

CONSTITUTION MUST ENSURE EQUALITY

K. Balagopal
Nihar Online.Com
January 2000

On the fiftieth anniversary of the Indian Constitution, one hears suggestions and even demands for a review of the Constitution. Perhaps what is intended by those speaking of review is actually a rewriting of the Constitution. Such a demand need not scare any one, since Constitutions are made by us and can be changed by us.

But a proper appreciation of the matter would begin with a review of the working of the Constitution and not its text. The working of any Constitution is as much a political process as a juristic matter. So is the demand for its review or its rewriting. And so, what has been the politics of the working of the Constitution, and what, in consequence, may we conclude about the politics of the demand for its review?

The Indian Constitution begins with a preamble that declares that the Constitution has been given to themselves by the People of India in order to build a society based on justice social, economic and political. Later on there are two chapters that declare the various rights of the people and the Constitutional directives concerning the broad policy framework to be adopted for securing the social, economic and political justice promised in the Preamble. The rest of the Constitution, excepting a few provisions for the protection of scheduled castes and tribes, is a description of the powers and responsibilities of the various organs of the State and of the division of powers between them.

How has this worked, in practice?

The policy directives of the Indian Constitution are broadly egalitarian and welfarist. But the actual policies of the rulers of the country have not been unequivocally so. This is because, in economic terms, they opted for a capitalist path of development, though with certain controls dictated by the needs of

ensuring welfare of the disadvantaged sections and the long term interests of the country. No matter that the private sector and its mouth-pieces have always decried all the controls indiscriminately as tools of bureaucratic harassment and corruption, at least some of the controls and regulations had welfarist purposes, though the officials whose duty was to see to their implementation frequently used them as tools of money-making and power-mongering. But inspite of this, the overall orientation of the economy has been capitalist from the very beginning. This has, over the years, resulted in a situation that exhibits a glaring discrepancy between the egalitarian Constitutional directives and the emerging reality.

From this one can infer two possible reasons for seeking a review. One is to add teeth to the directives to help bring reality more in conformity with their egalitarian intentions. The other is to get rid of or reinterpret the Constitution and bring its meaning in line with the emerging reality. The latter is today the dominant view.

This hankering for a reinterpretation has already begun to affect the mood of the Courts. There is a clear tendency to look at welfare and rights as obstacles to development. Or as the fruit of unreasonable blackmail that slum-dwellers, workers, dalits, minorities etc put upon the decision-makers. The peculiar insistence of the Supreme Court that the Kerala government cannot declare that there is no `creamy layer` among the backward classes in that State, but must necessarily identify such a layer and remove such persons from enjoyment of reservations is a case in point. But the Courts are only following the general trend of elite opinion in this matter. That India has the capacity to become a big power if only unreasonable limitations are not placed upon its rate of development by sections of the population described as backward, oppressed, exploited, etc is fast becoming a widespread opinion in the country.

Is the Constitution to be reviewed now to rewrite it in accordance with this prejudice? Or do we, on the other hand, identify ways of working the Constitution in its true spirit?

But it is not that for such a working of the Constitution in its true spirit, there is no need at all to make any changes in the Constitution. The Indian Constitution is

basically too much of a unitary document. It is necessary to decentralize decision making right down to the village. Some kind of a right to livelihood or employment should be made a fundamental right. The directive principle of universal education up to 14 years must be made a fundamental right, as indeed it has been held to be by the Supreme Court.

But the more important matter would be to see how much the Constitutional set up serves the purpose of enabling people, individually and collectively, to strive for the creation of the new society dreamt of by this very Constitution. While the right to associate and the right to take part in politics is both implicitly and explicitly a universal right, the police powers of the Indian Constitution frequently negate that right. Only that political freedom which is exercised within a certain sphere is tolerated. Beyond that, the powers of the police, to whom no Constitutional limitations in fact apply, take over. How can the Constitution be strengthened so that guardians of the Law do not become predators?

But unfortunately those who are seeking a review are perhaps looking for more of police powers or a more `liberal` definition of what constitutes a reasonable restriction on a citizen's rights. And it would be necessary to devise the means by which the Constitutional obligation of structuring a just society is actually given effect to by politicians who aspire for power under the Constitution. It has been held by the Supreme Court that beneficent powers given to the government by the Constitution must be exercised for the benefit of the concerned people and not slept over. This would be even more true of the beneficent powers given to the State to establish an egalitarian or at least a welfarist state. But we have no means in the Constitution to get this dictum enforced. Perhaps some thought can be given in that direction.

The truth is that today, the social and political elite of our country is of the view that what was written in the Constitution fifty years ago is sentimental nonsense. They feel that what is required is further opportunities to those who already have opportunities to increase Society's gross wealth at a faster rate by increasing their own wealth at a rapid rate. The trickle down will take care of the rest, if at all. This view is contrary to the aspirations of the nationalist movement from which our Constitution was born. What is required today is to protect what is egalitarian

in the Constitution from such reinterpretations. The demand for a review must be understood from this point of view.