



THE NATIONALISM DEBATE, CONCERNS, AND CONSTITUTIONAL RESPONSE

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Abstract Today, we find ourselves in a situation where identity has returned as a political force and there is a rejection of multicultural values. There is a raging debate on what nationalism implies and means to its citizens. There are groups that advocate a relook at history, culture, and education. They believe that India should be defined not in western liberal terms, but in what are termed as ancient civilizational values. However, the Indian brand of nationalism must be based on Constitutional nationalism. This form of nationalism is distinct as it demands a citizen's allegiance not to any religion or school of thought, but only to the constitutional ethos. Most importantly, this idea of nationalism is in line with the idea of India as was envisaged in the Indian National Movement that moulded the common nationality of Indians for the first time, and has been informed by the history of our rich pluralistic civilization.

I. INTRODUCTION: NATIONALISM AND ITS CONTOURS

Benedict Andersen famously describes a nation as a socially constructed community, imagined by the people who perceive themselves as part of that group. In India, nationalism was once synonymous with the freedom struggle. For a colonized people, for whom unity was needed to weave together different peoples and regions with diverse cultures to obtain freedom from British rule, nationalism was a liberating force, a promise of equality and freedom from colonial subjugation. This spirit of nationalism was rooted in ideas of progress and development, not only politically, but also socially, economically, and culturally. On the

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one hand, it was accompanied with a revival of religion, culture, languages, art, and more, and on the other hand, there was development of a scientific spirit and modern ideas.¹ This spirit emboldened us to fight against centuries of oppression and backwardness, and move forward towards a new era.²

While respect for nationalism is vital for a nation-state, as was in the case of newly independent India in 1947, excessive adherence to it over time may hinder the nation from moving forward. In its extreme form, history has shown that nationalism has led to colonial imperialism and fascism, and many wars have been fought in its name.³ Tagore, noting the dangers of nationalism, warned against the excessive fetishisation of the nation,⁴ where any insults against the nation threaten our sentiments, if not our security, and are thus met with outrage. Such a reaction often occurs when nationalism is divorced from the necessary social and economic reform required to ensure its vitality, and consequently it often assumes a more revolutionary, undesirable colour. Jayaprakash Narayan warned against this tendency, through his opinion that that our central concern must be to ensure that the political unity emanating from the Constitution be made firm and enduring, and not to take the same for granted, lest it take on a more secessionist sentiment.⁵

In modern-day India, the nationalism debate has assumed special significance in the midst of competing claims. These competing claims have now percolated to the common man. It is more important than ever to have a meaningful and constructive dialogue about what nationalism signifies today for a democratic country like India.

In order to assess the significance of nationalism in the modern Indian state, the concept of nationalism must be understood in the historical context. Yet, it has to be borne in mind that it is our Constitutional values that now shape Indian nationalism, and nationalism in a Constitutional Republic have and must be understood within the confines of the Constitution and the Rule of Law. A healthy discussion on nationalism must be informed, and must break free from the ideology of an insecure, narrowly tailored brand of nationalism.

II. THE MAKING OF A NATION

In a 1984 judgment, Justice P.N. Bhagwati mused:

¹ K.R. Narayanan, *Nationalism and Democracy in India*, THE ECONOMIC AND POLITICAL WEEKLY 659 (1965).

² *Id.*, at 633.

³ Narayanan, *supra* note 1, at 633.

⁴ Nitin Pai, *Patriotism without nationalism*, THE HINDU, February 23, 2016.

⁵ Jayaprakash Narayan, *Origin of a Nation*, in INDIAN NATIONALISM: THE ESSENTIAL WRITINGS 257, 270 (S. Irfan Habib ed., 2017).

“1. ...today the integrity of the nation is threatened by the divisive forces of regionalism, linguism and communalism and regional, linguistic and communal loyalties are gaining ascendancy in national life and seeking to tear apart and destroy national integrity. We tend to forget that India is one nation and we are all Indians first and last.”⁶

This sentiment remains relevant today as of late, there is a raging debate on what nationalism implies and means to its citizens. There are groups that advocate a relook at history, culture, and education. They believe that India should be defined not in western liberal terms, but in what are termed as ancient civilizational values. The contention is that India must be synonymous with the majority traditions and a thousand years of invasions and invaders cannot be the basis to define this ancient land and its people. Historically, nationalism as an ideology has used “othering” as a way to identify the nation, but doing so has however necessitated the presence of an ‘other’ to maintain such an identity distinction.⁷

“History cannot, however, be re-lived. The re-creation of the past is itself subject to the influence of all that has happened in between. India’s determination to establish itself as a secular, democratic State is a recognition of this fact. It is an acceptance of her history without seeking to deny or repudiate any element that has once entered the national life.”⁸

India as it exists today—from Kashmir to Kanyakumari, from Gujarat to Nagaland—was moulded together in 1947. In the past, the sub-continent was more often than not fragmented into principalities and kingdoms. Barring periods of central rule under the Mauryas, the Guptas, the Delhi Sultanate and finally the Mughals in North and Central India, this landmass has predominantly been a country of myriad rulers and kingdoms. Even under these periods of central rule, there were significant portions of the territory under the rule of independent kingdoms.⁹ There have been confederacies like the Sikh Misls and the Maratha Confederacy that controlled landmasses by virtue of their military prowess.

With the waning of the Mughal Empire and the rise of the East India Company until 1857, when the British Crown took control, the map of India was nothing like it is today. As Mughal power waned post Aurangzeb, there was an assertion of power by local rulers including Tipu Sultan, the Marathas, and Maharaja Ranjit Singh. The princely families that survived accepted British suzerainty even while they retained their own kingdoms. It was under the British

⁶ Pradeep Jain v. Union of India, (1984) 3 SCC 654.

⁷ John Evans, *The Use of “Othering” in the Formation of a Nationalist Society*, 7.

⁸ 4 THE CULTURAL HERITAGE OF INDIA, THE RELIGION 592 (Haridas Bhattacharyya ed., 1969).

⁹ Pradeep Jain v. Union of India, (1984) 3 SCC 654, ¶2.

rule that India became a compact political unit having a single political regime throughout its land, and thus the concept of a nation took its roots.¹⁰

However, it was only with the freedom movement that the leaders of the time who were from different creeds, races, castes, and colours create a truly nationalistic movement towards freedom and assertion of rights of natives of this land, both in the princely states (as they existed pre-1947) and in British India. The freedom movement was the catalyst that led to, as Maulana Abul Kalam Azad put it, the moulding of a common nationality through a thousand years of joint life.¹¹

The Indian Independence Act, 1947, and the creation of the Dominions of India and Pakistan were followed by the amalgamation of the princely states, and thus India, as we know it now, took birth. On the eve of Independence, the President of the Constituent Assembly, Dr. Rajendra Prasad, proclaimed:

“To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any form against them. Their religion, their culture and their language are safe and they will enjoy all the rights and privileges of citizenship, and will be expected in turn to render loyalty to the country in which they live and to its constitution”¹²

Finally, on January 26, 1950, we gave to ourselves the Constitution of India.

Post the Constitution, the process of amalgamation of states continued. Initially, there was a merger of states and regions on a linguistic basis, but the past two decades have seen a carving out of states such as Uttarakhand from Uttar Pradesh,¹³ Chhattisgarh from Madhya Pradesh,¹⁴ Jharkhand from Bihar,¹⁵ and Telangana from Andhra Pradesh.¹⁶ This bifurcation of states is not new to India, and we have seen this in the division of Assam into Nagaland,¹⁷ Meghalaya,¹⁸ Mizoram,¹⁹ and Arunachal Pradesh,²⁰ the division of East

¹⁰ Pradeep Jain v. Union of India, (1984) 3 SCC 654, ¶2.

¹¹ Maulana Abul Kalam Azad, *Indivisible Unity Called Indian Nationality*, in INDIAN NATIONALISM: THE ESSENTIAL WRITINGS 237, 240 (S. Irfan Habib ed., 2017).

¹² I THE FRAMING OF INDIA'S CONSTITUTION: SELECT DOCUMENTS 558 (B. Shiva Rao ed., 2004).

¹³ *Vide* Uttar Pradesh Reorganisation Act, 2000.

¹⁴ *Vide* Madhya Pradesh Reorganisation Act, 2000.

¹⁵ *Vide* Bihar Reorganisation Act, 2000.

¹⁶ *Vide* The Andhra Pradesh Reorganisation Act, 2014.

¹⁷ *Vide* State of Nagaland Act, 1962.

¹⁸ *Vide* North-Eastern Areas (Reorganisation) Act, 1971.

¹⁹ Declared to be a Union Territory *vide* North-Eastern Areas (Reorganisation) Act, 1971. It was proclaimed as a State *vide* State of Mizoram Act, 1986.

²⁰ Declared to be a Union Territory *vide* North-Eastern Areas (Reorganisation) Act, 1971. It was proclaimed as a State *vide* State of Arunachal Pradesh, 1986.

Punjab into Haryana, Punjab and Himachal Pradesh,²¹ and the carving out of Gujarat from Bombay (now Maharashtra).²² Initially, post-independence, there were enclaves in the country ruled by the French and the Portuguese, such as Puducherry and Goa, which later merged with India. Yet our border disputes with Pakistan and China continued, and to a certain extent, continue till date.²³

III. NATIONALISM AND THE INDIAN CONSTITUTION

Given our history, the Indian brand of nationalism is based on an ethos that is not only multicultural, but like the Constitution itself, liberal and tolerant of all faiths and peoples who have settled in this land over centuries. It is the Constitution that defines us as a nation, that describes our territories, the rights of our citizens (Part II), our fundamental rights (Part III), and the duties cast on the Indian Union and the States (Part IV).

The Preamble to the Indian Constitution declared India to be a “Sovereign Democratic Republic”.²⁴ With the Forty-second Amendment in 1977, the terms ‘socialist’ and ‘secular’ were introduced in the Preamble. Contemporaneously, provisions such as Article 48A, and more importantly, Part IVA of the Constitution were introduced. Part IVA of the Constitution, describing the Fundamental Duties, was consciously kept as a separate chapter. Parliament felt that the Fundamental Rights must be accompanied by corresponding duties, and these duties are not mere pious resolutions unenforceable by law, but in fact constitute the aspirations of a billion people.²⁵

These Fundamental Duties indicate the desire of the Parliament to inculcate the spirit of nationalism amongst its citizens, a nationalism that draws its contours from the Constitution alone. Article 51A (introduced in 1977) enjoins the citizens to uphold duties which can be termed as elements of nationalism and consciously abjures reference to the culture of any individual community or its history, and instead focuses on the rich heritage of our composite culture. These include respecting the Constitution and its ideals, as well as symbols such as the National Flag and the National Anthem, to cherish the ideals that informed the freedom struggle, and to protect the sovereignty, unity and integrity of India.

At the same time, it requires us to promote unity and harmony as well. Article 51A(g) states that citizens of India must aspire to a common brotherhood transcending diversities of religion, languages, regions, and to value and preserve the rich heritage of our common culture.

²¹ *Vide* Punjab Reorganisation Act, 1966.

²² *Vide* Bombay Reorganisation Act, 1960.

²³ SANJEEV SANYAL, *LAND OF THE SEVEN RIVERS* 259-260 (2012).

²⁴ INDIAN CONST. pmbl.

²⁵ K.B. Rohatgi, *Equality and Inequality: A Legal Perspective*, in *CITIZENSHIP VALUES IN INDIA: INDIVIDUALISM AND SOCIAL IMPERATIVES* 43 (Shyam Ratna Gupta et al. eds., 1990).

Seervai, however, calls Article 51A “innocuous” at best, not being “law”, and, *a fortiori*, not being the supreme law of the country. He states that it has been enacted under the mistaken belief that Fundamental Rights must correspond to certain duties, and some of the directives must appear ludicrous to people outside India, such as Article 51A(b) — “to cherish and follow the noble ideals which inspired our national struggle for freedom”, and Article 51A(j) — “to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement”.²⁶

However, the position of Article 51A is far from being precarious. Many judgments of the Supreme Court have held that Article 51A casts upon citizens similar duties as Part IV of the Constitution enjoins upon the State.²⁷ Conversely, although Article 51A does not cast any fundamental duty upon the State, the individual duties it imposes upon the citizens have been creatively read to cast a collective duty upon the State.²⁸ Article 51A has also come to be used by the apex court as an interpretative aid, with the Court holding that the principles enshrined therein should be kept in mind while interpreting statutes.²⁹ In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*,³⁰ the Supreme Court highlighted their importance in the following manner:

“58. It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of State policy and fundamental duties as enshrined in Article 51-A of the Constitution play a significant role.”

Recently, the Supreme Court in *Shyam Narayan Chouksey v. Union of India*,³¹ while deciding on the issue of the regulation of playing/singing of National Anthem, noted that the executive has constituted an Inter-Ministerial Committee to submit its recommendations on the same. It, however, made it clear:

“69. When we consider the perspectives put forth before us pronounced in their own way, we have no shadow of doubt that one is compelled to show respect whenever and wherever the National Anthem is played. It is the *élan vital* of the Nation and fundamental grammar of belonging to a nation state. However, the prescription of the place or occasion has to be made by the

²⁶ 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 2020 (4th ed. 2005).

²⁷ *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534, ¶51.

²⁸ *AIIMS Students' Union v. AIIMS*, (2002) 1 SCC 428, ¶58.

²⁹ *State of W.B. v. Sujit Kumar Rana*, (2004) 4 SCC 129, ¶21.

³⁰ (2005) 8 SCC 534, ¶58.

³¹ 2018 SCC OnLine SC 11, ¶69.

executive keeping in view the concept of fundamental duties provided under the Constitution and the law.”

Thus, Constitutional nationalism is distinct as it demands a citizen’s allegiance not to any religion or school of thought, but only to the constitutional ethos. Even our elected representatives under Articles 84 and 174 of the Constitution (Member of Parliament or State Legislature) take an oath prescribed under the Third Schedule pledging, “true faith and allegiance to the Constitution of India as by law established”, and to “uphold the sovereignty and integrity of India”.³²

Section 8(1)(a) of the Representation of the People Act, 1951, records a disqualification on the grounds of promoting enmity between different groups on grounds of race, religion, place of birth, language, residence, etc., and to do acts prejudicial to the maintenance of harmony under Section 153A of the Indian Penal Code. Under Section 8(2)(k) of the Representation of the People Act, 1951, it is a disqualification to be convicted under Sections 2 and 3 of the Prevention of Insults to National Honour Act, 1971 (offences of insulting the National Flag or the Constitution, and preventing singing of the National Anthem).

It is in this context that the role of the courts becomes of utmost importance. The sentinel of our rights, the Supreme Court has exercised judicial review to,

“maintain the balance of federalism, to protect the fundamental rights and fundamental freedoms guaranteed to the citizens and to afford a useful weapon for availability, availment and enjoyment of equality, liberty and fundamental freedoms and to help to create a healthy nationalism....”³³

In *S.S. Bola v. B.D. Sardana*,³⁴ the Court noted:

“97. ... judicial review is a moral guarantee wrapped in legal commands. In a welfare State like India, healthy nationalism consists in evolving such socio-economic philosophy for the reconstruction of the society which may be beneficial to the nation and for this the Court is the best adjunct to filtrate and advance such dynamic principles for developing the nation through judicial review as united Bharat.”

Noting the power of nationalism and its symbols, the Supreme Court made it clear that nationalism cannot be achieved at the cost of other Fundamental Rights, such individual rights granted under Article 19(1)(a), and Article 21. The Constitution which places great importance on individual rights, affirmed this in

³² INDIAN CONST. third sched.

³³ *S.S. Bola v. B.D. Sardana*, (1997) 8 SCC 522 (*'S.S. Bola'*).

³⁴ (1997) 8 SCC 522, ¶97.

the recent Aadhar decision of *K.S. Puttaswamy v. Union of India*,³⁵ where in the context of the right to privacy Chandrachud J. wrote:

“118. Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the state is to safeguard the ability to take decisions—the autonomy of the individual—and not to dictate those decisions. ‘Life’ within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one’s being in its fullest sense. That which facilitates the fulfilment of life is as much within the protection of the guarantee of life.”

In the same judgment, Chelameswar J. remarked,

“372. History abounds with examples of attempts by governments to shape the minds of subjects. In other words, conditioning the thought process by prescribing what to read or not to read; what forms of art alone are required to be appreciated leading to the conditioning of beliefs; interfering with the choice of people regarding the kind of literature, music or art which an individual would prefer to enjoy. Such conditioning is sought to be achieved by screening the source of information or prescribing penalties for making choices which governments do not approve. Insofar as religious beliefs are concerned, a good deal of the misery our species suffer owes its existence to and centres around competing claims of the right to propagate religion. Constitution of India protects the liberty of all subjects guaranteeing the freedom of conscience and right to freely profess, practice and propagate religion. While the right to freely “profess, practice and propagate religion” may be a facet of free speech guaranteed Under Article 19(1)(a), the freedom of the belief or faith in any religion is a matter of conscience falling within the zone of purely private thought process and is an aspect of liberty.”

Constitutional nationalism is one which is not compelled by the State, but one arising out of individual volition. At the same time, it is respectful of different thoughts, tenets, and religious beliefs held by the people.

³⁵ (2017) 10 SCC 1 (*K.S. Puttaswamy*).

In *Union of India v. Naveen Jindal*,³⁶ the Court upheld the right of a citizen to fly the National Flag as a Fundamental Right under Article 19(1)(a) of the Constitution and held that it was a permissible use under the Flag Code of India, 2002. The Court held that the Flag Code could not be a reasonable restriction under Article 19(2), not being a “law” under Article 13, but that the Code must be followed to ensure the use of the National Flag is not commercialized or disrespectful. But it held that while flying the national flag was a protectable fundamental right under Article 19(1)(a), it was not an absolute right, and would be subject to not only Article 19(2), but also the Emblems and Names (Prevention of Improper Use) Act, 1950, and the Prevention of Insults to National Honour Act, 1971.

The judgment in *K.S. Puttaswamy* is also significant in another context. *Kesavananda Bharati v. State of Kerala*,³⁷ had already struck down as unconstitutional the Constitution (Twenty-Fifth Amendment) Act, 1971, which prohibited judicial review of certain Directive Principles, declaring judicial review to be a part of the basic structure of the Constitution. However, *K.S. Puttaswamy* has formally overruled *ADM Jabalpur v. Shivakant Shukla*,³⁸ which held that fundamental rights such as judicial review can be suspended during the emergency. Thus, the position of judicial review in Constitutional law is further entrenched, and now the role of the Supreme Court as the overseer of Constitutional nationalism stands stronger than ever before.

IV. CONCLUSION: DEBATING NATIONALISM

Due to the conduct of the colonial government right from the beginning of the nineteenth century, nationalism in India fed upon religious identification.³⁹ This trend eventually led to the creation of India and Pakistan. Religious communities have seen nationalism as a shield to protect themselves not only territorially, but also in terms of their cultural heritage. Today, we find ourselves in a situation, where across the world, identity has returned as a political force and there is a rejection of multicultural values⁴⁰ Ramachandra Guha describes the questioning of governments being equated with questioning the nation-state and nationalism as a nationalism of “paranoia and insecurity”.⁴¹

Democratic debate on nationalism is healthy, and in line with the Indian tradition of debate. But it also must not be read to proportions where it is a challenge

³⁶ (2004) 2 SCC 510.

³⁷ (1973) 4 SCC 225.

³⁸ (1976) 2 SCC 521.

³⁹ PETER VAN DER VEER, *RELIGIOUS NATIONALISM: HINDUS AND MUSLIMS IN INDIA* 2 (1994).

⁴⁰ Christoph Hasselbach, *What Return of Identity as a Political Force in Europe Means*, THE INDIAN EXPRESS, November 1, 2017.

⁴¹ Amrita Dutta, *This is a nationalism of paranoia and insecurity: Ramachandra Guha*, THE INDIAN EXPRESS, September 24, 2016.

to the idea of India itself as described in the Constitution. This idea has been informed by the history of our rich pluralistic civilization, which the judiciary has protected by interpreting Constitutional provisions in a way that is true to this Constitutional brand of nationalism.

Nationalism must be viewed as a work in progress, an emotion that ensures that not only do we celebrate our nationhood, but that equally importantly, we strive towards a better, greater, and more equitable India. That is the true spirit in which Article 51A must be read and interpreted.

The entry of fundamentalism in the Indian political debate does not just lead to polarization of society, but is antithetical to the very idea of a united nationalism. This places tremendous strain on the secular credentials of nationalism in India,⁴² creates a breeding ground for further disintegration, and questions Parliamentary democracy and the Constitution itself.⁴³ Different schools of thought have an equal stake in the secular state, as it is the only viable framework for a civilized society.⁴⁴

As Romila Thapar in a 2016 interview said in the context of India being a Constitutional democracy and nationalism -

“Surely, nationalism requires a serious commitment to a nation, defined as every citizen having access to human rights, and recognised not just by territory but also by reliable and just governance. Nationalism is not expressed merely by raising a flag or shouting a slogan, but by safe-guarding rights and ensuring good governance.”⁴⁵

⁴² Mahendra Pratap Singh, *Secularism and Communalism in India: Dialectics and Dilemmas*, 55(2) THE INDIAN JOURNAL OF POLITICAL SCIENCE 97 (1994).

⁴³ S.R. Bommai v. Union of India, (1994) 3 SCC 1, ¶132 (K. Ramaswamy, J.).

⁴⁴ Singh, *supra* note 42, at 97.

⁴⁵ *What Has Been Happening in Recent Times Could Well Develop into Fascism: An Interview with Romila Thapar*, THE CARAVAN, May 1, 2016.