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Students As the Constitution's Vanguard

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I am delighted to speak at today's webinar organised by the Shikshan Prasarak Mandali in the memory of my father, Late Justice Y V Chandrachud, at his 101st birth anniversary. Shikshan Prasarak Mandali was an institution that was very close to my father's heart, where he devoted the retirement years of his life, as Chairman of its Governing Council. Its plethora of institutions, ranging right from schools for little children to excellent post-graduate education is reflective of its deep-seated commitment to the noblest goal of educating our future generations. Socrates, one of the oldest philosophers in documented history, had mused that 'Education is kindling of a flame, not filling of a vessel'. I am positive that Shikshan Prasarak Mandali has kindled this flame for every one of its students.

Today, in honoring my father's 101st birth anniversary, I seek to touch upon two things that were very close to my his heart- *first*, collaborating with educational institutions and interacting with students, particularly of the Shikshan Prasarak Mandali; and *second*, studying the Indian Constitution. I don't intend to take away from the role of your able teachers who must have taught you about the freedom struggle, the framing of the constitution and the rights and duties of Indian citizens that are embodied therein. Instead, I will be speaking about the unique

role that you, as students, can play in preserving our constitutional framework and how your education would be a critical tool in the process.

Any talk on the Indian Constitution must begin by paying homage to Dr. Bhim Rao Ambedkar, the Chairperson of the Drafting Committee, who is fondly remembered as the architect of the Constitution and one of the most prominent anti-caste advocates in India. Before mounting a ferocious battle against casteism, patriarchy and oppressive Hindu practices, his first struggle was gaining access to his own education. As a person hailing from the Mahar caste, an untouchable *dalit* caste, Babasaheb significantly struggled in gaining access to even primary education. His foremost memories of his schooling, are of humiliation and segregation where he had to attend his classes, while sitting outside the classroom, and ensuring that he does not touch the water or the notebooks that belonged to the upper caste students.¹ He eventually went onto hold 26 degrees and titles, becoming one of the most highly educated Indians of his generation.² His education wasn't just a vehicle for his self-advancement, but left its imprints in the prescience, nuance and transformative potential of the Indian Constitution. It also provided several persons of the oppressed castes with the necessary vocabulary and aspiration, to push back against the denigrating structures of caste and patriarchy.

¹ Dr.B.R. Ambedkar- the Man and His Message: A Commemorative Volume (Eds. Sudarshan Agarwal, Secretary-General, Rajya Sabha) available at https://rajyasabha.nic.in/rsnew/publication_electronic/Ambedkar.pdf (Accessed 16 July 2021).

² <https://www.deccanchronicle.com/opinion/columnists/130421/ambedkars-way-it-was-education-that-helped-him-make-a-difference.html> (Accessed 16 July 2021).

Just like him, several revolutionaries, in India and the world over, like Savitribai Phule, Jyotiba Phule, Nelson Mandela and even Malala Yousafzai heralded their emancipatory movements through an initial and, at the time and circumstance-radical, quest for education. These stories are useful reminders that the privilege of education we have today, are fruits of the boldest struggles and represent the dreams of our ancestors. The mantle is only passed forward, as every generation is entrusted with the task of bettering our society. Personally, inspite of hailing from a family that had a background in the legal profession, the most defining years of my life were my school and college days where the faculty and my peers shaped me into the person I am today. The curiosity and passion that you develop in these days, is something that propels you for life. I firmly believe that students can play an instrumental role in heralding progressive politics and cultures by using their formative years to question existing systems and hierarchies.

Historically, the roots of student movements in India can be traced back to nearly 200 years, with the formation of the Academic Association in 1828, in undivided Bengal's Hindu College under the guidance of Henry Louis Vivian Derozio, a teacher and a reformer. He spearheaded the Young Bengal Movement consisting of boys from middle-class Bengali Hindu households who were driven by a radical ambition of eradicating every belief system that thwarted free thought. His disciples, who formed the Young India group of free thinkers, played a part in the Bengal Renaissance of the 19th century. This movement, inspired by the French Revolution, propelled liberal thinking in India that questioned archaic and oppressive religious customs. Student movements were also key actors and

mass participants in India's freedom struggle. They even went on to assume leadership positions in the 1920 Non-Cooperation Movement, the 1930 Civil Disobedience Movement and the 1942 Quit India Movement.³ This brave pursuit of justice by students was not just against the colonial rule, but against future injustice as well, including the Emergency in 1975 when a democratically elected government had curtailed several civil liberties and muzzled free speech, offering a justification of a supposed "internal disturbance".⁴ The idealism and optimism, that one feels as a student who wishes to contribute to shaping society, is unparalleled. However, if I have to think of an example where our country shared this idealism in equal measure, would be the moment of our independence, when we finally wrestled free from centuries of social and economic exploitation.

The Indian Constitution, when we colloquially think about it, established our free republic. For the first time, every Indian citizen was to have a say in the governance of our country with the promise of universal adult franchisee that was guaranteed-irrespective of our caste, gender, linguistic or religious identities. The Constitution didn't just transform us from colonial subjects to free citizens, but also undertook a massive challenge of confronting a polity that was plagued by oppressive systems of caste, patriarchy and communal violence. Additionally, as a country that sought to define herself after centuries of economic subservience to a colonial enterprise, the task of the constitution was also to provide the conditions that could enable development and modernization. Civil and political

³ Altbach, Philip G. "The Transformation of the Indian Student Movement." *Asian Survey*, 6(8), 1966, page 449 (Accessed 15 July 2021).

⁴ <https://indianexpress.com/article/research/four-reasons-why-indira-gandhi-declared-the-emergency-5232397/> (Accessed 16 July 2021)

liberties such as the right to vote, right to substantive equality, right to life, liberty and fundamental freedoms of speech and expression were explicitly guaranteed as 'Fundamental Rights' that were available to all citizens, and some- to even non-citizens. Any violation of these rights could be argued before the High Court or the Supreme Court, and a meaningful remedy could be secured. Social and economic equality was also an important goal of our constitution, but enumerated within the Directive Principles of State Policy. These principles were not something that could be independently argued before courts, to invalidate parliamentary legislations. This distinction was owing to the inadequacy of the new and impoverished state at the time, to meaningfully guarantee them as enforceable obligations. It is often assumed that the inability of a person to rush to courts seeking enforcement of the goals enumerated in the Directive Principles of State Policy is proof of their irrelevance. However, a closer study of the constitution and its finely contested structures reveals that these goals were to serve as pedagogical instruments for future governance, in order to enable their progressive realisation.

This year, we would be well into the 71st year of our constitutional republic. It is understandable that we may, on occasion, feel that our democracy is no longer new and the need to study constitutional history and engage with its framework isn't as worthwhile. However, it is important to recognize that in times of peace or crisis, irrespective of the electoral legitimacy of the government, the constitution is a north star, against which the conformity of every state action or inaction, would have to be judged. India, as a post-colonial nation, did not achieve statehood in the way countries in, let's say- Europe did, which were through

liberal revolutions that were catching up to industrialization that altered their society.⁵ The Indian State, as a post-colonial economy with semi-feudal conditions in our towns and villages, had to task itself with the project of modernizing our economic relations. The lack of a common ethnicity that united all its people, made the task of forging a national identity indescribably complex. In this melting pot of cultures, with each person representing multi-axle identities, the premise of a democratic nation-state can be truly tested. Our nation was forged and united, with a promise of certain commitments and entitlements to each and every citizen. A promise of religious freedom, a promise of equality between persons, irrespective of sex, caste or religion, a promise of fundamental freedom of speech and movement- without undue state interference and an enduring right to life and personal liberty. Majoritarian tendencies, whenever and however they arise, must be questioned against this background of our constitutive promise. Any semblance of authoritarianism, clampdown on civil liberties, sexism, casteism, otherization on account of religion or region is upsetting a sacred promise that was made to our ancestors who accepted India as their constitutional republic.

Irrespective of whether you want to be lawyers, do read up on the history, the spirit and morality of our constitution- it is not just a lawyer's constitution. Being a lawyer and now a judge, is a pursuit in eternal education. Having to do my job everyday requires a lot of reading over a wide range of issues. Be it intricate areas of technology and algorithms while understanding the working of the

⁵ Nivedita Menon, *Citizenship and the Passive Revolution: Interpreting the First Amendment* 39(18), THE ECONOMIC AND POLITICAL WEEKLY (May 2004).

Unique Identification Authority of India to determine the constitutionality of Aadhar or the complex process of vaccine development and production, while understanding the feasibility of compulsory licensing and the subsequent technology transfer that could potentially augment production of the COVID-19 vaccines. However, I would like to re-iterate that lawyers do not occupy this unique nexus where they engage with all aspects of our society, through the constitutional lens. Each and every one of us, irrespective of our age, profession or socio-economic location unwittingly engages with the constitution every day. When we lead our lives without obtrusive and unjustified state interference, when everyone- irrespective of their caste identity exerts their right to access public places- be they shops, parks, wells or temples, or when we enjoy the right to speak our mind and profess our trade- we assert our constitutional freedoms. The lives that we lead as given and obvious today, were not our reality, less than 75 years ago. The Constitution marked a breakthrough; it embodied a vision and a pedagogical purpose when it formulated a framework that was aspirational and a work in progress. The process of constitutional amendment is relatively easy in India and has been exercised over a 100 times to reflect the march of time, and the evolving needs and values of society. The education that we so dearly value, is now a fundamental enforceable right for children aged 6-14 years, under Article 21A, that was inserted by way of an amendment in 2002. However, the Supreme Court had also clarified, through the largest bench constituted in its history, that this amendment power cannot be exercised to destroy the fundamental character and ethos- i.e. the basic structure, of the Indian Constitution.⁶ Preserving this

⁶ Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225.

fundamental ethos is the precise role which students can play, as conscientious citizens.

Our lives are currently mediated by a technological interface that was unthinkable when the Constitution was framed in 1950. Technology has dramatically altered our social landscape and is now our primary window into the world. The COVID-19 pandemic has accelerated the penetration of technology in our lives. If not for technology, I wouldn't be able to address you all, from the safety of all of our individual homes. However, as the shape and structure of our society is reconfigured by the digital era, we must understand that our democratic institutions must adapt to it, in order to retain collective power and decision-making over something that currently constitutes essential infrastructure.

Like I said previously, as a judge at the Supreme Court, I have to interact with the constitution in novel ways, every single day. One such challenge was determining whether Indian citizens have the right to privacy. This right to privacy would embody our free ability to make our own decisions, access information and freedom from state or private surveillance. These issues arose as a consequence of our digitally mediated life, which is a novel medium that did not exist before the invention of the world wide web in 1989! The Constitution, drafted in 1950, would not be compatible with our lives today if we considered it as dead letter that would have to be applied as a rigid formula for evaluating realities that were previously unfathomable. My conclusion in the Supreme Court decision, recognizing a right to privacy as an essential component of the 'right to life' under

Article 21 of the Indian Constitution,⁷ was a recognition of the constitution as a foundation, which future generations had to build upon- as opposed to a rigid text that would be literally applied, divorced from its historical context. The Constitution sought to define the contours of our democratic institutions, by providing certain operative rules and constraints, that were grounded in a commitment to equality, liberty and justice for all, as an enduring vision. It is the job of succeeding generations to interpret its spirit and apply it to their lived realities.

Just like technology, the Constitution also could not predict the extent of globalization and privatization that we are witnessing today. The Constitution envisaged our newly independent state as the predominant actor, employer and developer of our society. Naturally, several of our fundamental rights and guarantees, in their literal word, seek to protect us from the potential tyranny of the state. However, the constitutional spirit seeks to protect individuals from hegemonic power structures, irrespective of their forms. To quote the Preamble, the constitution “*secure(s) to all its citizens: Justice, social, economic and political*”. Presently, in a globalized and increasingly privatized world, the idea of liberty for some, such as powerful corporations, may not necessarily result in dignity or life for most, especially the marginalized classes and sections of society. In viewing our constitution as the primary spirit of counter-majoritarianism, we can equip ourselves with a unique lens to view the world and balance competing interests, where we undoubtedly make scientific progress, but in a manner that benefits all of humanity, and not just a narrow section.

⁷ Justice K S Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

As students, not all of you will be training to study the law or make a career in the social sciences. However, the constitution and its teachings will matter, irrespective of your vocation. If you chose to be engineers or data scientists, the apps and algorithms you devise may have a direct consequence on the form of the economy and the lives of the poorest workers who sustain themselves on their wages alone. Artificial intelligence may automate several of our tasks, but may also unwittingly perpetuate pre-existing biases. Any technical solution will have to transplant itself on societal structures which aren't always equitable. The technology would have to be moderated to counter-act these structures, which will not happen unless the minds behind them are aware and conscientious citizens. If you chose to be doctors or scientists, an understanding of the priors for science, can shed light on how it can often overlook or diminish the experiences of females. A conscious understanding and attempt to counter this bias, may result in better healthcare for women everywhere. All of us are a factor and function of the society we inhabit, and for the better or worse- cannot detach ourselves from it. A critical outlook towards its social and material realities is the first step towards bettering it, an outlook that the constitution was designed to provide.

We are in the midst of an accelerating climate crisis. As the Covid-19 pandemic has shown us, ecological disruptions exacerbate existing inequalities. To combat this crisis, we would require collective and global action at a scale that we have not witnessed so far. An engaged citizenry, particularly its students, can confront several material interests that will have to be made subservient to the existence of our species. Greta Thunberg, who is one of the strongest voices in civil society

against climate change, began her journey, as a lone 15 year old, sitting outside the Swedish Parliament demanding governmental action against the imminent risks of global warming. Her example, in addition that of many others, shows us how nobody is too young or too insignificant to effectuate a big change.

To conclude, I would like to quote a prominent legal academician Martha Nussbaum, who had said- "*It would be catastrophic to become a nation of technically competent people who have lost the ability to think critically, to examine themselves, and to respect the humanity and diversity of others*".⁸ I am confident that all students of the Shikshan Prasarak Mandali, like their alumni, will go onto become leading intellectuals and, and above all, empathetic citizens.

⁸ Martha Nussbaum, CULTIVATING HUMANITY: A CLASSICAL DEFENSE OF REFORM IN LIBERAL EDUCATION (Cambridge MA, Harvard University Press, 1997), 300.