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Present Issue :

Constitutional Expectation
Dr. S. K. Kapoor
Ved Ratan

Chief Justices of India
Subhash Nagpal

CONSTITUTIONAL EXPECTATION

Dr. S. K. Kapoor
Ved Ratan

01 **Constitution is Supreme**

1. 'Constitution of India is Supreme'. It is the first value of law. All other values of Indian laws are tested for their virtues on the touchstone of the Constitution of India.

02 **Constitutional Authorities**

2. In India, the 'Constitutional authorities' are the creation of the Constitution. This being so the Constitution regarding its values, functions and speaks through authorities created by the Constitution itself.
3. With it, the Constitutional expectation becomes the core question of interpretation for which the Constitution puts the responsibility upon the judicial organ of state created by the Constitution.
4. And this responsibility has been discharged by the Constitutional Bench of the Supreme Court in its judgment dated 27-August-2014 in case Manoj Narula Vs. Union of India in Writ Petition (Civil) No. 289 Of 2005.

WELCOME ANNOUNCEMENT

State Judicial Services preparations Guidance facility

Finding necessity for guidance for all those preparing for State Judicial Services Competitions Examinations, Paramount Law Consultants Ltd. has decided to help with valuable guidance. Interested persons are welcome.

Legal Audit and Moral Audit Services

Paramount Law Consultants Ltd., Delhi has completed its research and is taking up legal audit and moral audit services for the Corporates.

Subhash Nagpal
Chairman
Paramount Law Consultants Ltd., Delhi

5. This judgment is in the form of three judgments, first judgment is by Hon'ble Chief Justice. R.M. Lodha, Justice Dipak Misra, Justice S.A. Bobde. The second judgment is by Hon'ble Justice Madan B. Lokur. The third judgment is by Hon'ble Justice Kurian Joseph.

03

Conclusions of first Judgment

“85. From the aforesaid, it becomes graphically vivid that the Prime Minister has been regarded as the repository of Constitutional trust. The use of the words “on the advice of the Prime Minister” cannot be allowed to operate in a vacuum to lose their significance. There can be no scintilla of doubt that the Prime Minister’s advice is binding on the President for the appointment of a person as a Minister to the Council of Ministers unless the said person is disqualified under the Constitution to contest the election or under the 1951 Act, as has been held in B.R. Kapur’s case. That is in the realm of disqualification. But, a pregnant one, the trust reposed in a high Constitutional functionary like the Prime Minister under the Constitution does not end there. That the Prime Minister would be giving apposite advice to the President is a legitimate Constitutional expectation, for it is a paramount Constitutional concern. In a controlled Constitution like ours, the Prime Minister is expected to act with Constitutional responsibility as a consequence of which the cherished values of democracy and established norms of good governance get condignly fructified. The framers of the Constitution left many a thing unwritten by reposing immense trust in the Prime Minister. The scheme of the Constitution suggests that there has to be an emergence of Constitutional governance which would gradually grow to give rise to Constitutional renaissance.

87. It is worthy to note that the Council of Ministers has the collective responsibility to sustain the integrity and purity of the Constitutional structure. That is why the Prime Minister enjoys a great magnitude of Constitutional power. Therefore, the responsibility is more, regard being had to the instillation of trust, a Constitutional one. It is also expected that the Prime Minister should act in the interest of the national polity of the nation-state. He has to bear in mind that unwarranted elements or persons who are facing charge in certain category of offences may thwart or hinder the canons of Constitutional morality or principles of good governance and eventually diminish the Constitutional trust. We have already held that

prohibition cannot be brought in within the province of ‘advice’ but indubitably, the concepts, especially the Constitutional trust, can be allowed to be perceived in the act of such advice. Thus, while interpreting Article 75(1), definitely a disqualification cannot be added. However, it can always be legitimately expected, regard being had to the role of a Minister in the Council of Ministers and keeping in view the sanctity of oath he takes, the Prime Minister, while living up to the trust reposed in him, would consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers. This is what the Constitution suggests and that is the Constitutional expectation from the Prime Minister. Rest has to be left to the wisdom of the Prime Minister. We say nothing more, nothing less.”

04

Additional Conclusions of second judgment

“22. Therefore, the position as it stands today is this:

(i) To become a Member of Parliament, a person should possess the qualifications mentioned in Article 84 of the Constitution;

(ii) To become a Member of Parliament, a person should not suffer any of the disqualifications mentioned in Article 102 of the Constitution;

(iii) The Constitution does not provide for any limitation in a Member of Parliament becoming a Minister, but certain implied limitations have been read into the Constitution by decisions rendered by this Court regarding an unelected person becoming a Minister;

(iv) One implied limitation read into the Constitution is that a person not elected to Parliament can nevertheless be appointed as a Minister for a period of six months;

(v) Another implied limitation read into the Constitution is that though a person can be Writ Petition (Civil) No.289 of 2005 appointed as a Minister for a period of six months, he or she cannot repeatedly be so appointed;

(vi) Yet another implied limitation read into the Constitution is that a person otherwise not qualified to be elected as a Member of Parliament or disqualified from being so elected cannot be appointed as a Minister;

(vii) In other words, any person, not subject to any disqualification, can be appointed a Minister in the Central Government. Conclusions on the second relief

35. The discussion leads to the following conclusions:

(i) To become a legislator and to continue as a legislator, a person should not suffer any of the disqualifications mentioned in Section 8 of the representation of the People Act, 1951;

(ii) There does seem to be a gap in Section 8 of the Representation of the People Act, 1951 inasmuch as a person convicted of a heinous or a serious offence but awarded a sentence of less than two years imprisonment may still be eligible for being elected as a Member of Parliament;

(iii) While a debate is necessary for bringing about a suitable legislation disqualifying a person from becoming a legislator, there are various factors that need to be taken into consideration;

(iv) That there is some degree of criminalization of politics is quite evident;

(v) It is not for this Court to lay down any guidelines relating to who should or should not be entitled to become a legislator or who should or should not be appointed a Minister in the Central Government;”

05

Additional Conclusions of third judgment

“12. No doubt, it is not for the court to issue any direction to the Prime Minister or the Chief Minister, as the case may be, as to the manner in which they should exercise their power while selecting the colleagues in the Council of Ministers. That is the Constitutional prerogative of those functionaries

who are called upon to preserve, protect and defend the Constitution. But it is the prophetic duty of this Court to remind the key duty holders about their role in working the Constitution. Hence, I am of the firm view, that the Prime Minister and the Chief Minister of the State, who themselves have taken oath to bear true faith and allegiance to the Constitution of India and to discharge their duties faithfully and conscientiously, will be well advised to consider avoiding any person in the Council of Ministers, against whom charges have been framed by a criminal court in respect of offences involving moral turpitude and also offences specifically referred to in Chapter III of The Representation of the People Act, 1951.”





CHIEF JUSTICES OF INDIA

Subhash Nagpal

Indian State Sovereignty is organized as legislature, Judiciary and Executive. The independence of Judiciary is the hall mark of division of sovereign powers under the Indian Constitution. The Chief Justice of India is the flag carrier of Indian Judiciary. Indian Constitution provides and ordains:

124. (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven² other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

- (a) a Judge may, by writing under his hand addressed to the President, resign his office;
- (b) a Judge may be removed from his office in the manner provided in clause (4).

1[(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

- (a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
- (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
- (c) is, in the opinion of the President, a distinguished jurist.

Explanation I.—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

CHIEF JUSTICES OF INDIA since 26-January 1950

Sn.	Period		Chief Justice of India
	Since	Uptill	
1	26 January 1950	6 November 1951	Hon'ble Mr. Justice H. J. Kania
2	7 November 1951	3 January 1954	Hon'ble Mr. Justice Patanjli Sastri
3	4 January 1954	22 December 1954	Hon'ble Mr. Justice Mehr Chand Mahajan
4	23 December 1954	31 January 1956	Hon'ble Mr. Justice Bijan Kumar Mukherjea
5	1 February 1956	30 September 1959	Hon'ble Mr. Justice Sudhi Ranjan Das
6	1 October 1959	31 January 1964	Hon'ble Mr. Justice Bhuvaneshwar Prasad Sinha

7	1 February 1964	15 March 1966	Hon'ble Mr. Justice P. B. Gajendragadkar
8	16 March 1966	29 June 1966	Hon'ble Mr. Justice Amal Kumar Sarkar
9	30 June 1966	11 April 1967	Hon'ble Mr. Justice Koka Subba Rao
10	12 April 1967	24 February 1968	Hon'ble Mr. Justice Kailas Nath Wanchoo
11	25 February 1968	16 December 1970	Hon'ble Mr. Justice Mohammad Hidayatullah[2]
12	17 December 1970	21 January 1971	Hon'ble Mr. Justice Jayantilal Chhotalal Shah
13	22 Jan 1971	25 April 1973	Hon'ble Mr. Justice Sarv Mittra Sikri
14	26 April 1973	27 January 1977	Hon'ble Mr. Justice Ajit Nath Ray
15	28 January 1977	21 February 1978	Hon'ble Mr. Justice Mirza Hameedullah Beg
16	22 February 1978	11 July 1985	Hon'ble Mr. Justice Yeshwant Vishnu Chandrachud
17	12 July 1985	20 December 1986	Hon'ble Mr. Justice Prfullachandra Natwarlal Bhagwati
18	21 December 1986	18 June 1989	Hon'ble Mr. Justice Raghunandan Swarup Pathak
19	19 June 1989	17 December 1989	Hon'ble Mr. Justice Engalaguppe Seetharamiah Venkataramiah
20	18 December 1989	25 September 1990	Hon'ble Mr. Justice Sabyasachi Mukharji
21	26 September 1990	24 November 1991	Hon'ble Mr. Justice Ranganath Misra
22	25 November 1991	12 December 1991	Hon'ble Mr. Justice Kamal Narain Singh
23	13 December 1991	17 November 1992	Hon'ble Mr. Justice Madhukar Hiralal Kania
24	18 November 1992	11 February 1993	Hon'ble Mr. Justice Lalit Mohan Sharma
25	12 February 1993	24 October 1994	Hon'ble Mr. Justice Manepalli Narayana Rao Venkatachaliah
26	25 October 1994	24 March 1997	Hon'ble Mr. Justice Aziz Mushabber Ahmadi

27	25 March 1997	17 January 1998	Hon'ble Mr. Justice Jagdish Sharan Verma
28	18 January 1998	9 October 1998	Hon'ble Mr. Justice Madan Mohan PUNCHHI
29	10 October 1998	11 January 2001	Hon'ble Mr. Justice Adarsh Sein Anand
30	11 January 2001	6 May 2002	Hon'ble Mr. Justice Sam Piroj Bharucha
31	6 May 2002	8 November 2002	Hon'ble Mr. Justice Bhupinder Nath Kirpal
32	8 November 2002	19 December 2002	Hon'ble Mr. Justice Gopal Ballav Pattanaik
33	19 Dec 2002	2 May 2004	Hon'ble Mr. Justice V. N. Khare
34	2 May 2004	1 June 2004	Hon'ble Mr. Justice S. Rajendra Babu
35	1 June 2004	1 November 2005	Hon'ble Mr. Justice Ramesh Chandra Lahoti
36	1 November 2005	13 January 2007	Hon'ble Mr. Justice Yogesh Kumar Sabharwal
37	13 January 2007	11 May 2010	Hon'ble Mr. Justice K. G. Balakrishnan
38	12 May 2010	28 Sep 2012	Hon'ble Mr. Justice S. H. Kapadia
39	29 September 2012	18 July 2013	Hon'ble Mr. Justice Altamas Kabir
40	19 July 2013	26 April 2014	Hon'ble Mr. Justice P. Sathasivam
41	27 April 2014	Incumbent	Hon'ble Mr. Justice Rajendra Mal Lodha

