

Is the Constitution a Log book?

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It is reported that some chief Ministers in the recent meeting in Delhi on NCTC wanted the Constitution be reviewed to accommodate perhaps their grievances in a federal set up. Similarly, the Supreme Court in its fresh order on reservations in promotion has made the political class to appeal to the Prime Minister to amend the Constitution Art 16 (4) may be third time in a decade. The occurrence of these episodes made us sad due to the exiguous respect paid to the Constitution by those who are supposed to revere and uphold its values. The Constitutional history of India indicates how we have evolved and adopted it in November 1949 in the Constituent Assembly. The federal structure of the country was already there in the 1935 Act. The Chairman of the drafting committee B.R Ambedkar was the only person who was eminently qualified at that time to take a view on the federal structure as he had already done Ph.D on Federal Finance under an eminent economist. Even Benegal N.Rao or B.N.Rao, Adviser was not an economist in the sense of B.R Ambedkar in dealing with not only economic issues in a federal set up and even the structural and ideological concerns. Ambedkar used to refer to India in all his writings as United States of India indicating the federal nature of the country. In this connection, one may find few disconnects here and there in the federal composition that may not call for a review. The Chief Ministers conference, NDC meeting etc ,are forums where such issues can be sorted out if a hard headed Home Minister is considered as an issue, but not a review of the constitution.

The Constitution is generally defined as a “frame work of political society organized through and by law, in which law has established permanent institutions with recognized functions and definite rights”. The apex court and its learned Judges in the past have delineated the basic structure of the constitution. Though, legal luminaries and administrators like Shivasankar had expressed very serious reservations on such judgments due to the tilt given to Mathadipathis and elite, the fact remains that we are now following the arrangement. In fact, the partial view given to the structure without considering the social vision of the constitution and the preamble has been a subject of academic discussion in the country for quite some time. It is in this context, we may bring in the history of the social clauses put in the constitution. The country would not have emerged as the so called Nation on 1st January 1950 without certain agreements and reservations in framing the Constitution. It is relevant to refer to the agreement reached between B.R.Ambedkarji and Gandhiji in 1932 and the first amendment made to the constitution under Art 15(4) in 1951 due to the agitations in the South on caste based reservations. The guarantees given to minorities under Art 29 and 30 can also be considered as the serious concerns of the nation. They are very fundamental for a nascent nation that was emerging with several dichotomies in its social and political life. I feel that we

should consider these as the “Social Contract” between the minorities (the vulnerable) and the majority or the ruling classes. If these agreements are not respected, the ideal of a unified nation might collapse at any time.

The visionary Judges of the apex court in the formative years of the country have shown great insight in to the Constitution with their wide experience, learning and maturity in delivering judgments dispassionately keeping the country’s future. It is difficult to find such class of people now due to the quality of legal education, training and recruitment. The Judges to the High courts are appointed from anyone who has ‘for at least ten years been an advocate of a High Court or of two or more such Courts in succession’, or a judicial officer for ten years”. According to one estimate 67 percent of the judges are coming from the category of advocates. It appears some of them occupy chairs in the apex court with limited exposure. Otherwise, how do we understand the disarray in social jurisprudence in the country particularly in relation to caste based reservations?

Justice O. Chinnappa Reddy is respected and remembered even today for his exemplary clarity of thought and social purpose in his judgments. We may draw here the Judgment delivered by him in K.C.Vasanth Kumar vs. State of Karnataka in 1985 which is relevant here in the context of the recent Supreme Court order on reservations in promotions. He said that, “Efficiency is very much on the lips of the privileged whenever reservation is mentioned. Efficiency, it seems, will be impaired if the total reservation exceeds 50 per cent; efficiency, it seems will suffer if the ‘carry forward’ rule is adopted...But, the truth is otherwise. The truth is that the civil service is no paradise and the upper echelons belonging to the chosen classes are not necessarily models of efficiency....There is neither statistical basis nor expert evidence to support these assumptions...all that we mean to say is that one need not make a fastidious fetish of it.” It may be pertinent here to bring out the fact that out of 1.90 crore jobs in the government today at all levels and categories in the states and centre, scheduled castes get 15 percent only (population is about 17 % now). This comes to 28.5 lakh jobs and it constitutes 0.0139 percent of 20.40 crore of scheduled castes (it turns out to be abysmal if compared to total population). How does it affect the system though it would definitely contribute to the creation of a class within like in every other caste to demonstrate that through education one can reach the chosen goals? Therefore, Art 335 made in the context of scheduled castes in 1950 appears to be redundant and deserved to be repealed to avoid litigations.

It has become a popular method now to ask for statistical evidence to prove that these categories are not adequately represented in services. It has happened both in Nagraj (2006) and in the recent U.P reservation in promotion cases. In fact the National commission for Scheduled Castes seems to have submitted a report to Government providing statistical

data indicating that the representation is not adequate except in group D services. It is a common knowledge that the Departments in consultation with constitutional bodies like the service commission(s) prepare cadre strength and identify the earmarking of posts. The exercise is based on data and other inputs from different layers of the system. It is strange that without understanding nor enquiring in to this process, superseding other constitutional bodies do not augur well for the judiciary. This would entice the political class resort to amendments to the Constitution to show their authority. This competing tussle between Judiciary and the Executive with puerile behavior even after 60 years of republic would reduce the Constitution a mere Log Book to make and or expunge entries. This would bring down the esteem and the vision of the founding fathers to build a liberal democratic republic.