

•Strategies to transform Bharat to India

•: AN APPROACH TOWARDS FUNDAMENTAL RIGHTS Panch Rishi Dev Sharma

Where the mind is without fear
And the head is held high,
Where knowledge is free;
Where the world has not been broken
Up into fragments by narrow domestic walls;
.....Where the mind is led forward
By thee into ever-widening thought and action
Into that heaven of freedom,
My father, Let my country awake¹.

Rabindranath Nath Tagore

Tagore viewed Right as entitlement and democracy as means to the end the end is specified as welfare -utilitarian state.He believes that rights empowers individual to act on reflection. The capability to act on reflection is the power to transform the individual, society, state, nation and the world. This capability is enshrined in the constitution of India. This article reflects the ideals, objects, ways and stops to transform Bharat to India which is the motive of this conference.

Let we achieve the motive!

Let we achieve the Goal!!

Let we be unite and argumentative towards rights and truths!!!

THE IDEALS OF THE CONSTITUTION OF INDIA : Way towards Transformation of Bharat to India.

The founding fathers and mothers of the constitution makers has one dream, that is to make India : A Sovereign Secular Socialist Democratic Republic²(though in the actual text 'Secular' term was not there and it was inserted later³ but the spirit was undoubtedly there in the constitution since inception⁴). Through this India (Sovereign Secular Socialist Democratic Republic) the constitution wanted to achieve certain goals- **Justice**: Social, Economical and Political; **Liberty**: of thoughts, expression and belief; **Equality**: of status and opportunity. These goals are the ideals of the constitution makers, these are the

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□ Shishir Kumar Das Ed 1994, The English Writings of Tagore, Sahitya Academy. PN 53.

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Refer the Preamble of the Constitution of India

3 Refer 42nd Constitutional Amendment Act Section 2.

4 Refer Article 25 to 28 of the Constitution of India which are termed as Religious Rights which are instrumental to maintain the Secular Fabric of the state.

objects of present day governance and I feel these are the pathways for strategies to transform Bharat to India. Through this article i try to find out the ways and progress on these ways, hinderances on these ways, halts on these ways, diversions of these ways and destinations of all these ways for a journey from Bharat to India.

The Constitution of India with its Article 1 states : India that is Bharat, which means that India (ignoring the context of this conference) believes that a Bharat exists in India. That Bharat is not less in any senses to India, but needs support attention and care, the way to provide this strength is from the constitution it self. That is the reason why the constitution of India gives a unique combination of Rights in form of Fundamental Rights⁵. These rights enables Individuals to put themselves into the new emerging India. The Constitution of India also identifies certain key principles for the state so that the sate can be transformed from Bharat to India, these are termed as Directive Principles of the State Policy⁶. The Constitution also determines certain duties to the individuals because it considers that the rights without the corresponding duties are meaningless in the form of Fundamental Duties⁷. The Constitution also determines the relationship between the center and the states⁸ so that the proper transfer of the resources could be maintained between center and the sate: its another task of transformation of Bharat to India. Under Article 32 of the Constitution, every citizen of this country has been given a fundamental right to move the Supreme Court for enforcement of rights which are guaranteed under Part III of the Constitution. The highest Court of the Country has simultaneously been conferred powers to issue directions, orders or writs including conventional prerogative writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, a terminology borrowed from English Law. This Article is of fundamental importance for maintaining the basic structure of the Constitution. The Article itself contemplates that this Article shall not be suspended except as provided by the Constitution. Vide Article 359 of the Constitution, the right to move the Court cannot be suspended even during proclamation of emergency In cases where a citizen comes forward for enforcement of right to life and liberty guaranteed by Article 21 and right conferred by Article 20 protecting a citizen from conviction for offenses. extending guarantee that a citizen of the country will not be convicted for the same offence twice, nor he will be compelled to be witness against himself and also that for an offence his conviction will be according to the law enforced on the date the offence was committed, and. he will not be liable for higher punishment for the offence If the law is later on changed.

STEPS TOWARDS TRANSFORMATION OF BHART TO INDIA

The steps towards the transformation of Bharat to India are on the bedrock of the constitution, their realities, strengths and weaknesses are based on constitution edifice. Through this article i have highlighted following five steps for the march towards the transformation of Bharat to India (CONSTITUTIONALLY). This journey has various phases and dimensions, let me discuss that with you :

5 Refer Part III of the Constitution of India (Art 12 to 32)

6 Refer Part III of the Constitution of India (Art 33 to 51)

7 Refer Article 51A of the Constitution of India

8 Refer Article 245 to 280 of the Constitution of India.

Step:1 New Approaches towards providing Rights to the Masses : New Approaches- New Dimensions:

The new approaches starts with the liberalised trend of Indian Judiciary which has allowed and provided space for broader horizons. This trend has various dimensions but the important one are always admired. The Supreme Court through various of its case laws has expanded the definition of the State which is defined under Article 12 so that the protection and welfare of Article 12 and fundamental rights could be reached to the masses. Article 12 defines State against whom the protection and preservation of Fundamental Rights could be enforced. The expansion of Article 12 led to the expansion of the protection of fundamental Rights which is valuable for the development of rural and urban sector business as well as living. Through cases like State of Rajasthan Vs. Union of India⁹, Sukhdev Vs. Bhagat Ram¹⁰, Sabhjit Tiwari Vs. CSIR¹¹, various High Courts and Supreme Court has expanded the notion of the State through the theory of Instrumentality to almost all the 'other authorities' which are directly or indirectly financially, functionally or administratively in control of state governments or Union Government. Thus through expansion of regime of protection is the first way how constitution transforms Bharat to India as a transformation.

Step:2 Super-expansion of Rights enshrined as Fundamental Rights:

The constitution makers intelligently has used very wide terminologies for the fundamental rights so that when ever its necessary to expand an shrink the rights opportunity could be utilized. The Supreme Court has utilized this opportunity very well. The judicial trend in this regard is quite unique. The trend has been three-dimensional through the expansion of Article 14 (Right to Equality), Art 19(Freedom of Speech and Expression) and through Article 21 (Right to life and Personal Liberty). The expansion has been the key development in the history of constitution of India. Article 14 which states that 'there shall be equality of law and equal protection of laws' is in very wide language. Supreme Court used this language for protective discrimination so that equality is not the abstract equality rather the equality is in between the people who are in equal circumstances. Similarly courts used article 14 to provide the path way for reservation women welfare and child welfare centric laws. The egalitarian approach towards business was also developed through the jurisprudence that is linked to article 14. Article 19 on the other hand is the source of freedom of individual, society, business groups and many more. It established rule of law in the state. It governs freedom of the press which is the fourth pillar of the democracy. Article 21 is the mother of all rights in India its right to life and personal liberty, through Maneka Gandhi Vs. Union of India¹² the supreme court has propounded all most all of the human rights in and under the constitution of India which is the corner point of our constitution. Thus these rights under the constitution (Article 14, 19 and 21) makes the GOLDEN TRIANGEL in the constitution, this triangle is the main station in the journey of transformation of Bharat to India.

9 AIR 1967 SC 1857

10 AIR 1975 SC 1658

11 AIR 1981 SC 212

12 AIR 1973 SC 5451

Step: 3 Conversion of Golden Triangle into Golden Diamond in respect of Article 14, 19 and 21

As referred in earlier Article 14, 19 and 21 are the heart and soul of the constitution but they have evolved into different stages and states now a days. Article 14 which states equality before law and equal protection of laws at the bedrock of the constitution is more important for the reasonable classification. Absolute equality is a fallacy, the abstract and real equality is based on reasonable classification because there could be equality only among equals. Unequals are only equal among unequals. Similarly though article 19 establishes freedom of speech and expression but that freedom will be absurd and will be abused if it dose not conform with certain reasonable restrictions. Similarly article 21 which states about right to life and personal liberty is the not the only rights rather its a bundle of rights to be maintained and preserved.

Step: 4 India : As a Welfare State

The transformation of India from a Totalitarian state in British regime to Welfare State and than to Service State has been the key force in emergence of present India. Now the statehood in India has transformed from one state to another. The powers of government are now transformed into responsibilities of the state. The torch light in this field are the Directive Principles of the State Policy which the principles of the governance. Now the principle of governance is sine-qua-nan for present day statehood. State has emerged as parent of the society and nation. From food to shelter to health to , insurance to work to aid there are numerous responsibilities on the shoulder of the state that is why the present day state is termed as Service State. This development has made the pace towards the transformation of Bharat to India quite fast and smooth.

Step: 5 Constitutionalism : Soul of Indian Democracy

Constitutionalism believes in limited powers, so that powers are not abused and checked and balanced at every level of governance. Constitutionalism negates absolutism which believes in unlimited power. India not only believes in Rule of law but it believes in Constitutional Rule of Law. Through this even the head of the state or parliament can not rewrite the constitution. They all are abided by one and single law that is constitutionalism. Its establishes harmony of laws. With constitutionalism law establishes the fundamental rule of the land which is equal for all in equal circumstances.

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