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EVOLUTION IS BETTER THAN REVOLUTION

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The world history is tainted with instances of several revolutions that have taken place at different times under different circumstances. These revolutions are representations of the changes which are inevitable and highlight the need of a more dynamic society. With shifting plates of the Earth, there arises a need to shift the feet too. The modern connotation of the word "revolution" has two meanings attached to it. The geographic terminology refers to the movement of Earth around the Sun, while the meaning put forward by sociologists is "change in the existing political system of a State". While both words have different usages, the notion represented by both of them is the same. Both are words signifying 'change'. Be it change in the geographical position or change in the political order. Change is necessary and is inescapable. The adaptable survive it while the ignorant lament over it. A better society incorporates change through integral mechanisms of its structure using legal, political and administrative forums as harbingers of change.

But the important question that arises is that whether Revolution is the appropriate and pertinent option of bringing about change? The answer to this looming question cannot be established easily. However, what is evident throughout the pages of history is that appropriate or not, revolutions have been expedient all along.

Revolutions come at a point when the people of the society have been reduced to a state of distrust over governmental framework and are motivated by channels of cynicism over the people in power. This leads to a turmoil inside the minds which then harbor actions and methods to overcome the misrule and existing uncertainty.

The society finds itself facing such situations very often with the need of urgent radical changes arising in the existing systems. The uncertainty reflects through various forms like caricatures, artistic representations, writings, speeches, dialogues, references, acts and even armed conflicts in extreme situations.

The French Revolution, the Nazi revolt, the Sepoy Mutiny, Fight for Independence are famous common examples of armed revolutions that has inspired changes in the way governance has been working. Some other examples of revolutions include the Gandhian movement, Mandela's fight against the apartheid, Aung San Suu Kyi's rebel to the recent Anna Hazare movement. Fights have been as small as Rosa Parks choice of not giving up her seat in the bus to the bloodshed on the streets of Syria.

It is usually seen that fights by individuals have followed the course of civil disturbances while groups preferably choose a more violent method. While some revolutions only paint the pages red, others use a slightly lighter choice of colors to change the way the page looks.

In case of a social revolt, sights of some unknown person rising amongst the people, delivering speeches to a group of people is common. Such people do not have a charisma about them. They

lack proper backgrounds, the necessary connections and in certain cases even the right motives. But somehow, people in the audience gaping at the speaker intently find themselves connecting to them. Their voices are winds of change and just like the brisk rustle of leaves, they hint at the arriving storm.

Until and unless people aren't reduced to a point (let's term it as 'breaking point') where their patience runs out, significant changes usually do not find their way into governance. As a result, changes brought thereto are impactful but short-lived. They tend to stay in the memory for a longer period but they fail to impact the system in the longer run.

Evolution is commonly equated with the famous Charles Darwin's theory for the same. The theory states that evolution is a process by which organisms change over a period of time due of changes in their physical or behavioral characteristics. Similar application to Evolution of society in sociological terms refers to the change in the traits of the working and framework of the institutions.

The most significant change in the Government mechanism of our country was the economic liberalization of the 1990's. India had been financially drained of resources and its gold reserves was lying in vaults of foreign banks. We had money of paper but money was not on paper. After being reduced to such a point of helplessness, significant changes were incorporated in the institutional frameworks and working style of the country. This revolution was not a one of arms but had ensured benefits in the longer run.

The tendency to be reduced to such a morbid state before taking actions of initiating revolutionary changes has become common behavioral patterns for all societies. Revolutions have taken up for Evolution. The extra 'R' might take up extra space and effort, but people find it convenient enough that they neglect its negative implications.

Continuous evolution might be the key to our success but our tendency to overlook it might cost us a constant graph of escalating growth and create shackles for the rising curve. It takes more effort to build something from the debris of structures left behind after revolts rather than improve upon them continuously while they stand tall.

Most countries have adopted a democratic form of government where the power is separated between different organs of the state. After years of revolting against the Britishers our country gained independence and subsequently adopted a democratic system for governance. While the legislative organ was given the rule making power, the judiciary had the responsibility to safeguard the rights of the people while ensuring the proper interpretation of laws. Parliament made legislations to govern the state while judiciary worked to keep the Parliament in check. Such a system inherent to the federal structure adopted by the newly formed Republic was aptly christened the 'check and balance' system.

However, balance doesn't come without a shaky start or a preceding disruption. Even the balance scales commonly sighted at a vegetable vendor's doesn't come to a standstill unless it has witnessed several cycles of up and down movements on both the sides. And interestingly

enough, the statue of the Goddess Justice, standing in courts lifts a weighing scale in her left hand. The metaphor of justice and equality is also a metaphor for impending conflict.

So, undoubtedly, in this 'check and balance' system, there have been several instances of a tussle between the legislature and the judiciary. At times, the laws made by the Houses have been squashed away by the Courts while at other times, the laws of the land have deliberately overpowered the judiciary by expressly being put outside the ambit of the Court's power. Its power of review.

The power of the Courts to review any legislation is referred simply as 'judicial review'. If any law made is inconsistent with the Constitution (the supreme law), then courts perform a role of elucidating the provisions of the Constitution and declaring the impugned legislation or arbitrary administrative action as void on grounds of being unconstitutional. Such a power keeps the government from becoming autocratic and unduly impinging the provisions of the Constitution.

Before having a constitution, the American legal system incorporated unsaid judicial review. But, it was for the first time in the case of Marbury vs. Madison[1], that specific claims of judicial review were determined and limitation to the powers of the legislation was distinctly mentioned. However, it has not been expressly provided in the American Constitution.

Unlike USA, India has incorporated the doctrine of Judicial Review by way of Article 13, 32, 1331-136, 143, 226 and 246. Maybe, the Indian Constitution makers knew that India would be a country of changing trends owing to its dynamicity and multi-dimensional quality. Also, maybe they had kept it in mind that what they are making would not be the same forever unlike the US constitution. This is quite evident from the fact that India has more than 100 amendments till date whereas USA has allowed only 27 amendments in its 241 year long history.

It has been seen that a consociational democracy like ours cannot be existent without an active and powerful judiciary to include the interests of all the people in case they have been sidelined by the law makers. Since our system allows power to change hands after completion of a term, interest of different sections also come along with this power. It is very much plausible that with a change in power, change of interest, a change is also made into the legislations of the land guaranteeing those interests. If in such cases, the judiciary is absent to take charge of expounding these unconstitutional provisions which violate Article 14 and others, the said purpose of law is compromised. The ideology behind writing the Preamble is challenged and the pillars of righteousness and equality are threatened.

Over the years, if one looks back upon the judicial history of our country, it is evident that developments in the legislations by way of judicial review have been in consonance with the changes in the society taking place at that time. In Shankari Prasad[2] case, in order to abolish the *zamindari* system, when the Parliament introduced the concept of acquisition of property by the government, it was challenged in court. The need of the society at that time was to end the existing *zamindari* system and thus the court interpreted that amendment does not fall under the

[1] Marbury vs. Madison 1 Cranch 137; 2 L Ed 60
[2] Shankari Prasad Singh vs. Union of India AIR 1951 SC 458

ambit of law defined in Article 13(3). This was followed as well in the Sajjan Singh[3] case until the Golaknath[4] case presented an alternate point. The need of the hour at that time was to preserve the integrity of the constitution and it was said that it is the fundamental right that actually builds the nexus between the common man and law which was necessary to preserve.

Supreme Court's decision to change the prior two rulings and establishing prospective overruling was a landmark judgement at that time. The success of democracy does not only lie in its 'check and balance' system but in its open mindedness to change old precedents and the mechanism to do so has been credited to the check and balance.

The idea was that there is a part of the constitution that cannot be changed, something permanent, and something untouchable. At the same time it was necessary to give the parliament the authority to amend the constitution without any interference. If no provisions were made for the amendment of the constitution, the people would have recourse to extra constitutional method like revolution to change the constitution.[5] In the immortal words of K. C. Wheare a federal constitution is rigid in nature, as the amendment procedure is very complicated and it is this strictness that our constitution makers did not wanted to be a part of Indian Constitution and this factor was emphasized in the Keshavnanda Bharti case. The former Prime Minister of India Pt. Nehru also embraced the flexibility of the constitution. In the words of Willis, "If no provision for amendment were provided, there would be constant danger of revolution. If the method of amendment were too easy, there would be the danger of too hastly action all the time." This formulated the concept of evolution and residing on this concept was the landmark judgment of the largest SC bench in the Indian history. Khanna J in the same case stated that, "The word amendment postulates that the old constitution survives without loss of its identity despite the change and continues even though it has been subject to alterations." The interpretation of the judgment of Keshavnanda Bharti is clear that the court wanted to identify that middle line required to keep the amendment procedure away from altering the basic structure of the constitution along with giving it a unique statues of its own. The question upon the bench was what is this basic structure? At that time it appeared as if the basic structure is predominantly focused on the protection of Part III of the constitution along with its secular character, its supremacy and the democratic and republic norms it represents. Then in Minerva Mills case the Supreme Court finally laid down that the basic features included the limited power of Parliament to amend the constitution; harmony and balance between fundamental rights and directive principles; fundamental rights in certain cases and power of judicial review in certain cases.[6] Independence of judiciary is also a part of basic structure.[7] It can be seen that the basic structure is like the seed that is used to plant a tree. A time comes when the trees grows and yield fruits. How the yield will be would not only be dependent on how the seeds were but also on what were the seeds. Preserving the integrity of the basic structure was important but more important was to recognize the seed in the first place as deep in the ground it stayed.

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[3] Sajjan Singh v. State of Rajasthan AIR 1965 SC 845
[4] Golaknath vs. State of Punjab AIR 1967 SC 1643
[5] *Keshavnanda Bharti v. State of Kerala*, AIR 1973 SC 1461
[6] *Minerva Mills Ltd. v. Union of India* AIR 1980 SC 1789
[7] *Shri Kumar Padma Padma v. Union of India*, (1992) 2 SC 428

Whenever the discussion on the effect of this judgment takes place, one aspect that is easily ignored is the impact it had on the legislature. Those were the times of Indira Gandhi who was known for her robust dictatorial attitude. This was evident as the legislature did not want any interference. It is generally assumed in the democracy from the layman's perspective that the supreme power lies upon the representative of the people. What is ignored is that the idea of democracy depends on not giving any absolute power to any organ in the first place. The amending power without interference was that absolute power of the legislature which they wanted to protect and the complete judicial review without any interference was the absolute power of the judiciary which too made the legislature is wary of the provision. Keshavnanda Bharti case was the middle line made to protect the soul of our democracy. What then proceeded were series of events or efforts by the legislative body in order to maintain the supremacy it presumed it had. The 39th amendment and the 42nd amendment justify this argument. It was the time of one of the biggest revolutions in the history of the country. More importantly it was the revolution of the legislature against the judiciary. One organ intended to evolve and the other was afraid of that evolution. One organ had the means and knowledge to adapt as per the modern norms the other was the reflection of the general public but in its quest for power it failed to realize who its own supporters became the collateral damage. The 39th amendment came after the Allahabad High Court decision of Indira Nehru Gandhi v. Raj Narayan. The amendment was made to validate with retrospective effect the election of Indira Gandhi which the Allahabad High Court held otherwise. The clause (4) and (5) of article 368 were struck down as unconstitutional on the ground that they were outright negotiation of the right of equality conferred by article 14, a right which is the basic postulate of the constitution.[8] This did not restrict the government and they continued to find ways to win this argument against the judiciary and for that the 42nd amendment was formulated. It reduced the scope of judicial review by adding that no constitutional amendment shall be called in court on any ground and it enlarged the scope of constituent power of the Parliament by declaring that there will be no limitation. If Keshavnanda Bharti was an arrow, the 42nd amendment was the government's shield against it. But in judicial review court had the power to break any hurdle even if it tries to restrict this feature itself. The clause (4) and (5) of article 368 added in the 42nd amendment was declared unconstitutional by the Supreme Court of India in the Minerva Mills case.

So even after decades from that in I.R. Coelho v. State of Tamil Nadu, the SC in the nine judge bench decision held – Any law placed in the Ninth Schedule after April 24, 1974 when Keshavnanda Bharti's judgment was delivered would be open to challenge. So the ninth schedule is not bullet proof, it can be challenged subject to the condition that the basis to challenge it is that the basic feature of the constitution is in dispute.

Ambiguity of the basic structure doctrine is something that has been in question since its inception.

[8] *Indira Nehru Gandhi v. Raj Narayan* AIR 1975 SC 2299