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The Indian Constituent Assembly Debates: An Interpretative Tool

MADHAV VED[1]

ABSTRACT

The Indian Constituent Assembly was the first step towards what we know today as the longest constitution of the world. The Constitution of India has evolved through ages with 104 amendments; it has dynamically paved the way to the changing times. This article aims to look into various instances where the constituent assembly debates have been used as an aid to interpretation by the judicial bodies, while also keeping in mind the changes that have taken place in such interpretation. For ease of understanding, the author has divided the paper into two parts i.e. pre 42nd Amendment and post 42nd Amendment. The rationale behind the division of the time line is to give a wider understanding in the changing trend of the reliance placed upon the debates throughout the passage of time. The author aims to exhibit the emphasis laid upon the legal founding document through the course of history.

I. INTRODUCTION

On 9th December 1946, 209 members assembled in the Central Hall of the parliament at Delhi to initiate what we today call, The Constitution of India. However, the foundation was laid long ago starting with the Constitution of India Bill, 1895, followed by various committee reports, the Government of India Act 1935, and declarations such as Irwin Declaration, 1929 and The Declaration of Purna Swaraj, 1930. Soon after the constitution was brought into effect, there arose multiple proceedings and challenges before the courts of India to secure the newly affirmed rights to the people. Since the document was fresh, the scope of interpretation was considerably limited and hence the judicial bodies relied heavily upon the Constituent Assembly Debates among other available options such as Privy Council cases, foreign judgements, etc. Contrarily, Courts were reluctant to rely on the floor speeches reasoning that only the text's actual phrases and words mattered[2]. However, over the course of time, the courts opined several judgements which subsequently paved a way for a sharpened interpretation of the Constitution. The author in this paper shall

[1] Author is an Associate at Wadia Ghandy & Co, India.

[2] Vikram Raghavan, "Why Do Our Constitutional Debates Matter?", (Mint, 05 Oct 2016) <www.livemint.com/Opinion/mLactWgKWt6iKosuEyBNMI/Why-do-ourconstitutional-debates-matter.html> (last date of access: 12 December 2020)

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attempt to showcase the transformation of reliance placed on the debates by the courts over the years.

II. EARLY INSTANCES OF USE OF DEBATES BY THE COURT

The earliest instance of interpretation of Constituent Assembly Debates **("the Debates")** can be found in the landmark case of A K Gopalan[3]. The question of law which emerged before the Court was whether the Preventive Detention Act[4] violated Article 21. Justice Kania in the judgement postulates, that the phrase "*procedure established by law*" was deliberately retained in place of "*due process of law*". While deriving the said conclusion reliance was placed on the report of the Drafting Committee however while the petitioners seemed to heavily rely upon the individual opinions of the members, it was observed that the same cannot be referred to for the purpose of construing the Constitution, relying upon TheMunicipal Council of Sydney v. The Commonwealth[5]. The question regarding "*due process of law*" was categorically dealt with by the Assembly while foreseeing the possibility of its future interpretation by judicial authorities. Amendments were moved by several members in the Assembly to change the phrase "*procedure established by law*" to "*due process of law*", and the reasoning for same was also enunciated, however the amendments were negatived. The reasoning could have been of a vital importance in consideration of the above mentioned question. Mr. K.T. Shah during the deliberation stated, "*The liberty of the person to fight against any arbitrary arrest or detention, without due process of law, has been thebasis of English constitutional growth, and also of the French Constitution that was born after the Revolution*"[6]. This proposition has also been affirmed by Chintan Chandrachud where he remarks the "*black letter approach*" adopted by Justice Kania.[7] Hence, it was firmly concluded that "*No extrinsic aid is needed to interpret the words of Article 21, which in my opinion, are not ambiguous*"[8].

Similarly, the courts refrained from taking into consideration the Debates in order to settle law with respect to admissions to minority educational institutes in the case of Champakam Dorairajan And Another v. The State Of Madras[9].

A question of similar nature arose in the landmark cases of Shankari Prasad[10] and Sajjan Singh[11] wherein the question before the courts was with respect to the amending power of the Legislature *qua* the abrogation of Fundamental rights. In this regard it was essential for the courts to delve into the interpretation of article 13, specifically article 13(2). Article 13

[3] 1950 AIR 27; 1950 SCR 88
[4] Preventive Detention Act, 1950, Bill No. 12 of 1950
[5] (1904) 1 Com. L.R. 208
[6] CAD 1st December, 1948, Vol VII
[7] Chintan Chandrachud, „Constitutional Interpretation" in Sujit Choudhry, Madhav Khosla, And Pratap Bhanu Mehta (eds), *THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION* (OUP 2016)
[8] Ibid (n. 2)
[9] 1950 SCC OnLine Mad 197
[10] 1951 AIR 458, 1952 SCR 89
[11] 1965 AIR 845, 1965 SCR (1) 933

originally was article 8 as per the draft submitted before the constituent assembly.

The interpretation of article 368 i.e. Article 304 of the draft constitution which started with Shankari Prasad case[12] challenging the first amendment to the constitution, opened a Pandora box of interpretation of the 'amendment power' of the legislature. This was followed by aseries of judicial pronouncements which shall be subsequently dealt with chronologically. The point to be considered in this regard is, in both the above-mentioned judicial pronouncements the Debates were not taken into consideration.

The challenge to the Shankari Prasad case was on the grounds that the amendment was void because it was passed by a unicameral legislature and hence did not comply with the provisions laid down for the amendment.

It is pertinent to note that extensive exchange of amendments took place on the floor of the constituent assembly to give article 368 (304) a structure. One of the suggested amendments proposed as 304A by Mr. P. S. Deshmukh was,

"*Notwithstanding anything contained in this Constitution to the contrary, no amendment which is calculated to infringe or restrict or diminish the scope of any individual rights, any rights of a person or persons with respect to property or otherwise, they be permissible under this Constitution and any amendment which is or is likely to have Such an effect shall be voidand ultra vires of any Legislature*."[13]

This amendment, in the opinion of the author, would have given a better scope to the interpretation in the above-mentioned judgements. However, the said proposed amendment was negatived. It is crucial to note that if even a bare reference to the discussion taken place on article 304 would have been taken into consideration by the judicial authorities therewould exist substantial clarity to interpretation of the term "law" as mentioned in article 13. As Justice Ashok Ganguly Comments while referring to the then CJI Justice Gajendragadkar the reasoning of the learned judge was far from being cogent.[14]

The question of law that lay before the courts in both the cases was whether constitutional amendments would be subject to scrutiny under Article 13(2) and would it be construed as "law". If we look into Article 13(3)(a) the term law is defined as "*Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of Law*"[15]. From a purely interpretative point of view this would be an exhaustive extending definition wherein an exhaustive list of ingredients is given as a part of the definition. By virtue of "*expresso unis est exclusion alerius*" the view taken by judges in the above referred cases would fall under the ambit of the maxim wherein constitutional amendments if specifically not mentioned would be excluded. The pronouncement in Shankari Prasad was

[12] Ibid (n. 8)
[13] CAD 17th September, 1949, VOL IX
[14] Justice Ashok Ganguly, „Landmark judgments that changed india" (Rupa Publications India Pvt. Ltd 2015)
[15] Constitution of India, 1950

subsequently reaffirmed in the Sajjan Singh Case.

III. HANSARD RULE

Traditionally, the intent of the parliament was seldom relied upon to interpret legislation. This principle derives itself from the Hansard Rule[16], Hansard which is the official collection of debates and reports of The British parliament. However exceptions this rule were carved out, relevant passages were quoted and relied upon.[17]

It would be vital at this juncture, to shed some light on the Hansard rule as a source of

interpretation. The motive behind the admonishment of the Hansard for interpretation was rather intriguing. Since the members of parliament are secured by legislative immunity against prosecution for defamation and similar offences it was deemed appropriate not to use it for interpretation in courts.[18] However in the case of Pepper[19] which was case of "concessionary fee" allowed to the children of teachers at Malvern College to be educated at one-fifth fee. The dispute arose on the interpretation of the term "cost". It was a landmark case in this regard, where Lord Templeman favourably ruled that parliamentary material i.e. Hansard can be a valuable source of interpretation and must be looked into when the legislative material itself is ambiguous. Hence, the Hansard was relied upon in after this landmark case.

Similarly, in the Indian jurisdiction as well the courts took a modern approach towards the constituent assembly in the late 1970s. However, it was a long journey till that time and there were various judgments like the Keshevana Menon[20] case wherein interpretation of operation of article 13(1) along with the General Clauses Act, 1897 was called into, where the use of the Constituent Assembly Debates would have been quite instrumental if not imperative.

Similarly in the case of 'In Re: The Delhi Laws Act'[21] where the powers of delegation of the parliament was referred to a bench 7 judges, wherein the case was a first among others which called into question the intent and purpose of powers vested to the legislature, the separation of powers and the ability of the Supreme Court to hold a law null and void. In this regard Justice Bose while penning down the judgement remarked,

"*We have to try and discover from the Constitution itself what the concept of legislative power looked like in the eyes of the Constituent Assembly which conferred it. When that body created an Indian Parliament for the first time and endowed it with life, what did they think*

they were doing? What concept of legislative power had they in mind?"

[16] Stephen D Girvin, 'Hansard and the Interpretation of Statutes' (1993) 22 Anglo-Am L Rev 475

[17] GP Singh, Principles of Statutory Interpretation (14th Edn Lexis Nexis 2020)

[18] Stephane Beaulac, "Parliamentary Debates in Statutory Interpretation: A Question of Admissibility or ofWeight?", (1998) 43 McGill L.J. [McGill Law Journal], 287

[19] Pepper v Hart [1993] AC 593

[20] 1951 AIR 128, 1951 SCR 2

[21] 1951 AIR 332, 1951 SCR 747 28

Soon after the above phase came the Golaknath Judgement[22] which was delivered by a bench of 11 judges which again called into the amendment powers vested to the parliament for amendment of the Fundamental Rights. It is the author's opinion that this was the judgment where the turning point in history where the Supreme Court advanced towards the instrumentality of the Debates and its implementation in interpretation.

It was before the courts to determine till what extent the parliament could amend the constitution or rather till what extent did the Constituent assembly intend to vest the amending power with the Parliament. Even then the courts were heavily reluctant to rely on the Debates and decided not to read the speeches made in the constituent assembly. Thecourts however time and again reiterated while referring to article 368 that if the constituent assembly yearned to keep part III away from amendment by parliament it would have done so by mentioning the same in the article itself and such absence strongly suggests the intent of the Constitution framers. The court however agreed to look into the historical circumstances of the Assembly. It was contended that in order to amend the fundamental rights a fresh constituent assembly must be convoked and that the parliament cannot be deemed equivalent to constituent assembly. Justice Bachawat while writing the minority opinion did in fact refer to speeches made in the assembly in verbatim while simultaneously agreeing that they cannot however be used as an aid to interpretation. He called into the speeches made by AK Sen on September, 17, 1949. It seems fitting to reproduce the same here, "*Now, what is it we do? We divide the articles of the Constitution under three categories. Thefirst category is the one which consists of articles which can be amended by Parliament by a bare majority. The second set of articles are, articles which require two--thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304, all that is necessary for them is to have two--thirds majority. Then they can amend it.*"[23] The other volumes were also referred in order to emphasise and lay stress on the point of the intent of the Assembly.

Soon after the Golaknath judgement the courts grew favourable towards the use of the Constituent Assembly debates in its judgements. In the case of Madhavrao Scindia Vs UOI[24] a bench of 11 judges while adjudicating upon the issue of abolishment of privy purses whilst also considering the equality of citizens aspect, by the parliament did rely heavily on the debates to understand the historical scenario revolving around the privy purses. Dwelling on the speeches made by Sardar Vallabhai Patel[25] the courts were reluctant to abolish the privy purses and its perks and benefits, looking into the antecedent circumstances revolving around the integration

[22] 1967 AIR 1643, 1967 SCR (2) 762
[23] Constituent Assembly Debates, Vol IX, 597
[24] 1971 1 SCC 85
[25] Constituent Assembly Debates, Vol X, 284

of states[26]. The difference however can be noted that the courts were less hesitant in using the debates as an interpretative tool, however it is of the author‟s opinion that the facts and circumstances of the case were such that it warranted the use of the Debates in order to ascertain the true nature of the Assembly.

IV. CHANGE IN THE VIEWPOINT BY THE SUPREME COURT

In the year 1973 came the turning point for use of Constituent Assembly Debates by the Supreme Court with the advent of Keshavanand Bharti Case[27]. The court relied heavily on the constituent assembly debates while also keeping in mind the observations made in the precedent cases with regard to use of Debates for interpretation. It would be appropriate to say that although the judges were aware of the detriments of using the Debates for interpretation, they were also appreciative of the significance of its contribution. Hence, they were treading on a narrow path striking a balance between both the aspects. The references paraphrased above[28] were reiterated in order to signify the importance laid by the assembly on the fundamental right and its protection. Reference was made to the debates in the entire judgement at least 200 times. The contention of the respondents was that the amending power vests the parliament at an equal footing to that of the constituent assembly itself and it works in the same capacity as the constituent assembly itself. The court while refuting this argument held that if the constitution makers were inclined to confer the full power of the constituent assembly to the legislature it would have done so in suitable terms.

An analogy was also drawn while pointing out the first amendment towards the fact that the constituent assembly itself functioned as the parliament till the general elections in 1952, and yet it followed the process mentioned in article 368 to carry out the process of amendment after the assembly ceased to exist. The judges however did lay emphasis on an interim report on fundamental rights which was laid before the house and discussed on 29th April, 1947.[29] The speeches and discussion held with regard to the report were taken into consideration while looking into article 13(2) and amendments.

The court held that even if the debates were to be taken into consideration, at no point in time it was stated by any member that the fundamental rights were absolute or unamendable. It however settled an important altercation which was given by the respondents that the parliament could under Article 368 convene a different body of constituent assembly for amending the parts which could not be amended by the parliament. The court held that what could not be done directly cannot be done indirectly and hence such an act would be void. This principle was then evolved further to frame the basic structure doctrine.

[26] VP Menon, Integration of States, (1965, Orient Longman)
[27] Kesavananda Bharati Sripadagalvaru and Ors vs State of Kerala AIR 1973 SC 1461
[28] Ibid (n. 21)
[29] Constituent Assembly Debates, Vol III, 18.2

It is most vital at this juncture to quote Justice P. Jaganmohan Reddy's remarks for use of the debates as an aid to interpretation.

"*Speaking for myself, why should we not look into them boldly for ascertaining what was the intention of our framers and how they translated that intention? What is the rationale for treating them as forbidden or forbidding material. The Court in a Constitutional matter, where the intent of the framers of the Constitution as embodied in the written document is to be ascertained, should look into the proceedings, the relevant data including any speech which may throw light on ascertaining it. It can reject them as unhelpful, if they throw no light or throw only dim light in which nothing can be discerned…*

… all I intend to do for the present is to examine the stages through which the draft passed and whether and that attempts were made to introduce words or expressions or delete any that were already there and for what purpose. If these proceedings are examined from this point of view, do they throw any light on or support the view taken by me?"[30]

It can be said that in considering what formed a part of the basic structure i.e. Supremacy of the Constitution, Republican and Democratic form of Government, Secular character of the Constitution, Separation of powers between the Legislature, the executive and the judiciary, Federal character of the Constitution, etc. the judges relied upon the very objective of the constitution and its framers. The above features of basic structure are easily discernible not only from the constitution itself but also from the intent of the constitution makers.

The groundwork of the "basic structure" as stipulated can be traced back to the Cabinet mission plan, which ran into 9 pages organised into 24 points. The members undertook to achieve the failures of the Cripps mission. Both the parties were initially in favour of the planbut ultimately rejected it. As Menon comments[31] that the mission stressed that it had become necessary for them to predetermine the broad basis of the future constitution. It then arrived on the following points, (1) There should be a Union of India, which should deal with the following subjects: foreign affairs, defence, and communications. (2) The Union should have an executive and a legislature constituted from British-Indian and States' representatives. (3) The powers other than those expressly mentioned would vest with the states (residuary powers) (4) allotting seats in the parliament to the proportion of a states population. Upon these point the constituent assembly weaved the thread of a draft constitution and gave it the structure that we know today, which was subsequently referred to as the "basic structure".

The basic structure doctrine further evolved subsequently in the case of Indira Gandhi vs Raj Narain.[32] However the use of constituent

[30] Ibid (n. 25)
[31] Menon, V. P. Transfer of Power in India. Princeton, NJ, Princeton University Press.
[32] AIR 1975 SC 2299

assembly debates increased exponentially after the Keshavanand Bharti judgement. In this case as well we can see references made to the assembly in general. It can be seen as a stark shift from the conventional approach where any allusion to the debates was seriously frowned upon by the courts.

Similarly in Minerva Mills the same was upheld where the court held that the constituent assembly preferred supersede part III over part IV i.e. giving the fundamental rights a higher standpoint over the DPSPs. It drew this conclusion not only from the constituent assembly itself but the Sapru Report[33] which accentuated the Fundamental rights above other provisions. The Committee Report laid the cornerstone of the fundamental rights under Part

III.[34] Austin deals with the aspect rather categorically analysing the protection that the report

granted not only to the minorities but „a standard conduct for the legislature, government and courts".[35]

In the Samsher Singh Judgement[36] parts of the draft constitution, the speeches made on the floor and suggested amendments were read before the bar and court felt convinced enough to take into consideration the speeches made by various members on the floor of the assembly. The court time and again quotes members like Dr. Rajendra Prasad, Dr. Ambedkar, Sardar Patel, Munshi, Sir B.N. Rao,. Sir Alladi Krishnaswamy Aiyar among various other members to strengthen the arguments placed on record in order to determine the power of governor and the president in termination of services without citing any reasons and whether the satisfaction under 311 of the president or the governor would be personal satisfaction or is thepower to be exercised in consultation with the council of ministers.

In this regard an altercation between Dr. Ambedkar and the President[37] has been transcribed in the judgement where an amendment was moved by Sardar Hukum Singh that the President may promulgate ordinances after consultation with his Council of Ministers and likewise for the Governor of states. The court held that the satisfaction does not mean personal satisfaction but the president acting in tandem with the council of ministers.

In such a case where the satisfaction of a constitutional post/ position was to be determined it was imperative and peremptory for the court in order to rely solely on the constituent assembly debates to assess the intent of the constitution framers. It was

[33] Sapru Committee Report <https://www.constitutionofindia.net/historical_constitutions/sapru_committee_report sir_tej_bahadur_sapru_ _1945__1st%20December%201945> Accessed 15th January, 2021.

[34] K VIVEK REDDY, „Minority Educational Institutions" in Sujit Choudhry, Madhav Khosla, And Pratap Bhanu Mehta (eds), *THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION* (OUP 2016)

[35] Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press 1966) 57.

[36] 1974 AIR 2192, 1975 SCR (1) 814

[37] Constituent Assembly Debates, Vol VIII, 23rd May, 1949

necessary because in an ambiguous position like this a bare reading of the provision or any other aid to interpretation for that matter whether intrinsic or extrinsic would have been futile.

In ADM Jabalpur[38] as well Justice Chandrachud while throwing light upon article 22 and preventive detention laws makes a mention of the constituent assembly itself. He asserts that the assembly was composed of politicians, statesmen, lawyers and social workers who

themselves had faced the travails of incarceration and hence gave a higher pedestal to the right against preventive detention.

V. PUBLIC INTEREST LITIGATION AND CONSTITUENT ASSEMBLY

With the advent of Public Interest Litigation in the 80s the scope for interpretation of the constitutional provisions widened significantly. Justice Bhagwati in S.P. Gupta[39] relied rather extensively on the debates to highlight the then procedure of transfer of judges. With respect to the interpretation it was mentioned,

"The authorities-on the question of interpret-ation of the constitutional provisions may roughly be divided into four categories which may not exactly be absolutely separate or independent so as to be confined in a watertight compartment but in some cases may overalp,yet they generally lay down the law on the subject categorised by us:

Categories (A) Where the language of a statute is plain, explicit and unambiguous, no external aid is permissible.

(B) Where the language is vague and ambiguous or does not clearly spell out the object and the spirit of the Act, external aids in the nature of parliamentary debates, reports of Drafting or Select Committees may be permissible to determine and locate the real intention of the legislature.

(C) Where certain words are omitted from the statute, the court cannot supply the omission or add words to the statute on a supposed view regarding the intention of the legislature.

(D) Any speech made by a Minister or a Member in the Parliament is not admissible or permissible to construe a statutory or a constitutional provision."

Thus, it can be observed that the courts were open to use the extrinsic aid to interpretation in the form of committee reports, Parliamentary debates, etc only when there is an ambiguity in the provision itself. They were of the view that the constitution must be interpreted in the broadest possible manner in order to safeguard interests of the citizens and in this process reliance may be placed on external aids to interpretation. The court relied on speech made by Dr. Ambedkar on 16th September, 1949, where he elucidates the power vested with the centre for the transfer of judges and gave 3 points while doing so. 1. To import better talent to the transferee court, 2. To have a chief justice

[38] Additional District Magistrate, Jabalpur vs S. S. Shukla; 1976 AIR 1207, 1976 SCR 172

[39] S.P. Gupta vs President Of India And Ors; AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365

unaffected by the local politics, 3. That such transfer would only be on the grounds of convenience and general administration.

Hence after a critical consideration it can be seen that the courts have relied on the piecemeal speeches and debates rather heavily while also keeping in mind the value that it added. The court was of the opinion that, "*Too much reference to piecemeal debates at the drafting stage,provisions in the draft Constitution and views expressed by different speakers during the debates in the Constituent Assembly is likely to raise a picture in support of some of the provisions of the Constitution which may be misleading, After a long debate, discussion, suggestions amendments, the end product namely, the provision finally inserted in the Constitution must be examined*"

VI. Reservation and Constituent Assembly

In the Mandal Commission case[40] the courts yet again called into the debates in verbatim to analyse the wording, framing and the history attached to article 14,15 and 16 of the constitution. The court indulged into the historical analysis of what the constitution framers considered as "backward class" since the constitution does not define the term. However the same was expressed in the Objectives Resolution of the constituent assembly moved by Jawaharlal Nehru. We must bear in mind that Dr. Ambedkar was the beacon light that the assembly required and upon his able guidance the reservation laws were framed and structured. He added the word "backward" to article 16(4) (article 10(3) of the draft constitution). Hence it was observed by the court that the speeches made by Dr. Ambedkar cannot be left out or overlooked while considering interpretation of article 16.

The reason why the word "class" was used instead of "caste", was to integrate the term across all religions throughout the country. The word class was used in the sense of social class and not in the sense it is understood in Marxist jargon.

In the judgement, paragraphs 26-28 have in verbatim used the speeches made by Dr. Ambedkar during the discussion on article 10 (current article 16) wherein a few key points were raised. Even then Dr. Ambedkar vaguely described it as "*A backward community is a community which is backward in the opinion of the Government*."[41] The exchange which took place on the floor spelled out the intent of the constitution makes, specifically Dr. Ambedkar who stated that the reservations however must be confined to 'minority' of the seats upon which the court relied that the reservation cannot exceed 50%. In fact the provision for minority reservation of the seats was only brought up by Dr. Ambedkar and no one else hence it was clear that the constitution never envisaged reservation for more than 50%.

Not only did the court refer to the constituent assembly debate but also to the debate which took place before the first amendment, the

[40] AIR 1993 SC 477, 1992 Supp 2 SCR 454

[41] Constituent Assembly Debates, Vol VII, 30th November, 1948

composition of which was the same as the constituent assembly. The courts also referred to speeches made by Dr. Ambedkar at Columbia university of New York, U.S.A.

The judgement then proceeded to illustrate the concept of horizontal and vertical reservation in article 16(1) and 16(4) respectively. The court also elaborated on the theory of creamy layer which was not a part of the original constitution. It also clarified that after suchappointment by reservation is done there shall be no reservation in the matter of promotion shall be provided for. The court again relied on the debates to show that the absence of such provision was intended by the framers and hence is necessary to be left out. As Austin quite amusingly remarks "*The poor quite literally are trying to have two chappatis where they havehad one*" [42]

Hence, the constituent assembly debates were an immense contribution in a controversy like this where the speeches of one of the most ingenious personalities proved to be the most useful.

Similarly, in the case of appointment of High Courts Judges (second judges case)[43], the Supreme Court relied upon the debates and speeches made by luminaries like Mehboob Ali Bag, Mr. B Pocker, Mr. Prasaran among various other members, to once again signify the separation of powers of judiciary from that of the executive and vested the Chief Justice of India at a higher pedestal giving „primacy" to the post. It redefined the term "consultation" which differs from "concurrence" thus overruling the SP Gupta Judgement. The same was subsequently reaffirmed in the Third Judges Case[44].

In SR Bommai[45], Supreme Court relied on the speeches made by Dr. Ambedkar to emphasise the operation of article 355. The speech stated that the article was not merely declaratory in nature but imposed a duty upon the centre to protect the states against external aggression and internal disturbance. Dr. Ambedkar was in fact well aware that these articles (i.e. 355,356,357) are liable to be abused[46] but that applies to every part of the constitution and one can only hope that if these articles are brought into operation the president will be cautious enough before actually suspending the powers of the provinces. The court also laid down guidelines for declaration of emergency in states and held that the same shall be subject to judicial review and may be declared illegal and may revive the dismissed assembly. The judges have time and again referred to the contentions of Dr. Ambedkar. As Justice Ganguly comments[47] "*the Supreme Court enriched our constitutional jurisprudence by upholding manyconstitutional values, like the parliamentary system, federalism, secularism and judicial control over executive function*."

[42] Granville Austin, "Working a Democratic Constitution: The Indian Experience" (Oxford University Press,1999), 640

[43] Supreme Court Advocates-on-Record Association Vs. Union of Indi, (1993) 4 SCC 441

[44] In Re: Under Article 143(1) [special reference 1 of 1998] AIR 1999 SC 1, RLW 1999 (1) SC 168, 1998 (5) SCALE 629, 1998 Supp 2 SCR 400

[45] S.R. Bommai vs Union Of India; 1994 AIR 1918, 1994 SCC (3) 1

[46] Constituent Assembly Debates, Vol. IX, p. 177

[47] Ibid (n. 13) 66.

Justice Sabharwal[48] while determining whether open ballots and domicile are a basicstructure to the constitution made a reference to the debates. The court unanimously held that although federalism does form a part of basic structure as can be spelled out from the debates, however open ballots and domicile are not the essential elements of a federal structure.

In the IR Coelho[49] judgement the Supreme Court made a passing reference to the debates but did not go into the particular details of it for the very reason that the most relevant aspects of the debates had been relied upon in the Keshavanand Bharati[50] case and since this case was an extension upon the basic structure doctrine it fundamentally relied upon the KeshavanandBharati case.

In Shayara Bano[51] as well interpretation of article 44 (Article 35 of the draft constitution) wascalled upon and similarly heavy reliance was made specifically on the speeches of Mr. Munshi and Shri Alladi Krishanaswami Ayyar in detail wherein they strongly advocated towards a uniform civil code. Upon the basis of these contentions the petitioner were relied on to put a uniform religious law and to strike down any such religious practice which may be in violation of the fundamental rights, due to which the tradition of triple talaq was struck down by the court.

In the 377 judgement[52] as well the courts relied on the debates highlight the point of constitutional morality, and relied on speeches made by Dr. Ambedkar himself. The constituent assembly itself had stated „something that is not a part of the constitution can never be a part of the constitution would be a primitive argument". Dr. Ambedkar powerfully remarks as "*Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it.*" These observations were made in context of explaining the constitution with the larger goal of social revolution[53].

In the Puttaswami Judgement[54] as well, the judges have been liberal enough to lay stress on the constitutional provisions which although proposed could not be conceptualised. The makers of the constitution were far sighted to observe that such a right has not been envisaged in any constitution of other countries, however the same was not included in the main draft but was only suggested by the committee on fundamental rights by K M Munshi. The judgement also categorically stated that since there was no right to privacy as such before the constituent assembly it cannot be said that it had rejected the idea of it. The court was of the opinion that the dimensions of privacy were not fully considered by the assembly and hence it is not prudent to dismiss the same without fully examining the same. The court also propounded that even though the assembly

[48] Kuldip Nayar vs Union Of India AIR 2006 SC 3127
[49] I.R. Coelho v. State of Tamil Nadu ; (2007) 2 SCC1: AIR 2007 SC 861
[50] Ibid (n. 25)
[51] Shayara Bano vs Union Of India (2017) 9 SCC 1
[52] Navtej Singh Johar vs Union Of India (2018) 10 SCC 1
[53] John Sebastian & Aparajito Sen, Unravelling The Role Of Autonomy And Consent In Privacy (ICLJ Vol 9)
[54] Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors. (2017) 10 SCC 1

did not transparently mention the right to privacy, it is necessary to interpret it with the changing needs of society at different points of time.

VII. Conclusion

In conclusion it can be said that the constituent assembly has travelled a long lost journey starting with renouncement of its use to cautious use, passing references, resilient credence and detailed faith in it. There have been a plethora of judgements which have not been dealt with like Independent Thought[55], NCT Delhi Vs UOI[56], Indian Young Lawyers Association Vs State of Kerala[57] and various other cases where the courts have copiously relied on the Constituent Assembly Debates to aid the interpretation.

The historical judgements truly reveal the accepting and non-partisan views expressed by various judges in favour of the debates and speeches. The architects of the constitution tried to make the document unambiguous and conspicuous, with a far sighted view to protect the rights of the citizens, whilst also encompassing powers upon the various organs for it to operate freely, without hindrance and in an independent manner. The subsequent recognition of the efforts of the framers of the constitution, by the judicial bodies is a commendable effort. The judicial authorities are now appreciative of the utility of debates in interpretation and are now well guided by ample of precedents showing the strengths and weaknesses of using it for interpretation.

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[55] Independent Thought v. Union of India and Another (2017) 10 SCC 800

[56] Government of NCT of Delhi Vs Union of India C. A. No. 2357 of 2017

[57] 2018 SCC OnLine SC 1690