

## Analytical study of Democracy in Indian

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### Abstract

India has adopted a democratic, Republic and Parliamentary form of government. The democratic government in contrast seeks to preserve the dignity of man and to build itself on it. But democracy is more than a form of government. It is a special condition of society. It represents a state of society in which the rights of the people are equal and their thoughts and sentiments are similar. In his lecture to the American people on democracy, Thomas Mann gave the word a broad meaning, broader than what the politician give to it. He connected democracy with the "highest human attributes", and related it to the "inalienable dignity of "mankind" which, he said, 'No force, however humiliating, can destroy.'" It is in this sense that one should think of democracy. It exists where the rival claims of individuals and society are equitably adjusted, where every citizen is free and has the right to order his life to his best advantage, where the opportunities for all are equal, where the citizens choose their government by the exercise of free votes, and also control its policy by their opinions freely expressed, where dignity of man and Rule of Law are to be found. So, the present paper will represent the review paper of our democratic system to discover.

**Keywords:** India, democracy, parliamentary, society

### Introduction

*Absolute intellectual freedom is essential for human progress. MILTON said: "Give me the liberty, to know, to utter, and to argue freely according to conscience above all liberties."*

Democracy has been defined as rule of the majority, a conception, which Morarji Desai said the West call good government even when a majority of 51 percent goes on flouting the wishes of 49 percent. But it is difficult for an American to accept a definition of democracy which has no provision for protection of the rights of the minority. It would be more likely to follow the ideas of Madison in the Federalist that a government will be democratic if the checks and balances of that government are so constructed that tyranny of neither majority nor minority is possible.

Democracy entails the involvement of the people in the governance of one country by giving them a direct hand in the selection of rulers and by giving them periodic opportunities of getting rid of the rulers and replacing them by new rulers if they, the people, do not approve of the policies of the old rulers. The dictum that power corrupts and absolute power corrupts absolutely is amply affirmed by the facts of history <sup>[1]</sup>.

The people are the only censors of their governors. Rule of Law and independence of the Courts are essential attributes of a civilised society. Our constitutionalism, according to him, is founded upon institutional inspiration that makes for a free and civilised society organised with the minimum of force and maximum of reason. A society can be said to be free in which law binds all men equally the governors as well as the governed, the judges as well as the litigants <sup>[2]</sup>.

The people - the ultimate rulers in a democracy have voluntarily subjected themselves through a bill of rights to the restraints of law and created courts to help them observe the Law's prohibition <sup>[3]</sup>.

In the working of a Constitution, we sometimes come across encounters between one freedom and another. Entrustment of power to those in charge of the governance of the country calls for utmost vigilance lest the over-ambitious amongst them should make short shrift of our great heritage.

Democracy is a system of checks and balances. In this system, the government functions, not with the tacit consent, but the active and willing support of the people. In a democracy, the ultimate responsibility of the government to the people is not merely a philosophical dogma but a positive fact which is demonstrable through a prescribed and specific procedure. Democracy, the government by the people, is a government in which everyone has a share either directly or indirectly. The spirit of democracy is the belief that the happiness of every person is as much important as the happiness of anyone else.

### Scope of Study

The trouble is that very few persons know about democracy. The world also bristles with "democracies" of various sorts. The success of Western democracies has induced governments which are totalitarian or open dictatorships, to describe their countries as democratic. Hence, the present study has been compiled all the study of democratic system.

#### ▪ **Gilbert V. Minnesota 254 U.S 325** <sup>[4]</sup>

"Emergency laws & regulation generally impose restrictions of the right of free speech because no states can allow people in the name of free speech to dissuade its citizens from assisting in the prosecution of war."

#### ▪ **Block V. Hireh 256 U.S** <sup>[5]</sup>

"A limit in time, to tide over a passing trouble, well many justify a Law that could not be upheld as a permanent change."

▪ **Kennedy V Mendoza. Martinez 372 U.S 144** <sup>[6]</sup>

“It is fundamental that the great powers of Congress to conduct war and to regulate. The Nation’s foreign relations are subject to the constitutional requirements of due process.

▪ **Alfonso De Salas (2012)** <sup>[7]</sup>

The author explain and ellarabroate in his manual on human rights and environmental laws the accused protected by the international law by the absence of general principle principal of and neither the convention not the charter are design to provide a general protection of charter court has increasable examine the complaint in which individual have are gives that a breach of one of their convention rights as resulted from adverse environmentally factors.

▪ **Patricia kameri mbote et al. (2011)** <sup>[8]</sup>

In this manual author has explain legal and institutional framework to advance rule of law principal according the constitution and human right firstly would like to thank the researchers. judiciary particularly the honourable chief justice the attainment of the rule of law ideal it is carried out on the context of grooving interest in issue of good governance democracy human rights and the rule of law review the historical evolution of the justice sector.

▪ **Patricia Kameri Mbote et al. (2011)** <sup>[9]</sup>

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▪ **David Bloomfield et al (2003)** <sup>[10]</sup>

The author has connivance on this hand book that democracy and reconciliation part this hand book is a conviction that the best form of post conflict government is a democratic one. This is not so much a principal stend as a programmatic one. Democracy is a system for managing different without recourse to violence. this makes democracy particularly relevant given the changes in the nature of a violent conflict since the end of the cold war. As we move away from either or win lose solution to conflict democracies become the principal the practical many festination of cooperative win solution.

▪ **Ali Reja Esmati (2016)** <sup>[11]</sup>

Detention is depravation of personal liberty of the individual which under the constitution deny under part third of constitution and freedom of live freely without constitution and the temporary detention infringement the liberty of individuals without any order of the higher court detention is illegal respect of human dignity and freedom human right shall not be deprived as stated in constitution. AIR 1977 SC.965 “Fragmentary group of rules can misfire or even back fire”

▪ **Hem Chandra Saikia V/S State of Assam (1992) 2 LAB LIC 1252 (GAU)** <sup>[12]</sup>

High court define “The term “law” means the statute Law that is an Act enacted by the Legislature of a state after

Legislature proposals”

▪ **AIR 1975 MP 174** <sup>[13]</sup>

High court of Madhya Pradesh said that “Law presumes in favors of marriage and against concubinage and onus is on the person who challenge the Legitimacy”

▪ **AIR 1984 S.C 684** <sup>[14]</sup>

“The expression “Law” as used in article 13 is a Law enacted in exercise of the Legislative power.”

▪ **AIR 1986 S.C 1571** <sup>[15]</sup>

Apex court says that “The law is to play its allotted role of serving the needs of the society.”

▪ **Board of Mining Examination V/S Ramjee AIR 1977 S.C 956** <sup>[16]</sup>

Supreme Court said that “While fragmentary grasp of rules can misfire or even back fire mostly.”

▪ **M/S Bishamber Dayal Chandra Mohan v/s State of U.P AIR 1982 S.C 32** <sup>[17]</sup>

Supreme Court said that “The word ‘Law’ with reference to Article 300-A of the Constitution must means an Act of Parliament or of a State Legislature, a rule, or a statutory order having the effective force of Law.”

▪ **Ram Parsad v/s State of Bihar Air 1952 PAT.194** <sup>[18]</sup>

Patna High Court said that “The term “Law” in article 245 of the constitution must be constructed to include in the purviews all Legislature Acts enacted in the prescribed manner as well as form”

▪ **Emperor v/s Abdul Hamid, AIR 1923 PAT 1 AT 7 (SB)** <sup>[19]</sup>

“The basic essence of the word Law is that it is enforceable as “Law.”

▪ **Marbury V.Madison(1803) I. Cranch 137, LED 60** <sup>[20]</sup>

“The doctrine of the judicial review was originated in the case mentioned above.”

▪ **Mohd. Ahmed v/s Shah Bano Begam, AIR 1985 SC. 945** <sup>[21]</sup>

Supreme Court said that “Shah Bano Begam was made entitled for getting the maintenance v/s 125 of Crpc”

▪ **State of Tamil Nadu v/s State of Kerala AIR 2014 S.C 2407** <sup>[22]</sup>

Supreme Court said that “Legislature has no power to declare final judgment of court a nullity. It can however validate law by removing defects pointed out by the court.”

▪ **West Bengal v/s Union of India, AIR 1963 S.C 124** <sup>[23]</sup>

Supreme Court said that “In our democratic system the legal sovereignty under the constitution resides in the people.”

▪ **IN RE DELHI LAWS ACT CASE AIR 1951 SC. 332** <sup>[24]</sup>

Supreme Court said that “The court may after such hearing as it thinks fit report to the president its opinion there on.”

▪ **Dwarkadas Shrinivas V. Sholapur SPG.WG.CO AIR 1954 S.C 119** <sup>[25]</sup>

Supreme Court Justice S.R Das gave some indication. “Supreme Court is not bound by its own decision & may revise a previous decision.”

▪ **In Secularism - Conceptual contradictions need for secular minds** <sup>[26]</sup>

A. AKBAR said that a discussion on ‘Secularism’ seems to be highly pertinent at this moment given the fact that our country is now witnessing fissiparous tendencies apparently based on religion. Although the menace of communalism is not a new phenomenon in the Indian society, yet it is quite baffling and embarrassing that even after more than six decades of independence and despite an emphatic proclamation by the constitution that we are secular, still things are not so bright. Before proceeding further, it is necessary to have an idea of the nature and meaning of the term ‘secularism’. It is interesting to note that there is no agreed and precise meaning of ‘secularism’ in our country. As Jawaharlal Nehru wrote in his autobiography... “no word perhaps in any language is more likely to be interpreted in different ways by the people as the word ‘religion’. That being the case, ‘secularism’ which is a concept evolved in relation to religion can also not have the same connotation for all”.

▪ **Mohri Bibi V.Dharmodas Ghose 30 F.A 114** <sup>[27]</sup>

“Judge follows a mental process and decides a case in a more and less methodical ways.”

▪ **M/S Saramjivi Stores Calcutta v/s Union of India AIR (1982) DELHI 76** <sup>[28]</sup>

Delhi High Court said that “Literal construction should not be made if it struck down the aim of the statute.”

▪ **Navin Chand V. Commr. of I.T Bombay AIR 1955 S.C 58** <sup>[29]</sup>

Supreme Court said that “That consideration compels the court to construe the constitution liberty.”

▪ **Express News Paper V. Union of India AIR 1958 S.C 578** <sup>[30]</sup>

Supreme Court said that “While interpreting Article 19(1)(9) the court expended. The socio-economic theories regarding the concepts of ‘living’, ‘minimum’ and ‘fair’ wages.”

▪ **Raj Narayan V. Indira Gandhi 1971 H.C Allahabad** <sup>[31]</sup>

Allahabad High Court said that “The Indian constitution embodies the modern concept “Rule of law”

▪ **People’s Union for Democratic Right v/s Union of India AIR 1982 S.C 1473** <sup>[32]</sup>

Supreme Court said that “Public Interest Litigation is strategic arm of legal aid movement which is intended to bring justice within the reach of poor person.”

▪ **D.S Nakara V. Union of India 1983 S.C 305** <sup>[33]</sup>

Supreme Court said that “Any member of public having sufficient interest can maintain an action for judicial redress in connection public injury.”

▪ **State of Madras V. V.C Rao AIR 1952 SC. 196** <sup>[34]</sup>

Supreme Court said that “Our constitution contains express provision for judicial review of Legislation as to its conformity with constitution.”

▪ **A-K Gopalan V.Madras State AIR1950 S.C 27** <sup>[35]</sup>

Supreme Court said that “Chief justice kania – the power of judicial review is available automatically to the judiciary even in the absence of Art13.”

▪ **Sankari Parsad V. Union of India AIR 1951 S.C 458** <sup>[36]</sup>

Supreme Court said that “The constitution (First Amendment) Act 1951 – The word ‘Law’ is clause (2) of Article 13 does not include a Law/Constitution amendment by the parliament under art 368.

▪ **Sajjan Singh V. State of Rajasthan AIR 1965 S.C 845** <sup>[37]</sup>

Supreme Court said that “The interpretation given in the case of Sankri Prasad is followed –“The pitch and substance of the amendments was only the Fundamentals Rights. “So, as to help the Legislature.”

▪ **Golak Nath V. State of Punjab AIR 1967 SC. 1643** <sup>[38]</sup>

“Word ‘Law’ is clause (2) of Art 13 includes amendments to the constitution.” (Prospective Ruling)

▪ **Kesavananda Bharti V. State of Kerala AIR 1973 S.C 1461** <sup>[39]</sup>

Supreme Court said that “By the virtue of article 368, the power of the Parliament to amend extends to all provision of the Constitution provided it can’t alter its basic frame work.”

▪ **Minerva Mills Ltd V/S Union of India AIR 1980 SC. 1789** <sup>[40]</sup>

“The Supreme Court held the clause (4) & (5) of Art 368 as unconstitutional.”

▪ **Union of India V/S Mental Corporation of India AIR 1967 S.C. 637** <sup>[41]</sup>

Supreme Court said that “The mental corporation of India (Acquisition of undertaking) Act 1966 was declared ultra vires as offending article 31 (2)”.This Judgment was over ruled in the case State of Gujarat v/s Shanti Mangala Das AIR 1969 S.C. 634.

▪ **Makhan Singh V.State of Punjab AIR 1964 S.C 381** <sup>[42]</sup>

Supreme Court said that “There are two remedies open to a party whose right of personal freedom has been infringed he may move the court for writ under Art 226 (1) or 32 (1) of the constitution.”

▪ **Allegeyer v/s Louisiana (1897) 165 U.S 578** <sup>[43]</sup>

“Liberty is a very comprehensive term, it would include not merely freedom to move about unrestricted but such liberty of conduct choice and action as the law gives and protect.”

▪ **Wolf v/s Colorado (1949) 338 U.S 652** <sup>[44]</sup>

“The real clause to the problem confronting the judiciary on

the application of the due process clause is not to ask where the time is once and for all be drawn but to recognize that it is for the court to draw it by gradual and empiric progress of inclusion and exclusion.”

▪ **Gopal Das Mohta v/s Union of India AIR 1955 S.C. 1** <sup>[45]</sup>

Supreme Court said that “Forman analysis of article 32 –that every citizen has right to move the Supreme Court for the enforcement of his right guaranteed is part (III) of the constitution.”

▪ **Kuldeep Nayan v/s UNION OF INDIA AIR 2006 S.C 3127 ART 102** <sup>[46]</sup>

Supreme Court said that “Open ballot procedure does expose members to disqualification under 10<sup>th</sup> schedule.”

▪ **Committee on Judicial Accountability v/s Union of India AIR 1992 S.C 320** <sup>[47]</sup>

Supreme Court said that “Interpreting the constitutional provision the court should adopt a construction which strengthens the foundational features and basic structure of the constitution.”

▪ **Devendra Pal Singh v/s State N.C.T Delhi AIR 2003 S.C. 886.** <sup>[48]</sup>

Supreme Court said that “A judgment of the final court of the country is final and a review of such judgment is an exception.”

**Secularism - A goal and a process**

Sripriya Rengarajan said that “The purpose of the law must not be to extinguish the groups which make the society but to devise political, social, and legal means of preventing them from falling apart and so destroying the plural society of which they are members.” India is the only country in the world where the issue of secularism has occupied a centre stage in intellectual discussions. Secularism is, as for its genesis, an alien concept for India envisaging separation of the church and the state – an apparently impossible proposition in the Indian situation. In practice, however, all that ‘secular’ means is that the Parliament shall not be competent to impose any particular religion upon any section of population. Nehru, on a positive note, observed that the state gives protection and an opportunity to all religions and cultures and thus brings about an atmosphere of tolerance and co-operation and equal treatment to all religious communities. *Sarva Dharma Samabhava* is the central idea of Indian secularism, however unpalatable it is to concept puritans.

**Conclusion**

If we believe that democracy we believe that in future. We shall achieve a National community where are all men are free and none is hungry, homeless, ill or afraid. Country must be strong with a safety point. Development of country, corruption and political criminalisation must be abolished. Political social and economic justice, Rule of law, People must be educated and members of Parliament and State Legislatures must be qualified accountable to the public and believing this everybody will surely have to share in making this great dream of Democracy come true, that is the requirement for the success of democracy.

1. To know and understand the provisions, Acts,

enactments, Rules, Regulations, Ordinance, Laws etc.

2. To make appraisal for the ombudsman Act & citizen charter and draw certain conclusions on the bases of the study.
3. Historically trace the origin and evolution of the Democratic system in India.
4. Examine the recognition of Democracy at international as well as at national level.
5. To analyze the relevant provisions of the Constitution of India and other legislations dealing with Indian Democratic system.

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