



EDITORIAL: THE HINDU

GENERAL STUDIES 2: POLITY

DATE: 25.01.2025

TOPIC: RIGHT TO JUSTICE AND PERSONAL LIBERTY

AT 75, CONSTITUTIONAL JUSTICE AND PERSONAL LIBERTY

Celebrating 75 Years of the Indian Constitution

- As India celebrates the 75th anniversary of its Constitution, it is a moment for introspection rather than mere festivity.
- This milestone urges citizens and institutions to reflect on whether the Constitution's core principles, such as personal liberty and human dignity, are upheld.
- These values are often overshadowed by mechanical and narrow interpretations, leading to an ethical and moral crisis in society.

Dissent as a Constitutional Ethic

- The Supreme Court of India in *Puttaswamy vs. Union of India* (2017) revived Justice S. Fazl Ali's dissenting opinion from the *A.K. Gopalan* case.
- Justice Fazl Ali had dissented against the majority judgment in 1950, arguing for broader protections of personal liberty.
- His dissent was significant because it upheld the right to political dissent and critiqued the government's preventive detention of individuals.
- The Puttaswamy judgment corrected earlier judicial decisions that had limited the scope of liberty, marking a shift towards a more rights-oriented interpretation of the Constitution.

Article 21: Right to Life and Personal Liberty

- Article 21 of the Constitution safeguards an individual's right to life and liberty, emphasizing the dignity of the individual as central to human existence.
- Justice R.F. Nariman in *Puttaswamy* highlighted that personal liberty ensures the full development of a human being.
- Dr. B.R. Ambedkar, the architect of the Constitution, envisioned it as a dynamic framework capable of adapting to evolving needs while ensuring justice and unity.
- The Preamble, with its emphasis on justice, liberty, equality, and fraternity, should inspire collective efforts to maintain national cohesion, especially during politically divisive times.



Preventive Detention and Denial of Justice

- The increasing use of preventive detention and anti-terror laws has led to arbitrary arrests and prolonged custody without fair trials.
- Such measures disproportionately target political dissenters, silencing critical voices through intimidation.
- These practices often involve rituals of humiliation, stripping individuals of their dignity and imposing suffering on those who challenge state policies.
- Examples include the anti-CAA protests, where numerous activists have faced detention under laws that allow significant procedural opacity.

Paradox of Dissent and Criminalization

- While courts like the Supreme Court have reinstated dissent as a constitutional right, dissenters continue to face criminalization under restrictive laws.
- This paradox creates a situation where the judiciary acknowledges the importance of dissent but fails to ensure its protection in practice.
- The contradiction is emblematic of broader systemic issues, where legal safeguards exist on paper but are undermined in implementation.

Historical Parallel: A.K. Gopalan and Anti-CAA Resisters

- A.K. Gopalan, a prominent leader detained under preventive detention laws in 1950, faced challenges similar to those faced by today's anti-CAA protesters.
- Despite judicial rulings ordering his release, Gopalan was repeatedly re-arrested, reflecting the state's disregard for personal liberty.
- Similarly, current anti-CAA activists like Umar Khalid and Sharjeel Imam have spent years in detention, with courts showing little urgency in addressing their cases.
- The Preventive Detention Act of 1950, enacted in post-independence India, continues to echo colonial-era repressive practices, as seen in modern legal frameworks.

Role of Constitutional Courts

- Constitutional courts are entrusted with the responsibility of safeguarding individual rights and protecting citizens from state overreach.
- In landmark cases like Bhima Koregaon and anti-CAA protests, courts have a crucial role in addressing systemic abuses of power.
- Upholding "creative constitutionalism," as proposed by Professor Upendra Baxi, requires innovative interpretations of the law to ensure justice and liberty.



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- Without timely judicial interventions, the principles of personal liberty risk being eroded further.

Ethical Spirit of the Constitution

- The judiciary's failure to act decisively risks undermining the ethical core of the Constitution.
- Justice delayed in cases of wrongful detention, suppression of dissent, and misuse of power erodes public trust in constitutional values.
- Upholding personal liberty as the ultimate expression of justice ensures that the Constitution remains a living document, capable of fulfilling its promise of equality and freedom.
- Reflecting on these issues in the Constitution's 75th year is essential to avoid repeating historical errors and to reaffirm India's commitment to justice and dignity.

Source: <https://www.thehindu.com/opinion/lead/at-75-constitutional-justice-and-personal-liberty/article69137125.ece>

