

ROLE OF CONSTITUTIONAL ASSEMBLY DEBATE IN THE INTERPRETATION OF STATUTE

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Today when deciding a constitutional case, our Courts are altogether ignoring the Constitutional Assembly debate and its formation. It is a huge mistake on the part of the Judiciary as these debates are a piece of valuable guidance and acts as bridge to fill the gaps of any constitutional matter and its text.

The published multiple-volume sets of the *Constitutional Assembly Debates* are not much considered by our Judges when interpreting any law and it has become a prevailing practice. It is reasoned that the words and phrases written is what that matters and the meaning/rationale behind each clause of Constitution is not that helpful in resolving disputes. Since, India has one of the largest collections of founding documents. The Judges as well as the lawyers find these mass narratives tiresome to read and tries to avoid going into the complexities which they presume can inevitably lead to multiple, even competing, narratives about the assembly's ultimate choices. Concerned Judges and lawyers do not even attempt to reconcile conflicting narratives which by multiple readings of these "debates" can enhance its richness and relevance and make the decision making easy.

This debate on any day has the power to resolve any kind of ambiguities in any Legislature. After the decision of *Keshavananda Bharti* case it was hoped that the attitude of the Judges will change and will pay heed to the floor speeches made during the passage of Constitution but it has been still sparingly used in the constitutional litigation. It has become a consistent and prevailing practice

of our Indian Judges to decline the speeches enshrined in our Constitutional Assembly debates said during the passing of the Constitution. Also, Supreme Court only confines its principle of interpretation to the actual words of the Constitution and doesn't go beyond that.

But why do these debates matter?

Firstly, these debates can be said as an important source of material of our foundation and the conflicting ideologies of our founders. Our Constitution is the mother of all the laws. Whether it is a general law or a specific law, it derives its authority from the Constitution. Since, these debates show the values, ambitions, ideals of our Constitution makers, it would help our Legislatures to incorporate the same aspirations and ideals during legislation.

Secondly, these debates help to resolve frequent controversies whether it is relating to the debate on the adoption of form of Government or relating to the procedure of judicial appointments through Collegiums or NJAC. The debates can supply the form and content of the Constitution's basic features, which lie beyond the reach of constitutional amendments.

Finally, it can reduce the tension between the Legislature and the Judiciary, there would be less need of amendment in Constitution and it can easily adapt with the present situations. At the same time these debates can easily address the current day questions which are not yet faced or foreseen

by the Courts. For example, if in future there is any matter concerning social media. The Courts with the help of these debates even though our Constitution makers has not during that time would have imagined a digital age where the use of facebook, twitter would be prevalent but still they had passionate views on importance of free expression, which today guarantee us to post anything we want on the social media. These debates and their rationale can certainly able to solve future disputes.

For instance, the judgment of *Nabam Rebia and Bamang Felix v. Deputy Speaker and others*, MANU/SC/0177/2016; can be considered as good precedent for the Judges as well as for lawyers where Constitutional Assembly debates were heavily relied upon as not just like an interpretive tool but also as a determinative factor to come to the conclusion and make a right decision. In the *Nabam Rebia* case, when the question comes before the Supreme Court about the powers of a Governor and the Speaker in conducting the State Legislative Assembly, the learned Counsel during the argument quoted the likes of *B.R. Ambedkar, Mohd. Tabir* and others when addressing the issue of passing of resolution in Legislative Assemblies. The Hon'ble Supreme Court while deciding the matter referred to the characteristics of parliamentary democracy and the intention of the founding members behind imbibing the parliamentary form of Government, the Court observed that "the actions of the Governor were certainly not in the language of the law or the spirit of parliamentary democracy and responsible Government which was duly imbibed by our founding members in the Constitutional Assembly debates"

Evaluating the conduct of the Governor, the Court also observed that "Founding Fathers had desired, as the debate would reflect, the Speaker can be removed by the resolution passed by majority of all the then members and not by the majority of the members present and voting and the Governor was obliged to adhere to and follow the constitutional principle as proposed by our founding fathers."

This judgment with the help of the Constitutional Assembly debate has enriched the constitutional jurisprudence of India, and has given a new dimension especially in regard to the exercise of Article 356 in general and the role of the Governor in particular. It is certainly one of the landmarks in the evolution of law in India and we hope our learned Judges and Advocates will take into consideration the Constitutional Assembly debates in true spirit while resolving any constitutional litigation.

The drafting of the Constitution is considered as a monumental feat of democracy for which our founding fathers deserve immense respect. These individuals, despite being a multicultural set of people from various communities, were collectively committed to achieving the historic task of establishing a democratic republic in India. That the Assembly took a long time of over 3 years of deliberations and discussion on every single aspect allowing all kinds of people to express their views openly also shows that it represents the true will of the people of the country. Our Courts should play a vital role in imbibing the will of the founding fathers of our Constitution and should frequently refer in the constitutional matters which has lost its shine in the present day.

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