

# PRESERVING DEMOCRACY IN INDIA

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to The Preamble, Union & its Territories and The Citizenship

Maharashtra Minister Uday Samant with rebel Shiv Sena leader Eknath Shinde and other supporting MLAs in Guwahati on June 26. | Photo Credit: PTI

In January 2014, while addressing the Vijay Sankalp rally in Goa, Narendra Modi called on the audience to vote for a “Congress-mukt Bharat”. He said, “Be it dynasty politics, nepotism, corruption, communalism, divisions in society or poverty, getting freedom from all this is what I mean by a Congress-mukt Bharat.” Stating the BJP’s commitment to changing the future of India, he said, “We need efforts to integrate the nation, not divide it.” The events that have unfolded in the last few years, including the toppling of governments in Madhya Pradesh, Karnataka and Maharashtra and the selective arrests of Opposition leaders, show that we are perhaps heading towards an Opposition-mukt Bharat.

The Indian Constitution adopted the parliamentary system and not the presidential system. B.R. Ambedkar provided the rationale for this: “A democratic executive must satisfy two conditions - (1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree... In England, where the parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, resolutions, no-confidence motions, adjournment motions and debates on addresses. Periodic assessment is done by the electorate at the time of the election... The daily assessment of responsibility which is not available under the American system it is felt far more effective than the periodic assessment and far more necessary in... India. The draft Constitution in recommending the parliamentary system... has preferred more responsibility to more stability.”

Democracy is the basic feature of the Constitution. Parliamentary democracy does not envisage a condition where a one party-government becomes permanent. The presence of a vigilant Opposition is necessary not just for a vibrant democracy but for its very survival. When the Opposition criticises the government or carries on an agitation to arouse public opinion against a party’s misdeeds, it is performing a duty that is assigned by the Constitution. Without an effective Opposition, democracy will become dull and legislature will become submissive. The public will then think that the legislature is a sham and is unable to perform its functions and will lose interest in the functioning of Parliament.

Before and after independence, the Congress was determined to keep other parties out. For a long time, the Opposition was considered unnecessary and somewhat burdensome. This had a deleterious effect on the functioning of our democracy. The very evils that Mr. Modi spoke about in Goa were the result. Yet, Mr. Modi and the BJP today seek to follow the same path. Recently, Home Minister Amit Shah publicly declared that the next 30-40 years will be the era of the BJP. Encouraging defections from the parties in power in States will sound the death knell for democracy. The Tenth Schedule has failed to serve its purpose. The Supreme Court, in *Kihoto Hollohan v. Zachillhu* (1992), while upholding the 52nd Amendment through which the Tenth Schedule was introduced, summed up the argument for and against it in these words: “On the one hand there is the real and imminent threat to the very fabric of Indian democracy posed by certain levels of political behaviour conspicuous by their utter and total disregard of well recognised political proprieties and morality... On the other hand, there are... certain side-effects which might affect and hurt even honest dissenters and conscientious objectors.” In upholding the law, the court held: “But a political party functions on the strength of shared beliefs... Any

freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which... is its source of sustenance — nay, indeed, its very survival.”

Loyalty to the party is essential. The whip system is part of the established machinery of political organisation in the House and does not infringe on a member's rights or privilege in any way. That is why some political thinkers have recognised as an additional device the ‘theory of recall,’ so that a member whose personal behaviour falls below standards expected of his constituents goes back and seek their approval. This power is particularly apt when a member shows disloyalty to his party but declines to resign from his seat and to fight an immediate by-election. The anti-defection law was supposed to be the justification underlying the power of recall. In the absence of resignation and re-election immediately following the violation of the whip or showing disloyalty to the party on whose label the member was elected, the floor test is meaningless. It only seeks to legalise what is otherwise illegal, unconstitutional and immoral.

To see a flock of members of the governing legislative party in a State being flown from one destination to another in chartered planes, housed in five-star hotels, and taken to States run by the party in power at the Centre is a sign of a conspiracy. Given such circumstances, it is time for the Supreme Court to re-write that law, if necessary by exercising powers under Article 142 of the Constitution.

Equally alarming is the recent trend of the use of draconian powers, especially the Prevention of Money Laundering Act, against Opposition members. Nobody can condone illegalities. Individuals, if guilty, must be proceeded with under the law. But can one believe that such illegalities are committed only in the Opposition? There has not been a single case against a member of the ruling party since 2014. Is dishonesty the forte of only the Opposition parties?

The Prime Minister must seriously introspect on the erosion of public life and set things right. The judiciary must be aware of the ground realities and not allow such politically motivated investigations. Judges should readily grant anticipatory bail or regular bail in such matters. Political parties, the judiciary and civil society must take steps to ensure that democracy does not fail. The Opposition must be tolerated because if it is left for the party in power to decide what is healthy and unhealthy criticism, then every criticism of the latter will be treated as unhealthy.

During the Constituent Assembly debates, Naziruddin Ahmad had warned: “If you are not desirous of creating anti-Congress feeling... it is very necessary for you to create an opposition, if necessary by some members volunteering to go to the opposition and making it healthy and strong.” Ramnarayan Singh went further and said, “A government which does not like opposition and always wants to be in power is not a patriotic but a traitor government.”

At the same time, while the Opposition must be credible and strong, it is for the Opposition to make itself credible and strong. It must feel the pulse of the people. Unless it makes itself respectable, it cannot demand any respect. This is the biggest challenge facing the nation today.

The Opposition must also work constructively. Merely attacking the Prime Minister is not conducive for democracy. Our constitutional goal was to establish a sovereign, democratic republic. Mr. Modi and his party have a responsibility to ensure that India does not turn into an undemocratic republic.

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