

Parliament and the Courts in Independent India: The Constitution (First Amendment) Act, 1951

In May 1951 Jawaharlal Nehru introduced before Parliament a Bill to amend the Indian Constitution, some fifteen months after it had come into force. Some of these amendments concerned important “fundamental rights”: the right to freedom of speech (Art. 19(1)(a)); rights against the compulsory acquisition of property (Art. 31); and rights against non-discrimination (Art. 15(1)). Each of these amendments was a response to judgments of the High Courts and the Supreme Court striking down legislation for violating these rights; and each amendment had the effect of nullifying the offending judgments.

My paper traces the history of the Art. 19(1) protection of free speech and expression through three phases: the Constituent Assembly Debates in 1946-49; the constitutional challenges in the Courts in 1950-51; and the Parliamentary debates of May 1951. I suggest that they illustrate the development of a new Constitutional idiom at this transitional time, and I attempt to elucidate that idiom to some extent.

This idiom can only be understood in the context of the peculiar circumstances in which the Bill was proposed. Since elections under the new Constitution did not take place until late 1951, the Parliament was accused of lacking the legitimacy to make sweeping Constitutional changes. But in another respect the legitimacy of this Parliament to discuss the Constitution was not in doubt: under the terms of the India Independence Act of 1947, the Constituent Assembly was to sit in a legislative capacity until the new Constitution came into force. So these constitutional amendments were debated by the very people who had framed the Constitution!

Who, then could speak for the Constitution? Was it the Courts, which were set up by the Constitution and explicitly given the power of judicial review? Or did the Framers, now sitting in their legislative capacity, have greater authority to interpret the Constitution they had written, and correct “errors” in judicial interpretation?

I argue that debates about legitimacy were ultimately cast in terms of the extent to which the institutions in question represented continuities with colonial rule. Was it the Courts, as Nehru suggested, which were still stuck with a conservative “colonial mentality,” manned as they were by judges who had been appointed by the British before Independence? Or was this charge more aptly pressed against the Government, which was seeking to enact the very same laws that the British had earlier used to suppress the Independence movement?