.

## **3. RELATIONSHIP BETWEEN ELECTED LEGISLATORS AND APPOINTED JUDGES :**

Whereas our legislators are elected, our judges are appointed according to procedures laid down in the Constitution. A judge does not have a constituency in the sense in which a Member of Parliament has one. An elected Member of Parliament has a special responsibility towards his constituents. A judge of the Supreme Court has no constituents towards whom he has any special responsibility. The court is not a popular institution in the sense in which an elected legislature is. It is insulated from public pressure and expected to deal even-handedly with government and opposition. Because of its higher visibility and its more representational character, many believe that it is Parliament rather than the Supreme Court that embodies most fully the spirit of democracy. The Supreme Court is believed to be 'elitist' rather than popular and hence not fully democratic. This reflects the populist as against the constitutionalist concept of democracy. As the populist conception gains ground, the value placed on the institutions of democracy, including Parliament itself, tends to decline. Democracy rests on a delicate balance between two principles which may be called the rule of numbers and the rule of law. Numbers are important in a democracy at every level. When a person contests an election, he or the party which supports him makes an assessment of the numbers to see that the candidate has a reasonable chance of success. In Parliament or in any legislative assembly, the success of a motion and sometimes even the survival of the government depend on the ability to muster the right numbers at the right time. This is believed by many to require both manipulation and coercion.

The courts are designed to determine what is right and wrong in the light of the Constitution and the laws. Where there is a violation of the law, the courts have to rule against the violators even where they constitute a majority. In our country the courts have a special significance because disregard for the rule of law is very widespread in the public domain. The true significance of the courts of law in a democracy is that people look to them to protect the citizen against the arbitrary use of power by the state and its functionaries. But they also have the obligation to protect individuals and groups from being unjustly treated simply because they are outnumbered. Democracy requires institutions to ensure that the rule of law is not overwhelmed by the weight of numbers. In discussing these issues it is important to keep in mind the distinction between power and authority. People who have the numbers behind them often seek to impose their power even where they have no authority in the matter. Many persons who believe that they are backed by numbers because of the electoral support that they have won, or for some other reason feel that the prevalent rules and procedures are obstacles that should not be allowed to frustrate the public interest as they perceive it. Rules and procedures are indeed sometimes obsolete or archaic, and when it is in the general interest for them to change, they should be changed. But here again, they cannot be changed instantly and on the spot but only in accordance with established procedure. In a large, diverse, and disorderly society with an open political system such as ours, it is never easy to settle an issue of immediate or urgent public concern by the counting of heads on the spot. When a few hundred or a few thousand, or even a few lakh persons bring road and rail traffic to a halt, it is not easy to decide whether they or their victims constitute the majority. The rights and wrongs of the issue have to be decided in accordance with the



rule of law and not the rule of numbers. Political leaders make commitments under pressure and in the end it is left to the courts to decide whether those commitments are legally and constitutionally valid. When the courts have to intervene again and again in such matters, the relationship between elected legislators and appointed judges comes under strain and the major institutions of democracy become weakened.

We have now entered a season of coalition politics at the centre as well as in several states since 1989-2014. Coalition politics has brought home the fact that the calculation of numbers can be of crucial importance even where the numbers are not very large. He who heads a coalition government has to pay close and continuous attention to the numbers he is able to muster. It is well known that many compromises have to be made in the work of legislation simply in order to keep the numbers together. In some states, it is alleged, whole groups of legislators are sometimes taken away to distant and undisclosed destinations so that they do not desert the government in its hour of need. These actions are often on the borderline between what is legally valid and what is not, and rival parties, or even members of the public, move the courts to give a verdict. It was the first time in 30 years that a single party had won a clear parliamentary majority in 2014. Walter Bagehot in 1928 remarked that there was a dignified part and an efficient part in English constitution and it worked well when the two parts were in proper balance. I believe that our own premier institutions of democracy must be submitted to the test of both dignity and efficiency.

#### **4. CHANGES IN THE COMPOSITION OF LOK SABHA :**

There have been significant changes in the composition and character of the Lok Sabha since it was first constituted seventy years ago. Socially, it is more representative of the population of the country than in the past. Its membership is drawn from a wider range of castes and classes than before. This is perhaps even truer of the state legislatures. These changes have come about mainly through conscious efforts by each and every political party to widen its base of electoral support from one general election to another. The move to enlarge the presence of women through a system of quotas is yet to bear fruit. The earlier Lok Sabhas appear in retrospect to be 'elitist' not only in their social composition but also in their style of functioning. They included a fair proportion of professional people, particularly lawyers. Many of them were somewhat detached from the rough and tumble of electoral politics. They were able to keep their hands relatively clean even when they had to enter Parliament by contesting elections. It was believed possible to win an election on the candidate's standing in public life. Nowadays not only has the number and proportion of persons with professional experience and competence declined in the Lok Sabha, the number and proportion of those with real or alleged criminal records has increased. The criminalization of politics has entered the Lok Sabha as well as the Vidhan Sabhas. The disclosed assets of the members of Parliament show that at least in one respect, that of wealth, they are far from being representative of the population of a country in which poverty is pervasive and endemic. If one is able to enter Parliament, one's children are unlikely to ever have to live in poverty.

#### **5. CHANGES IN FUNCTIONING STYLE :**

The functioning style has also changed. In a democracy, Parliament is the pre-eminent forum for openly expressing dissent and disagreement. In the past, parliamentary debate was conducted in an atmosphere of civility. Even where disagreement was strong, it was tacitly understood that it had to be expressed in parliamentary language. The tone of civility has all but disappeared from parliamentary debate. Interruptions are frequent and noisy, and it has become a matter of routine for several persons to speak at the same time. Rushing to the well of the house is no longer an uncommon event, and the speaker has a difficult time in maintaining order, and has to adjourn the house repeatedly. Even the Rajya Sabha, where debates are expected to be less acrimonious, has to be adjourned for lack of order. The speaker of the Fourteenth Lok Sabha, himself a distinguished parliamentarian, expressed his frustration and anguish again and again. His repeated admonitions to the members to act with decorum generally went unheeded. We get a vivid picture of his frustration and exasperation from his memoirs published shortly after he ceased to be a Member of Parliament. On 28 February 2008, he said in the House, 'I am sorry I have to say that you are all working overtime to finish democracy in the country.' Some months later he said, 'I can only say that you are behaving in the most despicable manner,' and, again, on the same day, 'The whole country is ashamed of its parliamentarians' (Som Nath Chatterjee 2010: 171). Parliament may still be a great institution, but its members are no longer great men. How long can a great institution remain great in the hands of small men? Long-term effect of continuous discord and disorder within Parliament is an erosion of public trust in the institution itself. The disorder in Parliament detracts not only from its dignity but also from its efficiency day by day.

#### **6. ROLE OF JUDICIARY IN INDIA :**

The Supreme Court has held its place in the public esteem rather better than the Lok Sabha. Despite the occasional allegation of financial impropriety, our judges are still regarded as being on the whole learned, high-minded,



and dutiful in contrast with legislators, ministers, and civil servants. The higher courts of justice are smaller, more compact, and more purposeful than the legislatures. They are also better insulated from popular pressure.

A person from any class or community may seek election to Parliament. He may be a peasant, an artisan, or a man with only five years of schooling and still take an active part in parliamentary debate. The appointment of judges is confined to the middle class and that too, to the upper levels of it. The legal profession is described as a learned profession, and lawyers and judges have an elevated position in society by virtue of their education and occupation. Where the middle class is very small, as it was in India until recently, the higher judiciary stands out from the rest of society. There are pressures now to make the judiciary more representatives in terms of caste and community, but it is difficult to visualize a judiciary whose members belong in equal proportions to every social class or stratum. Judges disagree with each other although these disagreements are not on party lines or not expected to be on party lines. The chief justice has no authority to issue a whip to ensure conformity with his own judgement. When he finds himself in a minority, all he can do is to record a dissenting judgement. Judges express their disagreement in judicial prose and not by shouting at each other or brandishing their fists in open court. Generally speaking, judges are less eager to appear on television than members of Parliament. Judicial prose is learned, not to say recondite, and at least in India it tends to be prolix. Two or three judges often write separate judgments even when their opinions are substantially the same, and they tend to write at great length. Judicial deliberation and judicial composition take time. As a result, cases remain unattended for months and years. The law's delay has caused worry to ordinary persons in many places and in many ages, but in India today, it seems to have acquired pathological dimensions. This is partly because aggrieved parties are rarely satisfied with the verdict of the lower courts and seek to go on appeal to the higher ones. When a particular party does not want an early decision, he can engage a counsel who is skilled in the art of securing adjournments. It is sometimes suspected that there is collusion between lawyers and judges in expediting or delaying a hearing.

While the law's delay affects large numbers of persons, it does not affect them equitably. As some might benefit from it while others suffer? Indian society is a highly stratified one, and some can bear more easily than others the costs in both time and money of a protracted judicial process. It is natural for those who get entangled in litigation for no fault of theirs to feel that they are the victims rather than the beneficiaries of the courts. Thus, while the court is no doubt an institution, some might question how far it acts as a democratic institution in upholding the principle of equality in its actual practice.

## **7. WIDE GAP BETWEEN EXPECTATION AND REALITY:**

This comparison between Parliament and the Supreme Court is only the first step in the understanding of the institutions of democracy. A second and more difficult step would be to examine the relationship between them. They are assigned distinct spheres of operation, but they are expected to work in harmony. There is a wide gap between the expectation and the reality. The question is not simply whether the gap is particularly wide in India today, but whether it is growing wider. There are various reasons—personal, professional, and others—for friction between Parliament and the Supreme Court. The exclusive jurisdiction is not always recognized as being exclusive by the other. Underlying all of this is the tension between the two irreducible principles of democracy to which have referred more than once, the rule of numbers and the rule of law. That tension, carried beyond a certain point, may erupt into the kind of disorder that calls for the suspension of the institutions of democracy either for the time being or for good.

## **8. STRONG LEADERS THREATEN INDIAN DEMOCRATIC INSTITUTIONS:**

Over the past five years, democratic institutions have come in the spotlight for the singular reason of the executive's interference. Democracies run with institutional support. Their effectiveness holds the government accountable, protects people's interests and ensures a democracy's functioning. With the change of government, people expect that institutions will outlast elected leaders. During the tenure of the current government, a concern emerged that institutions are under attack from the executive under the leadership of Prime Minister Narendra Modi. The emergence of "strong leaders" is associated with the fact that they can violate established institutions and the laws, thereby weakening the democratic systems. "Strong leaders initiate the process of weakening institutions," Today Modi is perhaps the second, not the first, strong leader facing such criticism. One of the first leaders was Indira Gandhi who undermined the democratic institutions, especially the judiciary. The prime minister undermined institutions is buttressed by hard facts. The Election Commission (EC), perhaps for the first time since TN Seshan, came under pressure twice from the Modi government. In 2017, it delayed the declaration of dates for the Gujarat assembly elections which was interpreted as a bid to allow the BJP government to announce pre-election sops for voters. The EC also disqualified 20 MLAs of Aam Aadmi Party in Delhi, which was deemed as a partisan move and was ultimately reversed by the Delhi High Court in 2018.



In 2018, the University Grants Commission (UGC), a totally non-political institution, directed universities and higher educational institutions to celebrate September 29 as "surgical strike day"—to commemorate India's retaliatory strikes on launchpads used by terrorists in Pakistan-occupied Kashmir. The UGC's move was viewed as propaganda that would benefit the Bharatiya Janata Party. Two governors of the Reserve Bank of India, Raghuram Rajan and Urjit Patel, resigned over differences with the government which were viewed as undermining the RBI's autonomy. With deterioration in people's trust in institutions, there were reports that the Modi government did not consult with the RBI, the Cabinet and the finance minister, except in the last few hours, when announcing the demonetization of Rs/ 1,000 and Rs/ 500 notes on November 8, 2016. It was also reported that only seven persons—the PM, chiefs of RAW and Intelligence Bureau, the National Security Adviser, and chiefs of Army, Navy and Air Force—were in the loop about the Indian airstrikes in Balakot in the early morning of February 26, 2019. Effectively, it means the country's defense minister Nirmala Sitharaman was not even consulted. These instances show that under Modi, democratic institutions are being marginalized, overruled and weakened. In this regard, two biggest events in modern Indian history must also be mentioned. In January 2018, four senior-most justices of the Supreme Court—J Chelameswar, Ranjan Gogoi, MB Lokur and Kurian Joseph—held an unprecedented press conference where they mounted public criticism of the then Chief Justice Dipak Misra, warning that "administration of the Supreme Court is not in order" and "democracy will not survive". It appeared in the public eye that the apex court was under political pressure in the way some benches were constituted by Justice Misra. And, the Modi government's decision in October 2018 to issue a midnight order to remove Alok Verma as the director of the CBI revealed the government's panic over the Rafael issue. More such instances can be given where it appeared that the government was interfering with established procedures and systems, notably in changing the criteria for calculating gross domestic product (GDP), withholding the Central Statistical Organization report on jobs, preventing ministries from publishing data on employment and farmers' suicides, and the like.

Democratic institutions, despite being part of the executive, are supposed to work autonomously and in public service. However, the Modi government's interference—both overt and covert—This sent a message that the democratic institutions are no longer in public service but in the service of the governing party's quest for power. In India, this is not something new. "When was it that institutions in India were not under stress?" The Indian Democratic system faced its first challenges under Jawaharlal Nehru. There is an example of Dr BR Ambedkar resignation from the Nehru cabinet and how rumors were floated that he had resigned due to ill health and corruption. But Ambedkar spoke in Parliament saying that he quit due to the violation of the Cabinet form of the government by ignoring the collective responsibility of the council of ministers. There is another example when Nehru ignored the Cabinet, notably on issues like Kashmir and China. He took away the powers of the Home Minister Sardar Vallabhbhai Patel to handle the Kashmir issue. Nehru didn't have respect for Rajendra Prasad and did not go to the funeral of the first president when he died on February 28, 1963, in Patna. When the Janata Party came to power it passed the 44th Amendment, especially restoring the Cabinet system under Article 352 (3) which disallows imposition of Emergency-like measures without the Cabinet approval. However, once Indira Gandhi returned, she ran the Cabinet much as she wished. Judiciary too came under political pressure. In his book *Supreme Whispers*, Abhinav Chandrachud narrates numerous instances of "executive interference" in judicial appointments right through the first two decades of Indian democracy and how "government used tactics to intimidate judges after 1971, using weapons like supersessions, transfers and non-confirmation of additional and acting judges, to undermine the independence of the judiciary." This continued until the collegium system in the 1990s "took away the government's power to intimidate judges." In search of "committed judges", writes Chandrachud, Indira Gandhi "started packing the court" and "judges started being appointed to the Supreme Court, for the first time, by openly considering their political ideologies." Chandrachud observes: "Judges are still appointed ... on the basis of region, religion, caste and gender, as they were in the 1980s and before", but "with the advent of the collegiums, the ideology of a judge seldom makes its way into the judicial appointments process."

These examples underline one point: institutions have always been used and misused by the governing parties. The Enforcement Directorate, the CBI, the Income Tax department and the police force are routinely used and abused by leaders in power to harass political opponents and to favour those on the side of the governing party. Since the misuse of democratic institutions is a politically divisive issue, responses of critics also suffer from bias. For example, the supporters of Modi are eloquent when it comes to the criticism of Nehru and Indira Gandhi while being economical with words about the current prime minister and his BJP. There is an acceleration of the process under which institutions have come under stress, but internal checks and balances are important. The same political party which says something in opposition goes on to misuse the institutions when in power. Overall the nature of democracy has changed a lot over past 10-15 years. It can affect the functioning of institutions in the coming years. Political democracy and institutional democracy cannot be separated. Because of the institutional structures given by the Constitution, democracy in India is flourishing, despite governments' efforts [to the contrary], institutions remain. People are maturing. They are the source of the strength for democracy.



## 9. CONCLUSION:

Institutions must be reformed or created as part of a natural process. In 2005, the Manmohan Singh government enacted the Right to Information Act to address shortcomings in the workings of democracy. The Modi government too renamed the planning commission as Niti Aayog and redefined its scope to achieve cooperative federalism and sustainable development goals. The move was not seen as partisan because there was realization—since the fall of the Berlin Wall in 1989—that the socialist model of top-down planning has become an impediment to development. While democratic institutions will experience strains, then people nurture democracy is vital. The increasing democratic awareness acts as a bulwark against authoritarianism in India. While Indira Gandhi has been severely and rightly criticized for the Emergency, Andre Beteille wrote: "The Emergency did not abolish the institutions of democracy, but by subduing them, it created at least for a while a deeper awareness of their value." This is the awareness which has forced people to take note of the executive's interference with democratic institutions now. India has a large and articulate body of public intellectuals comprising journalists, lawyers, social scientists, and many others. Much like the Emergency made Indians aware of the value of institutions, the large body of intellectuals—and 900 million voters in India should be counted among them—acts as a wall against the executive's interference. The institutions which came under attack during the last few years will certainly outlive the concerned government.

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