

Governance and The Constitution

Harish Salve

*(Senior Advocate, Supreme Court of India &
former Solicitor General of India)*

**The Eleventh Nani A. Palkhivala
Memorial Lecture**



Published by
Nani A. Palkhivala Memorial Trust

NANI A. PALKHIVALA MEMORIAL TRUST

We hardly need to introduce you to the life and work of the late Nani A. Palkhivala. He was a legend in his lifetime. An outstanding jurist, an authority on Constitutional and Taxation laws, the late Nani Palkhivala's contribution to these fields and to several others such as economics, diplomacy and philosophy, are of lasting value for the country. He was a passionate democrat and patriot, and above all, he was a great human being.

Friends and admirers of Nani Palkhivala decided to perpetuate his memory through the creation of a public charitable trust to promote and foster the causes and concerns that were close to his heart. Therefore, the Nani A. Palkhivala Memorial Trust was set up in 2004.

The main objects of the Trust are the promotion, support and advancement of the causes that Nani Palkhivala ceaselessly espoused, such as democratic institutions, personal and civil liberties and rights enshrined in the Constitution, a society governed by just, fair and equitable laws and the institutions that oversee them, the primacy of liberal economic thinking for national development and preservation of India's priceless heritage in all its aspects.

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INTRODUCTION

The Nani A. Palkhivala Memorial Trust was privileged to have Mr. Harish Salve, a former Solicitor General of India to deliver the 11th Nani A. Palkhivala Memorial Lecture on the subject “Governance and the Constitution.” The Trust has pleasure in publishing this transcript of the lecture for the public.

In a hard-hitting lecture, Mr. Salve has examined the essential features of the Constitution and whether the level of governance has enabled fulfillment of the objectives of the Constitution. His conclusion is that while there have been some successes, for example, the fact that there has been the repeated refurbishment of the legislatures through the ballot, the functioning of a robust and free judiciary and a free press which keeps our democracy on the rails, there have also been many failures. Sixty seven years after the birth of our nation, we still have a state where one in three Indians lives below the poverty line, 280 millions are illiterate and the level of malnutrition is five times more than in China and twice that of even South Saharan Africa.

In asking himself the question “where have we failed” he has analysed several fundamental causes. First, while the Constitution created strong independent institutions, these institutions have lost their sense of direction. Second, while the Constitution demarcated the field of every institution, it accorded a degree of flexibility to make the system work. In the late 60s and 70s, we saw strong central leadership which respected the fine balance between the roles of these institutions but thereafter, all flexibility was used to push the system into a closed guarded system rather than the democratized system envisaged in the Constitution. Third, there are provisions in the Constitution which were intended to insulate the civil

service from their political masters and their illegalities but we have instead complete opacity in governance. Finally, because of the fact that, as a result, the people have come to expect from the Judiciary, something that the Judiciary can never deliver, namely good governance, we have a Judiciary which is often confused about its role often resulting in judicial over reach.

The questions which Mr. Salve has highlighted and the solutions which he offers need deep consideration. The Trust is publishing this transcript with the hope that it will assist in a debate on these issues which so critically affect the nation.

Y.H. Malegam
Chairman

15 June 2015

Nani A. Palkhivala Memorial Trust



NANI A. PALKHIVALA

16th January 1920 - 11th December 2002

NANI ARDESHIR PALKHIVALA

In 1972-73 the full Bench of thirteen judges of the Supreme Court of India heard with rapt attention a handsome lawyer argue for five months before them that the Constitution of India, which guaranteed fundamental freedoms to the people, was supreme, and Parliament had no power to abridge those rights. The Judges peppered him with questions. A jam-packed Court, corridors overflowing with members of the Bar and people who had come from far-away places just to hear the lawyer argue, were thrilled to hear him quote in reply, chapter and verse from the U.S., Irish, Canadian, Australian and other democratic Constitutions of the world.

Finally the judgment came in April 1973 in *Kesavananda Bharati v. State of Kerala*, popularly known as the *Fundamental Rights case*. The historic pronouncement was that though Parliament could amend the Constitution, it had no right to alter the basic structure of it.

The doyen of Indian journalists, Durga Das, congratulated the lawyer: "You have salvaged something precious from the wreck of the Constitutional structure which politicians have razed to the ground." This "something precious" - the sanctity of "the basic structure" of the Constitution - saved India from going down the totalitarian way during the dark days of the Emergency (1975-77) imposed by Mrs. Indira Gandhi.

Soon after the proclamation of the Emergency on 25th June 1975, the Government of India sought to get the judgment reversed in an atmosphere of covert terrorization of the judiciary, rigorous press censorship, and mass arrests without trial, so as to pave the way for the suspension of fundamental freedoms and establishment of a totalitarian State. Once again, braving the rulers' wrath, this lawyer came to the defence of the nameless citizen.

His six-page proposition before the Supreme Court and arguments extending over two days were so convincing, that the Bench was dissolved and the Court dropped the matter altogether. Commented a Judge: “Never before in the history of the Court has there been a performance like that. With his passionate plea for human freedoms and irrefutable logic, he convinced the Court that the earlier Kesavananda Bharati case judgment should not be reversed.”

This man who saved the Indian Constitution for generations unborn, was Nani Ardeshir Palkhivala. His greatness as a lawyer is summed up in the words of Justice H.R. Khanna of the Supreme Court: “If a court were to be made of the ten topmost lawyers of the world, I have no doubt that Mr. Palkhivala’s name would find a prominent mention therein”. The late Prime Minister, Morarji Desai, described him to Barun Gupta, the famous journalist, as “the country’s finest intellectual”. Rajaji described him as, “God’s gift to India”.

Nani A. Palkhivala, was for four decades one of the dominant figures in India’s public life. An outstanding jurist, redoubtable champion of freedom and above all a great humanist.

Born on 16th January 1920, Nani Palkhivala had a brilliant academic career. He stood first class first in both his LL.B., (1943) exams and in the Advocate (Original Side) Examination of the Bombay High Court.

Nani Palkhivala was Senior Advocate, Supreme Court of India; Professor of Law at the Government Law College, Mumbai; Tagore Professor of Law at the Calcutta University; and a Member of the First and Second Law Commissions. He was elected in 1975 an Honorary Member of the Academy of Political Science, New York, in recognition of his “outstanding public service and

distinguished contribution to the advancement of political science.”

Nani Palkhivala argued a number of historical cases in the Courts of India and abroad, including the cases between India and Pakistan before the U.N. Special Tribunal in Geneva and the International Court of Justice at the Hague.

He authored a number of books including *The Law and Practice of Income-Tax*, a monumental work, which is the definitive treatise on the subject. His other books included *Taxation in India*, published by the Harvard University in the *World Tax Series*; *The Highest Taxed Nation in the World*; *Our Constitution Defaced and Defiled*; *India's Priceless Heritage*; *We, the People and We, the Nation*.

His expositions on the Union Budget in Mumbai and other places were immensely popular and attracted attendance in excess of 1,00,000 persons. He eloquently espoused the cause for a more rational and equitable tax regime.

Nani Palkhivala was India's Ambassador to the U.S.A. from 1977 to 1979. He was in constant demand during this period and delivered more than 170 speeches in different cities, which included speeches in more than 50 Universities, on subjects as varied as Gandhi, the nuclear issue, human rights, India's foreign policy, civil liberties in India, Indian agriculture, apartheid and the Third World.

Two American Universities – Lawrence University, Wisconsin and Princeton University, New Jersey - bestowed honorary doctorates on him. Princeton was the first to do so on 6th June 1978. The citation reads:

“Defender of constitutional liberties, champion of human rights, he has courageously advanced his conviction that expediency in the name of progress, when at the cost of

freedom, is no progress at all, but retrogression. Lawyer, teacher, author and economic developer, he brings to us as Ambassador of India intelligent good humor, experience, and vision for international understanding. As we see the bonds of trust and respect grow between our two countries, Princeton takes pride in now having one of its own both in New Delhi and in Washington.”

Lawrence University honoured him with a doctorate of Laws on 28th March 1979. The citation said:

“What is human dignity? What rights are fundamental to an open society? What are the limits to political power? Ambassador Palkhivala, you, more than most, have pondered these great questions, and through your achievements have answered them.

As India’s leading author, scholar, teacher and practitioner of constitutional law, you have defended the individual, be he prince or pauper, against the state; you have championed free speech and an unfettered press; you have protected the autonomy of the religious and educational institutions of the minorities; you have fought for the preservation of independent social organizations and multiple centres of civic power.

As past president of the Forum of Free Enterprise and as an industrialist, you have battled stifling economic controls and bureaucratic red tape. You have always believed that even in a poor and developing country, the need for bread is fully compatible with the existence of liberty...

You are also an enlightened patriot and nationalist. You have successfully defended your country’s cause in international disputes before the special tribunal of the United Nations and the World Court at the Hague.

Never more did you live your principles than during the recent 19 month ordeal which India went through in what was called 'The Emergency'. When those who had eaten of the insane root, swollen with the pride of absolute political power, threw down the gauntlet, you did not bow or flinch. Under the shadow of near tyranny, at great risk and some cost, you raised the torch of freedom..."

In 1997 Nani Palkhivala was conferred the Dadabhai Naoroji Memorial Award for advancing the interests of India by his contribution towards public education in economic affairs and Constitutional law. In 1998 he was honoured by the Government of India with PADMA VIBHUSHAN. The Mumbai University conferred upon him an honorary Degree of Doctor of Laws (LL.D.) in 1998.

Nani Palkhivala was associated with the Tata group for about four decades. He was Chairman of Tata Consultancy Services, Tata International Ltd., Tata Infotech Ltd., the A.C.C. Ltd., and Director of Tata Sons Ltd. He was President of Forum of Free Enterprise from 1968 till 2000, and Chairman of the A. D. Shroff Memorial Trust from 1967 till his death.

HARISH SALVE

After obtaining his Bachelor Commerce (B.Com.) degree, Mr. Harish Salve obtained the Bachelor of Legislative Laws (LL.B.) degree, both from Nagpur University. He is also an Associate Member of the Institute of Chartered Accountants of India; Member, International Bar Association; Member, International Law Association; and Associate Member, London Maritime International Arbitrators Association.

In 1978 Mr. Salve started practicing as a Chartered Accountant, doing exclusively taxation work. But in 1980 he shifted to Counsel practice. In 1986 he set up his own chambers. In 1992 he was designated Senior Advocate. He is currently in private practice as Senior Counsel as well as an arbitrator. He practices mostly in the Supreme Court of India. He has handled some of the most important cases in the Supreme Court. He has also appeared in almost all the High Courts of India. From 1999 to November 2002 he was the Solicitor General of India – the youngest ever.

Governance and The Constitution

by

Harish Salve*

When Mr. Ranina asked me to consider coming here today and delivering the eleventh lecture in memory of Mr. Nani Palkhivala, there was no question of saying 'no'. But the moment I said 'yes', I was daunted by the task! For those who have known him as a lawyer, there is no doubt that there has never been anyone before or now anywhere near his standard or his class.

But Nani was much more than just a lawyer. He was a thinker. I think it doesn't capture the many facets of Mr. Palkhivala to describe him just as an economist, a lawyer, a political scientist. He was, how he used to describe a few people whom he admired '*a man with buddhi*', a man with vision, a man with farsightedness. It is a rare privilege for me to be here today to deliver a lecture in a memory of a man whom my father considered a Guru and who I had the privilege also of considering as my Guru.

Princeton University when conferring a doctorate on Mr. Palkhivala, called him the "*defender of constitutional liberties, champion of human rights, who has courageously advanced his conviction that expediency*

* The author is Senior Advocate, Supreme Court of India and former Solicitor General of India. The text is based on the Eleventh Nani A. Palkhivala Memorial Lecture delivered under the auspices of Nani A. Palkhivala Memorial Trust in Mumbai on 16th January 2014.

in the name of progress at the cost of freedom is no progress at all, but regression."¹ I think those words captured everything Nani stood for. He was a contrarian, never particularly worried by the fact, that what he was saying was not necessarily what was the popular view or what held current sway. This is the finest quality in him which we all admired and which we studied and hoped to imbibe. And it is in that spirit that I propose to share a few ideas with you on the Constitution and governance in our country today.

In the mid 80s, I remember coming to Bombay to hear Nani speak on what he had to say on *'the vision for India in the 21st Century'*.² Today our sublime Constitution looks more like a shadow, more like a wisp, than a clear path which guides our destiny or which should at least guide the destiny of our country. Institutions have lost their sense of direction. When I say this, I mean all institutions seem to have lost their sense of direction. Government has been sluggish and the civil service has never ever been so low in public esteem. The police is considered as the enemy of the people and the Courts are an animal which nobody can describe! Are they really running the country? Are they laying down policy? Do they decide what the environment should be? Do they decide what the political philosophy should be? We do not know. And the truth is the judges do not know. The reason they do not know is that while holding high constitutional office enjoying the faith and trust of the people of India, their position does not permit them to help the people to see the constitutional rights and values envisaged for them

1 Nitesh Potdar, *Inspiring Will of Shri Nani A. Palkhivala*, Available at http://www.academia.edu/1847959/Inspiring_Will_of_Shri_Nani_A._Palkhivala.

2 *Speeches, Address to the parliament farewell function hosted by the speaker Lok Sabha in the central hall of parliament house, New Delhi*. Available at http://www.abdulkalam.nic.in/address_parliament_farewell.html. (Last accessed March, 20, 2014).

by the makers of the Constitution. The Courts stray from their conventional role and they redefine their roles. To understand how this fits in with the notion of governance in accordance with the Constitution, it is necessary to step back and see where the world stands today, where India stands today and what is it that we need to do to fix our democracy and get it back on track. We must start with a clear understanding that the notion of a Court merely as a tribunal to resolve disputes has long been discarded.

A Constitutional Court, be it the American Supreme Court, or the English Supreme Court with Human Rights Court, be it the European Court of Human Rights or be it the Supreme Court of India, the role of the Court is far more today. What is now universally accepted is that it is more than merely interpreting statutes and deciding disputes between citizens of the State. Why has this change come about? There have been fundamental pressures acting globally which have changed the landscape of the world but not necessarily all changes have been for the better. Totalitarian societies have fallen apart, Soviet Russia has dismembered itself into States some of which, on their own admission, are ungovernable. Monarchy has come to face what is called the third phase of the market systems. And on the other hand certain established democracies have been overtaken by fundamentalism, by dictatorship or generally lost faith in popular governance.

India has seen, particularly in last two decades, three important things which have changed the Indian landscape. The first, which is a very worrisome phenomenon in any democracy, is the disenchantment with an over centralised political system. If the States have become regionally powerful it is not for the wrong reasons. I remember Nani once said, *'the Chief Minister*

was being treated as a backbencher of the Union Government'. The second feature in India which has imposed a hydraulic pressure of change is the growing activism of the new generation. My father's generation was busy building India, post independence. Our generation inherited a much more stable India; but we are busy building our own careers or busy building a system in which today India can boast of a middle class as big as the whole of United States. All these have led to the next generation being far more informed, being far more aware and, more than anything else, being far more demanding. Externally there has been, and we can say without fear of contradiction, almost a global rejection of any system other than democracy as the legitimate form of Government. In fact Kofi Annan said in 2006 that *'democracy is a universal right that does not belong to any country or region and that participatory governance, based on the will of the people, is the best path to freedom, growth and development.'*

There was a discussion in the 60s when we all flirted with socialism. I don't think there is now any doubt that a system where human initiative is curbed, where human industry is curbed, where governance comes from a centralised forum, is a system which is doomed to fail. Even economists like Professor Amartya Sen wrote a paper in 1999 in which he argued that no substantial famine has ever occurred in any independent country with a democratic form of government and a relatively free press. Mr. Palkhivala used to always give this example, *'see the difference between democracy and dictatorship, see the difference between South and North Korea, and see the difference between East and West Germany'*.

What is the life blood of human growth? It has to be freedom, it has to be democracy. Democracy, however,

is a very generalised virtue. Democracy has to be run by institutions. There has of course always been an argument amongst theorists between direct democracy which is called egalitarian institutions and institutionalised democracies. The two divergent views of the old days form the new work of extreme formalism where you are voting the elite to power when they govern you to join models of extremism and egalitarianism.

We hear some noises in Delhi about the kind of governance which says in taking a decision intended to be far reaching, we should gather a crowd and ask them what they would want done! The founding fathers of our Constitution fortunately did not leave this in the dark in India. They crafted an instrument with great care and precision. Granville Austin initially wrote about the Indian Constitution saying that it is like a dustbin of provisions - there are far too many provisions. Most Constitutions contain very basic rules of governance, but our Constitution was far more reasoned, because our Founding Fathers knew that India as a nation had no history of constitutionality behind it. We were a cluster of countries, small, medium, some not so medium, ruled by a handful monarchs who were all powerful. We had a history of being plundered by leaders who came from the North and it is the British who pulled us together.

India as you see it today was actually created by the British. The Founding Fathers knew this and knew that they must leave a proper structure within which India could advance and progress. So they created a Constitution which was quasi-federal. They realised that India was not ready for full scale federalism as in the US. They created strong institutions for governance such as Parliament and the Legislatures of States, and they created an independent civil service. There are provisions in the Constitution which, if administered correctly,

insulate the civil service from their political masters and their illegalities. They created an independent judiciary and conferred on it the power to review not only the actions of the government but also review legislation. They created an independent Comptroller and Auditor General who would audit the accounts of the Government. In no country, in no other Constitution have I seen constitutional status given to the Auditor of the Government. If you go through the debates you realise that they with foresight acknowledged that the pressures of populism would lead to wasteful expense and there was a need, therefore, to have an Auditor with constitutional status who could be independent of the Government.

The Founding Fathers also created an independent Finance Commission to ensure that a strong Centre does not starve the States of funds and also an Election Commission. No other Constitution in the world has these provisions. They created an Election Commission because they knew that the institution of Parliament and the institution of the Legislature must refresh themselves, must go back and seek a fresh, honest mandate from the people of India from time to time to have the legitimacy to govern.

Where did we go wrong? Like all Constitutions, our Constitution also demarcated the field of every institution but accorded a degree of flexibility to make the systems work. The late 60s and 70s saw a strong central leadership which respected the fine balance of Constitutional Institutions. To give an example, industry was meant to be either decontrolled or left to the States. There was a power given to Parliament to make a declaration that certain industries which were of national importance could be under the control of the Parliament. What did we do? We enacted the Industries

Development and Regulation Act and included in its Schedule *every possible industry*, making the Centre virtually the fountain-head of power.

I can go on and on about how all flexibility was used to push the system into a closed guarded system, whereas the Constitution had decided to democratise it. Over the years we proved Plato right, who presciently said, *'in a democracy those who are experts in winning elections and nothing else will eventually dominate democratic politics'*. Our system however corrected itself after the lowest point in Indian democracy in 1975, the promulgation of the infamous Emergency! The Emergency is called the lowest moment in our democracy as all institutions, a subservient Parliament, a civil service which capitulated completely and its judiciary failed the people of India. Mr. Parasaran, the Former Attorney General told several judges in the Supreme Court in open hearings, that, that was the one and only time when this Court which was really designed to protect Indian citizens, let them down. It was in 1976 when the Supreme Court accepted the argument saying that the right to life could not be suspended. The argument was that if you suspend my right to life and you take it away how will you restore it or reject it? Justice Baig when dealing with the argument of those in custody referred to the almost maternal care of those who were in jail. The Supreme Court let us down, and when it bounced back, India also bounced back!

After this we have seen a complete change in Indian politics. The States have found their voices. This is then the time for us to revisit where we have gone wrong. Today when we speak of Judicial overreach, why there is no public outcry to such judicial overreach? Judicial overreach in current times is a phenomenon because people have come to expect from the Judiciary, something that the Judiciary can never deliver— good

governance. The Judiciary was not meant to govern the people of India, but today we look to the Judiciary for governance. The first reaction of an Indian to a problem is why not file a public interest litigation? This is a most dangerous position in which the Court can put itself. And when the Court fails to deliver it will suffer from the same loss of confidence as is the case with the other institutions today.

A time has therefore come where we have to revisit what are those constitutional essentials which secure our democracy. The preamble to the Constitution recites why we formed ourselves into a nation. Apart from sovereignty which is a given, we promised we would be secular; we promised that we would be democratic and we promised we would be a Republic. How much of a Republic are we? Have we substituted one governing class for another governing class or do we today have a participatory democracy? Our Governors have lost that sensitivity that those who are to go back to the people every 5 years for sustaining their power should not be completely oblivious to public resentment and a naked display of power, or indifferent to the aspirations and needs of the people. We promised ourselves in our Preamble that what we do would be to achieve liberty, equality and fraternity tempered with Justice. How far have we achieved this? When we talk of justice and of liberty at the macro level, India has done wonderfully well. In 2014, almost 64 years since our Constitution was framed we have Legislatures which have been repeatedly refurbished by the ballot. Look at our neighbours. How many of them can boast of that?

We have a judiciary. Whatever else maybe its failing, it is robust and it is free. We have a free press. Some people may criticise it as indulging in a free for all but it is a free press which keeps our democracy on the rails.

With all its eccentricities, I think it is one of the most important institutions we have today. But at the micro level how close are we to the dream of justice? We may have reduced poverty from 55 % to 33% but 65 years from the birth of this nation, shamefully 1 out of every 3 Indians is still below the poverty line. This is partly to do with migration. Migration has brought in its wake serious socio-economic problems which we seem completely unequal to deal with. Sixty seven years after the birth of our Nation, India's state of malnutrition is called the silent emergency. The rate of malnutrition in India is 5 times more than in China and what should shock us, is it is twice that of Sub- Saharan Africa.

When we speak of the constitutional ideal of justice we speak of the kind of country we have built for ourselves. At last count this year over 280 million Indians were illiterate. We pride ourselves that India has a middle class as populous as the whole of the United States, We should hang our heads in shame that India also has as many illiterate people as the entire population of the United States of America.

Openness and transparency have been the primary virtues of any democracy - how far have we achieved those? We have complete opacity in governance. If there was not opacity in governance scams would not have happened. You put a person in the kind of temptation which our senior politicians find themselves in and scams are events waiting to happen. Why are we not willing to bring openness and transparency in administration as has been done in other countries? We have in India the spectacle of the Right to Information Act - one of the most remarkable laws of which we can be proud - living side by side with the Official Secrets Act.

We promised ourselves that we would try to achieve equality - and the greatest challenge we face is that of

political equality. This challenge is never as strong as before because with the communications revolution there has been empowerment of what we hitherto conceived of as a dead letter. With this kind of empowerment, with the villages of India being equipped with the means of communicating with each other or communicating with the world or seeing what is going on in the world, the entire dynamics - the grammar of political equality has changed. There was a leader of State, who had said he wanted to ban TVs in his State! He was right because once TVs came in and once the international channels came in, people of his State started seeing what was going on in the rest of the world and their aspirations changed. The aspirations of youngsters are the same everywhere, everybody wants jobs, everybody wants development, everybody wants growth, and everybody wants education. More than anything else everybody wants his voice to be heard.

Then why are we where we are? Have we failed our Institutions or have our Institutions failed us? We hear the argument nowadays that our Institutions have failed us and we must reinvent them. Direct democracy, it is argued, provides an important instrument for controlling political power and securing open political power structure. For all decisions there should be a referendum at different levels. Someone who thinks so, should first recall that Napoleon ascended to become Emperor through a referendum! He conducted a referendum at the end of which he proclaimed that the country wanted him to be Emperor! Robert Dahl, Professor of Political Science, wrote a book on democracy in 1959 in which he said, *'in a rough sense the essence of all competitive politics is bribery of the electorate by politicians.'* The farmer supports a candidate committed to high support prices, the businessman supports the advocate of

low corporation taxes and the consumer votes for a candidate who opposes sales tax. Thus, he said, if you are ruled by a coalition of minorities and policies and laws then government becomes bartering between different groups.

Delhi has in the entire neighbourhood the lowest power tariff and yet the Government won their election promising to reduce it by half! Two more States have announced reductions in the power tariff. With great difficulty. Populism in these sectors is opposed to realism and commercial truth. We are going back to the old days when a coalition of minorities, each power group, each pressure group, would come together - that is not the failing of an institution - but rather us failing the institution.

What is the way forward? Where do we go from here? The first thing we have to do is recognise that the world we live in today is very different. It's a global economic village. Thomas Friedman, the famous economist, said in the New York Times that globalisation began in 1492 when the world went from a large size to medium. Then in the era of multinational companies, it went from medium to small and post 2000 we are now in the third phase of globalisation where the world is going from being small to being tiny.

The funds for development, the funds for growth come not from rich promoters anymore, not from bankers, but from markets and markets have proved that if we want to indulge in populism it can only be at our peril. We have to remind ourselves of certain basic Constitutional values such as fairness in administration, a value which we have been trying to achieve for the last 5 decades. More than that what we need today is fairness in civil interactions. There is an inevitable drift from a society of merit, to

a society of the rich born. If this drift is not contained, Constitutional institutions will soon start failing.

We have to remind ourselves of the right to human dignity, the right to privacy and the right to reputation and our promise to have a casteless society and gender justice, all of which the Founding Fathers of our Constitution enshrined in our Constitution. Most of all we have to ensure the right to economic development in a sustainable system in which we must find an increasing balance between civil rights, political rights and economic rights. It can be done. Europe has done it. Professor Ernst-Ulrich Petersmann who is the Joint Chair of the International and European Law and Policy at the European University wrote that *'EU integration law including the ECHR (European Commission of Human Rights), protects civil, political, economic and social human rights in a more balanced way than the UN not with standing the many weaknesses of the EU law and leads to the explicit recognition of the human rights regime.'*

There is no necessary tension between a sustainable economic system on the one hand and social rights on the other. If Europe can do it so can we. We have to remind ourselves of a very important value enshrined in our Constitution — freedom of conscience. One of the ways in which we expressed the freedom of conscience was constitutionally recognising the rights of all the communities to establish educational institutions. It baffles people who are fond of India as to why in a billion strong country, you have youngsters struggling to get into the nursery schools. You have people who are willing to invest in education and you have youngsters who are frustrated because they cannot get seats in universities and colleges. Why are we strangulating education in India? Why are we allowing populism to get into India

and into our educational system? How often do we see critics being subjected to threats, intimidations, abuse. The most extreme form of this I remember was when a newspaper described the Chief Minister of a State as speaking in a shrill voice in the House because he did not agree with what the Chief Minister said. The Chief Minister said this was a breach of privilege! He almost hunted down that editor. Fortunately, I managed to move Supreme Court on a weekend and get an injunction from the Judge. Otherwise, one of the senior most editors of this country would have been in jail for saying that the Chief Minister's voice was shrill!

We have to rebuild our Constitutional Institutions. Look at Parliament, look at the people in the Constituent Assemblies. They were educated, they were informative and more than anything else they conveyed the passion of those who framed the Constitution. You need not agree with everything they said but their attention to the detail of every thought which went into framing our Constitution is an education in itself. We move to current trends and the most remarkable debate in parliament, when we had challenged the constitutional amendment, when the Supreme Court had held that you cannot have promotions fast forwarded, when you have a reservation and cut it down. We amended the Constitution for this and the Constitutional amendment in the Rajya Sabha was passed in one minute flat! One person got up to speak, the Speaker said it was getting to be the close of day and therefore the amendment should be passed! It was a very far reaching amendment overruling a very carefully considered judgement in the Supreme Court. One gentleman got up to speak and he got up to speak only because it was his last day in Parliament and the Speaker said and this was all on record, and that his

greatest tribute to the backward classes would be that he did not speak at all, and he sat down!

We need to remind ourselves that parliamentarians are meant to debate inside Parliament and not outside it! How few days has the Parliament worked in the last two years, is a matter of shame for us all. Yes, they had heated discussions outside on these issues. Is that the best way to run a Democracy - to bring these issues out on TV screens rather than to discuss them in Parliament? We need to improve the quality of our approach to Governance and make no bones about saying the quality of our approach is in sharp decline. And one of the reasons for this is we are not willing to revisit the crying need for administrative reforms in civil services and in all government services.

The salaries of our Government officials are in complete disconnect with the duties and the responsibilities of that person. That is part of the reason why we have corruption in the country. When you confer upon a person a huge amount of power and great responsibility and do not give him adequate space and compensation, we ask for degradation. Let us not forget this in today's material world where salaries are extremely important, this creates corruption all through the system. People say they have a magic wand to end corruption. They will do this by appointing an authority and corruption will disappear! They forget that what they need to address is the root cause of corruption - which they are not doing. We have a crying need to rebuild a very robust independent public service. Our freedoms are precious and we cannot sacrifice them at the altar of socialism. We have always to remind ourselves what Alex de Tocqueville said, '*democracy and socialism have nothing in common but one word, equality*'. But we need to recognise the difference. Democracy seeks

equality in liberty, Socialism seeks equality in restraint and conservatism. We need to rebuild our Institutions. I am sure if we could do this in 1976 then we can surely do it in 2014. It is just that we have to remember as Indians, it is the duty of each one of us to be true to our Constitution and to be true to our Nation.

I will end by quoting from Joseph Story, a quotation of which Nani was very fond - The great American Jurist had said, *'The Constitution has been reared for immortality, if the work of man justly aspire to such a title. It may, nevertheless, perish in an hour by the folly or corruption or negligence of its only keepers, the People.'*

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