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THE NEED FOR A RELOOK AT THE CONSTITUTION*

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In the midst of colonial, fascist rulers, dictating terms and conditions in most parts of the world, we have attained freedom to end the imperialist rule in 1947. This was a remarkable achievement in the annals of India, which earned Swaraj for the oppressed millions of India without waging a war in a battlefield.

After the independence, we have successfully fulfilled the ideals of a democracy by adopting the Constitution which is Sovereign, Democratic and Republic.¹ Thanks to the galaxy of leaders who were patriotic with commitment and caliber to meet the expectations of the future generations of India, who engineered the Constitution guaranteeing the social, economic, democratic values of the common people.²

Without going into details, it can be safely stated that the Constitution has succeeded in maintaining the unity and integrity of the nation, preserving secular character of the polity, maturing the system of representative Parliamentary democracy, ensuring the freedom and dignity of the individual in spite of the innumerable problems that afflict us. This itself is a monumental achievement of a Constitution in steering the life of a nation planting the tents of democracy without any inkling towards one up man-ship, unlike many neo-democracies. This is a significant accomplishment of Indian Constitution which could ably demonstrate to the rest of the world defying the predictions of many that liberal democracy cannot survive too long here.³

The Constitution of a nation is the fundamental law of the land. It specifies the objectivity of the polity and the functional character and procedures of institutions to be adopted for the betterment of the people and the State. But at the same time a constitution is naturally a product of struggle for revolution or liberation. It is partly declaratory and tries to embody the vision of the polity in which the framers always resort. The Indian Constitution has also been adopted on the lines of functional democracy with distribution of powers among the Executive, Legislature and Judiciary on the one hand, and on the other hand guaranteeing the freedom of the people to secure social, economic, political values.⁴ It is this

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fundamental value system that made the ball set to roll by the constitutional fathers in these last fifty years. The Constitution of India has been successful in rendering its goals and achieved considerable progress in the diverse and interconnected spheres of democratic governance among the various institutions and sections of the people. We can be legitimately proud that the Constitution could ably demonstrate that it is an ever-enduring document that we have adopted it into ourselves. In fact there is nothing wrong either with the Constitution of India or its Polity. It's the lack of will on the part of the political parties and the successive governments to adhere to the constitutional culture that is hampering us. In corroboration with the view of the author, Granville Austin also opines that "..... the Constitution and its seamless web have met India's needs. The inadequacies in fulfilling its promise should be assigned to those working it....."⁵

However, the assertion of caste, degradation of moral and ethical values in the governance of the polity, criminalisation of politics, escalating levels of violence, communalism, wide spread growth of unhealthy competition in various sections of society, the imbalance in the functioning of our federal system, the infighting between the constitutional organs, Union and States, the carelessness to strengthen the democratic governance from gross roots level and many more problems taken together of the Constitution, as a functional democracy.⁶ With the varied experience of living and working in the post-independence era, the present generation realized that there are many shortcomings in the functioning of the Constitution and they accept or look at it than tinkering with it every time with an amendment. As an offshoot, a variety of opinions have been aired to reshape the Constitution and to reorganize the social, economic, political, scientific, and legal framework.⁷ The complexities of the problems confronting the nation internally have been further exacerbated with the end of cold war and the reshaping of the Indian economy, under the guise of the World Bank, International Monetary Fund and the World Trade Organization. All these changes have necessitated a fresh look at the changing India before we face the challenges of the present millennium.

No political system can succeed without having the backing of a sound social, economic, educational, legal, scientific and technological foundations. Apart from these imperatives, a functional democracy has to enlighten the well-being, higher standards of life and decent living to the common man to exercise his human rights meaningfully. These aspects might have prompted the present Government of India to constitute a review committee of the Constitution in order to threshold the country to meet the national and international expectations of the future generations of this great nation.⁸

II

The moment, the government announced its decision to constitute a Constitution Review Panel some time in the month of February 2000, various sections of the people and some of the political parties expressed their fears over the announcement. It is unfortunate that the President of India himself raised the bogey to target the efforts of the Government.⁹ Further, almost a year after the Constitution of the Review Panel and even after it was made clear by the Panel about its agenda, on the eve of the 52nd Republic Day address to the nation, the President of India once again raised the controversy that the Constitution should not be tinkered sidelining the ideology adopted by the constitutional fathers.¹⁰

There is no need to be panicky over the Constitution of the review panel. As expressed by certain political parties or as fears aired by the President of India that the right of universal adult suffrage would be sidelined and the governance of the nation would be left in the hands of an elite class than the people of India as a whole. From the statements of the Chairman of the review panel, it is crystal clear that the Committee itself is not in favour of the Gandhian model of electoral reforms (i.e., direct election at the lowest level viz., at the Panchayat level; indirect elections at other levels, specially State Legislatures and the Parliament)¹¹. In fact the committee wants to continue the present system with minor modifications. Moreover as suspected by some political parties, the BJP can not induce the members to make the Constitution with its saffron ideology or hidden agenda of hindutva. Such speculations are baseless and plaguing the country because majority of the political parties are talking the issue without having a clear idea what a review means. Even if there is such a notorious intention behind this intent, it is all the more necessary to expose it and counter it by actively participating in the work of the review committee than blindly making wild allegations. Non-participation serves nobody's interest, least of all people's and is against the ethics of a democracy.¹²

The Constitution has already laid down clear cut guidelines under Article 368 for any alteration of the Constitution or bringing any major amendment. Accordingly, some provisions require simple majority; the others require a two thirds majority of both houses of the Parliament, in matters pertaining the federal structure apart from the two thirds majority of the Parliament, the changes need to be ratified by at least half of the State Legislatures. In accordance with the provisions of the article, the Parliament is empowered in exercise of its constituent power to amend by way of addition, variation, or repeal any provision of the Constitution as per the procedure laid down in this article. This means the Parliament still has an opportunity either to accept or alter or reject the views of the review committee's recommendations. The opposition parties instead of making hue and cry in public can take steps to prevent such misdeeds in the Parliament as they are already doing all the nonsense on various matters which include the passing of the Women's bill and blocking even the

budget of the country. Hence neither the government nor the review panel can single handedly change or alter the philosophy imbedded by the Constituent Assembly or by the Constitution. Even if the ruling party takes the Parliament for a ride as feared by the opposition parties overcoming the provisions of article 368, the judiciary is there to take care of any legislative misdeeds in exercise of its judicial review function as guaranteed by the Constitution, if the legislature tries to alter the basic structure of the Constitution. As rightly pointed out by the apex court in *Kesavananda Bharati's case*¹³, the Parliament can not alter the basic structure or framework of the Constitution. Hence the present government can not single handedly change or alter the philosophy adopted by the Constituent Assembly.

The Indian Constitution was not envisaged by the Constituent Assembly as an unalterable document. The Constituent Assembly after having a thorough discussion and on the lines of the Canadian, Australian and American Constitutions had adopted the present Constitution with a dynamic approach of amending the Constitution according to the social, economic, political, scientific and legal imperatives of the future needs of the polity. Further, a State as a living organ, its Constitution can not be a static document like the Gita, Bible or Quran. It has to have provisions to serve the society and its changing needs. Moreover, when the Constitution has been amended or revised more than 90 times in a piecemeal method, what is the wrong to have a re-look through a high power committee to pluck the loopholes and to patch them up once for all than fiddling with it time and again.

III

The fears allied by various political leaders, statesmen and other walks of public are baseless on an artificial distinction between an amendment and a review. If a distinction is drawn between an amendment (an alteration formally proposed for by a legislature to a bill or a document) and a review (a reevaluation or to examine in order to correct possible errors) on informal lines, it signifies almost the same.¹⁴ In fact the Constitution review is the basic structure of the Constitution itself if one reads in between the lines the language crystallized in article 368. In fact, the Supreme Court of India in the famous *S.R. Bommai's case* made it clear that the Constitution can be reviewable or amenable to the changing social, economic and political milieu of the society. Such a review implies mutuality and common purpose for the process of change with continuity between the centre and the states promoting social, economic, and cultural advancement of its people and to create/emulate fraternity among the people of India. Even the former Presidents of the nation Dr. Fakhruddin Ali Ahmed and N. Sanjeeva Reddy also favoured such a review language. In fact a review is better than an amendment. If a review is undertaken honestly, it gives scope to detect the errors, if any, and provides us with a scope to correct them instantaneously.

cessfully. The end result will be rewarding and sets a rest to all types of controversies.

Strictly speaking, the Constitution has already been reviewed several times. It all depends how one looks at it? The first one had began in 1950 and ended in 1951 which produced the Ninth Schedule wherein the government selected laws which were to be beyond judicial review. The second one by a sub-committee of the Congress Working Committee in 1954, produced anti-judiciary sentiments that then Prime Minister Pandit Nehru blocked them from entering the Constitution. The third one, beginning with the Golak Nath decision of 1967, extending through the Nath Pai Bill and producing the 24th Amendment's declaration that Parliament could amend the Constitution by way of addition, variation or repeal, concluded with the Supreme Court's decision in Kesavananda Bharati's case of basic structure doctrine. The fourth one was the 42nd Amendment on the recommendations of the Swaran Singh Committee in 1976 (At this point of time itself, the then Chairman of the Law Commission Justice P.B. Gajendragadkar expressed clearly to Mrs. Gandhi "yes, you may want to have a review of the Constitution, you can do so, but first it has to be done by a very high power and objective body and you should go about it very carefully as to what you want to achieve") which would have destroyed the concept of democracy, if the 43rd and 44th amendments have not been adopted by the Janata government. Lastly, the most impaired amendment to the Constitution is the 39th amendment which was struck down by the apex court on the ground that it militates against the principle of free and fair election. This amendment was introduced with a wrongful motive to protect the election of the then Prime Minister Mrs. Gandhi.¹⁵

In this background it is funny on the part of the main opposition party, namely the Congress party stating that we are not opposed to any amendment but strongly opposed to reviews. In fact all the confusion, caste ridden politics, inculcation of money and muscle power into elections, favoritism in many ways, family-rule, controlling the States wherein the party is in power by the high command, psycho-fancy all are part of the power politics of the Congress, and, some of its allies who claims that they are only socialist, secular and democratic. Having deviated from the constitutional culture that was painstakingly built by the Constituent Assembly, today, criticising the appointment of constitutional review panel by the opposition parties has no moral, ethical or legal basis. Moreover, there is no need to be worrissome, since the government and the panel have clearly stated that they will not make any attempt to alter the basic structure at all.

IV

The review panel from its first meeting held on 23.3.2000, made it clear that as an advisory body, its main aim is to strengthen the parliamen-

tary institutional democracy and their accountability without any deviation from the constitutional culture that has been built over a long period of time. The panel has clearly identified its terms of reference to work on in the following aspects such as maintaining the equilibrium of social justice enshrined by the Constitution; promoting literacy; generating employment; ensuring better Union-State relations; a re-look at article 356; appointment of governors and removal of governors; strengthening the Panchayat Raj, decentralization of power, enlargement of fundamental rights; effective enforcement of Directive Principles of State Policy; Fundamental Duties; Fiscal and monetary policies; controls on government expenditure; efficiency of public audit mechanisms etc.¹⁶

From the review panel's meetings, it is crystal clear that the Committee's main aim is only to have a re-look at certain aspects, not a through overhauling of the Constitution. The meetings of the panel clearly synchronizes with the thoughts of the writer that there is nothing wrong with the Constitution of India. Further, stung by the criticism of the President of India of attempts at tinkering with the Constitution on the Republic Day address to the nation the Chairman of the review panel Justice Venkata Chalaiah has amply made it clear that the panel is not going to alter the basic structure of the Constitution. Probably, the panel at best may suggest to review or amend the Constitution to fill the gaps that exist in accordance with the experience we had in last fifty years, or suggest some safeguards to some of the provisions which were not for seen by the constituent Assembly. Hence the need of the hour is to have a re-look at the Constitution to strengthen its aim's and objectives enunciated by the Constituent Assembly and to create a constitutional culture among the various sections of the country especially that of the political parties.

While we accept that the system of parliamentary governance need not be diluted, the responsibility be fixed on the various institutions. To achieve the imperatives of the Constitution, the responsibility lies on us to search the ways and means to ensure the strict implementation of the constitutional objectives. Of the various suggestions aired by different walks of people of the polity, the following aspects needs a meritorious consideration.

1. The teaching of the Constitution as apart of curricula should be made compulsory at all levels of education. In the primary level, the constitutional duties and objectives should be taught. At the middle level, the aspects of Fundamental Rights, Directive Principles of State policy be imparted. At the higher level, the philosophy of the Constitution be taught with a critical outlook of its entirety irrespective of the discipline of study.
2. Fundamental Duties be given a higher status by placing them even before the Fundamental Rights as an independent chapter. This

will certainly promote and cater the people to discharge their duties effectively and helps to create a value based society as enunciated by the Constitution in building the constitutional culture.

3. The most vexed issue that is plaguing the country is reservation. There is nothing wrong in extending reservation to the needy and down trodden sections of the society. But this has been made as a tool to grossly sideline the objectives of social justice and human rights jurisprudence in providing equal opportunity to all sections of the people in all fields without any kind of discrimination. The present reservation policy proved to be inadequate to meet the social and philosophical contours of the Constitution and became a serious threat to achieve the objectives of social justice and human rights. No one in the constituent Assembly including Dr. B.R. Ambedkar, the great leader of social justice had advocated that reservation be given in education and employment. It is only the gimmick of the political parties that they have amended the Constitution and incorporated clauses 4 and 4a to Article 16. To tackle this vexed question many suggestions have been expressed. But all of them proved to be inadequate or not acceptable to either the Executive, Legislature or Judiciary or to the reserved communities. It is time now that we should realize (especially the reserved categories), that reservation is neither a birth right nor a social obligatory norm to continue for ever at the cost of other sections of the society. The best method of approach is that reservations be continued to educate the downtrodden irrespective of caste. Here also instead of reducing the basic minimum qualifications (i.e., the rules relating to minimum marks etc.,) reservation be provided only on the basis of performance of the student in each class. This will not only enhance the level of intelligence of the reserved sections but help the society in a more pragmatic manner with better intellectuals. This policy can be named as "Policy of Concessions to the Down Trodden for Better Education".

The second important aspect is reservation in employment. The paragon of social justice is to promote the interest of all sections of the society on a rational juristic approach than blindly extending support to particular sections of the society basing on the political ideologies of the ruling class. In order to meet the concept of social justice and the objectives of human rights and fundamental freedoms, the present reservation policy in employment be modified with a new methodology without any consideration to caste, creed, community. The entire employment sector be divided into four categories such as superior, excellent, mediocre and less mediocre classes basing on the intelligence of the people, social status, family background, educational, cultural, economic, and political development etc. Accordingly, the jobs be filled on the basis of a quota system such as 15% to the first category, 20% to the second cat-

egory; 25% to the third and the rest 40% to the last category. At the same time the present interview system should also be scrapped. The interview boards should be oriented towards the skills required to the particular job than any other consideration prevalent present. The board of interview should be constituted on a broad basis consisting of experts mainly relating to the job, sociological, Psychological, cultural and men of public eminence. The proceedings of the board should be made public to the candidates appeared to the interview or a committee can be constituted to scrutinize the evaluating system of the board. Though in the beginning this may seem to be impractical or difficult to implement, we have to start somewhere. Any difficulties can be rectified once the system is implemented. I personally believe that this methodology will not only yield results in eliminating the maladies of the present reservation policy based on caste, but will certainly arrest brain drain of Indian intelligence to foreign countries. A word of caution is necessary in this regard. Before adopting this system, the society should be tuned by the State through mass based programmes using the intelligence of the society. This policy can be termed as "Reservation for the Benefit of Population." Or as "Theory of Social Strata". Reservation at the promotion level should be scrapped altogether once this policy is adopted. If the above policy is implemented it will automatically take care of the interests of all sections of the society in employment without any political gimmicks and also fulfills the concept of social justice of Dr. Ambedkar. It's time that we the people of India should demand and decide the policies what we want.

4. In order to achieve the objectives of Directive Principles of State Policy with respect to workers participation in management and fair wages for workers, efforts should be stepped up that management should reveal all the aspects of industry to workmen. This can be better achieved only by adopting a new wage structure. The wage policy be linked in such a manner that the gross valuation of the goods produced, gross turnover of the company, and the profit of the company be evaluated together. Accordingly, one third should be paid towards the wages of the workers., one third should be given to the State, five to ten percent be given to the social organizations and rest of it should go to the industry. By distributing the income in this manner. The workmen will get a satisfaction of the job and will able to meet the requirements of the industry. The State also will become rich and the cumbersome procedure of taxation be eliminated. The industry also will fulfill its commitment of social obligations.
5. It is the need of the hour to have a Uniform Civil Code as envisaged by Article 44 of the Constitution to protect the fundamental basic human rights of the Muslim Women. Is it not right on our

to have a common civil code in protecting the fundamental human rights of majority of the muslim women? Is it not the duty of the state to promote the socio-economic rights that are enshrined in Part IV of the Constitution? By not adopting a common civil code, creating chaos in the country on religious, communal basis etc. is not deviating from the ethos and goals of the Constitution? In fact when a majority of Islamic countries like Turkey, Egypt, Lebanon, Sudan, Indonesia, Malaysia, Iran, Pakistan and Iraq etc., have a strict law on polygamy and divorce,¹⁷ it is surprising that the male fundamentalists of Islam and some of the psycho fanatic political parties who's claim is to be secular and oppose any deviation in the male dominate muslim law of India and propagate that any change in the muslim law will certainly hamper the minorities status of the muslims seems to be illaudable. In fact today many of the muslim women and men are in favour of reform the muslim marriage law that was written under the guise of the colonial rulers of India.

6. Though the 74th and 75th constitutional amendments aim to achieve self sufficiency of democracy at the grass roots level, they too became a subservient to the politics of political parties. They should be free from political parties interference and various steps be taken to make the people to participate in their functioning more effectively.¹⁸
7. There is every need to have a massive reform of the electoral law of the country with respect to code of conduct, minimum educational qualifications for the contestants, the elimination of simple majority formula, reversion of voting age to 21 years, ban on post poll alliances, a re-look at the anti defection law etc. Further no candidate be allowed to contest not more than three terms or after 70 years of age which ever is earlier to all the elected bodies right from the Panchayat Raj.
8. In view of the various languages that we have, the Constitution recognised many languages as the official languages. It is unfortunate that in a country which has been built on its traditions and culture, there is no national language which is acceptable to all section of the polity as a common single language. This is one of the major obstacles that we are not able to achieve the concept of unity and integrity as that of Germany, USA, Australia, Canada U.K etc. Hence it is time now that we should have a single language as the national language which should be spoken all through the country and a policy be evolved on broad based consensus. Since Sanskrit is the sovereign language of ancient India and having considerable influence on all the Indian Languages, it should be preferred and people must be educated in that endeavour not to have any further chaos on the language issue.¹⁹ In case if Sanskrit is objectionable to certain sections of people or political par-

ties at least English which many not be objectionable to any sections of the polity be adopted as the national language of the country. Since in all most all parts of the country English is already considered as the common language, it can be adopted replacing the present national language Hindi. This may be an unfortunate situation that we have to borrow and adopt a foreign language as a common denominator than any of the Indian languages. This will also coincide with global policy of liberalization and globalization culturally and linguistically. This is the only alternative which may at least bring the desired results of unity and integrity in a nation where thousands of languages are spoken.

9. The Office of the Governor should be filled with eminent men. No political leader held any Office of the executive be appointed. Once a Governor is appointed to a State, he/she should be allowed to continue for a fixed term of not less than three years without any chance be given to the President to recall them as and when he likes or at the discretion of the Union Government, except on grounds of moral turpitude illness etc. Here also a person above the age of 70 years should not be appointed as a governor.

With these few aspects let me conclude that we want an India which can meet the challenges of not only the present century but also the future generations. For this we have to adopt the philosophy of social justice as advocated by the Constitution without any deviation. A great opportunity is with us at the moment, in assisting the constitution review panel to shape the destiny of this great nation India that is Bharat. The task is on especially on the educated elite of this country to transform India into an India of true democratic polity without any inclination towards the petty gains of power or oneupmanship. Let's remember that we are always answerable to the future generations. If we want to really build a modern India to meet the challenges of the next century, all of us should extend our support to the constitutional review committee in making this great nation as a real super power of the world in real terms without any mudslinging on the working of the constitution review panel.

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