

*Guest Article*

**“Defending Democracy: Constitutional Law and its Impact Today”\***

By: Hon’ble Mrs. Justice Sunita Agarwal, Chief Justice, High Court of Gujarat

My Dear Students,

Today Morning, standing in this Law College, in the Land of Mahatma Gandhi, I cannot start my address on the topic without sharing the great thought of Mahatma Gandhi on Democracy:-

*"To safeguard democracy the people must have a keen sense of independence, self-respect and their oneness, and should insist upon choosing as their representatives only such persons as are good and true."*

I extend my heartfelt gratitude to the entire organisation of the GLS University, Faculty of Law for giving me opportunity to be a part of this event. It is indeed a matter of great privilege for me to share the Dias with an exceptional legal luminary Justice Surya Kant, and to speak on the subject.

GLS University, promoted by Gujarat Law Society, has a rich history which dates back to the year 1927, where its foundation was laid by visionaries like Shri Sardar Vallabhbhai Patel, Shri Ganesh Mavlankar and Sheth Shri Kasturbhai Lalbhai. Beginning from a single law college in 1927, which was nurtured by Shri I.M. Nanavati, Gujarat Law Society has been in the field of education for over nine decades and has branched itself into nearly 9 faculties.

It is heartening that the University has focused not only on quantitative but also qualitative aspects of education and aims at overall development of its student's personality by arranging such Expert sessions. To my mind, the study of the Constitution of India and an insight into the functioning of its democracy is necessary for the students, irrespective of their choice of discipline, to have a deep understanding of Indian Constitution and Democracy. In fact, each and every citizen, irrespective of his profession or subject of specialization, should have the knowledge of our Constitution and Democracy.

Dear Students, Today, I would try to take you to the History of the Indian Democracy and the way it has evolved in the present social context. On 26th of January, 1950, we gave ourselves the Constitution of India. Through this living document we, as citizens, entered into a social contract with our State to establish a powerful public-private partnership nourished by Justice, Liberty and Equality.

The Indian Constitution is the Holy Book of democracy. It is a lodestar for the socio-economic transformation of an India whose civilization has celebrated pluralism, advocated tolerance and promoted goodwill between diverse communities.

The father of our Constitution - Dr. B R Ambedkar - saw great Potential in using the Indian Constitution as a powerful instrument of socio-economic transformation and with this intention, introduced into the draft Constitution, a variety of provisions which would enable full accountability of the Government, checks and balances, protection of fundamental rights,

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\* Speech as Guest of Honour at Expert Lecture Session at Faculty of Law, GLS University on October 28, 2023.

independent institutions and consistent movement towards social democracy. In Dr. Ambedkar's words, **"Our Constitution is not only a political or legal document but also an emotional, cultural and social contract."**

The then Hon'ble President of India, Shri Sarvepalli Radhakrishnan had said on the eve of Independence Day and I quote: **"We have adopted a democratic Constitution. It helps us to maintain our individuality in the face of mounting pressures for standardized thinking and acting..... Democratic Assemblies serve as safety valves for social tensions and prevent dangerous explosions. In an effective democracy, its members should be willing to accept law and lawful authority. No man, no group can be his or its own law giver"** (unquote).

India's Journey since independence has seen many successes. The greatest challenge for our founding fathers was to come up with a viable system of government. We have in the last 73 years since adoption of the Constitution, established a successful parliamentary democracy, an independent Judiciary and strong institutions like the Election Commission, CAG etc.

In practice, our political system has been innovative and flexible. Our commitment to constitutional principles has resulted in many interesting modern-day manifestations. For example, the Right to Information Act is a unique and powerful instrument created by law to empower people and enable them access, information from any department of the Government on any subject, advancing thereby openness and transparency.

The Hon'ble Supreme Court of India, through Public Interest Litigation, has enabled the common man to have access to the highest courts of justice by just sending a post card. High Courts and Hon'ble Supreme Court have also taken suo motu cognizance of violation of fundamental rights and initiated action on their own setting aside the conventional notions of locus standi. All the above reflect the strength of Indian democracy and the dynamism of the Constitution.

When India became independent, many in the world thought our democratic experiment would fail. They looked at our diversity, poverty as well as the lack of education of our people and predicted that India would lapse into authoritarian rule or military dictatorship. But, We the people of India proved them wrong.

Our first Prime Minister, Shri Jawaharlal Nehru believed that democracy was something deeper than voting, elections or a political form of government. He said **"In the ultimate analysis, it is a manner of thinking, a manner of action, a manner of behaviour to your neighbour and to your adversary and opponent."**

Let me read certain extracts from the well-known speech made to a Constituent Assembly on November 25, 1949 by Dr. B.R. Ambedkar. He said and I quote: **".....however good a Constitution may be, it is sure to turn out bad because those who are called to work 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. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depends are the people and the political parties they will set up as their instruments to carry out their wishes and their politics."** (Unquote)

Dear Students, Seventy six (76) years since independence and 73 years after we adopted our Constitution, we have remained steadfast in our commitment to democracy, yet, we must be conscious of the fact that the democracy requires constant nurturing. At no cost should we allow the exploitation of the fault lines. Those who spread violence must remember that Buddha, Ashoka and Akbar are remembered as heroes in history; not Hitler or Genghis Khan.

Let us strive for rapid progress but even as we do so, ensure that the benefits of economic progress percolate down to the poorest of the poor and those living in the farthest corners of our country. Let us embrace education, skill development and innovation which will enable us catapult India into the future and build a knowledge economy, riding the technological wave of the 21st century.

Among other essential features of the Constitutional Laws in Defending Democracy, one of the features namely "**Protection of Individual Rights**" has played an important role in strengthening the democratic values at the grass-root level. The Indian Judiciary has played a significant role in emphasising Democratic Values, insisting on making an inclusive society by defining the "Right to privacy" interpreting Article 21 of the Constitution of India.

#### **Some Important Judgments in this context:**

1) **Navtej Singh Johar vs. Union of India (Citation: (2018) 10 SCC 1) Dated – 06<sup>th</sup> Sept., 2018.**

In Navtej Singh Johar, challenge to Section 377 of the Penal Code was sustained on the ground that it violated the Constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination.

The Supreme Court of India unanimously held that Section 377 of the Indian Penal Code, 1860 discriminates citizens on the basis of sexual orientation which was violative of the right to equality, as criminalizing consensual sex between adults in private was violative of the right to privacy. Sexual orientation forms being an inherent part of self-identity, denying the same would be violative of the right to life.

2) **Janhit Abhiyan vs. Union of India (Citation: 2022 SCC OnLine SC 1540) Dated – 7<sup>th</sup> November, 2022**

The Hon'ble Supreme court has upheld 10% reservation to Economically Weaker Sections (EWS) in educational institutions and government jobs, with a view to make our society inclusive, by providing a level-playing field to the people who have been deprived of public resources because of poverty for decades.

3) **Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors. (Citation : (2017) 10 SCC 1) Dated – 24<sup>th</sup> August, 2017**

The Bench unanimously held that "the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution". It overruled previous decision in **M.P. Sharma and Kharak Singh**, insofar as the latter held that the right to privacy has not been recognised under the Indian Constitution thus, cementing the right to privacy as a fundamental right.

**Concluding remarks -**

Let me conclude by reiterating once again that defending democracy is not a passive act; it requires active engagement from all citizens, the civil society, and the legal institutions. Democracy, as an evolving concept, faces new challenges and opportunities. The Constitution of India is an instrument through which we address these challenges, adapt to changing circumstances and uphold the principles of democracy.

As we look forward, the role of Constitution in defending democracy remains as crucial as ever. It is a responsibility we all share in preserving the democratic ideals of freedom, equality, justice and the rule of law.

In closing, let us remember that defending democracy is not a one-time effort but an ongoing commitment. Democracy is not just a form of government; it is a way of life that embodies our collective aspirations for a more just, free, and equitable world. Constitution of India is the compass that guides us on this journey, ensuring that we stay true to the principles that define our democratic institutions.

**Thank You!**

**Jai Hindi!**