THE TRAP OF CONSTITUTION REVIEW



The Indian Constitution

By Ram Puniyani

Published in June 2000 on the occasion of 25th Anniversary of the nightmare of Emergency Rule in India in 1975 by:

Campaign & Advocacy for Human Rights

An Unit of Bombay Urban Industrial League for Development 11, Sujata Niwas S.V.Road, Bandra (W) Mumbai

82

EKTA

Committee for Communal Amity Besant Road, Santacruz (W) Mumbai

Design & Layout:Rathna

THE TRAP OF CONSTITUTION REVIEW



THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship.

EQUALITY of status and of opportunity;

And to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation;

IN OUR COSNTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

THE TRAP OF CONSTITUTION REVIEW

Facts against Myths

Commentary

During last few years a number of opinions have been put forward to modify and totally change the Indian Constitution. With the rise of power of the RSS and its affiliates our Indian Constitution has come under different types of criticisms. In one of the major congregations of the VHP's Sants and Mahants, who are the guiding force of VHP, a quasi-religious outfit, a resolution was passed in its Dharma Sansad (Religious Parliament). This resolution said that Indian Constitution is an anti-Hindu Constitution and so it should be done away with and be substituted by the one based on the Hindu holy books. They also constituted a committee to formulate a Constitution based on Hindu scriptures. As per some newspaper reports they recommended that the universal adult franchise should be scrapped and the power of voting should be restricted only to the educated people, teachers and the Hindu Holy seers. They should be the ones who will not only elect the parliament but should also constitute the law making and implementing bodies. Also RSS Sarsanghchalak (Supremo) Mr.K. Sudarshan recently on his anointment as the chief stated that the Constitution should be scrapped and be replaced by the one based on Hindu Dharma Granths (Holy Books).

Normally such opinions should be ignored and forgotten but since these organizations are the associates of the major political party BJP, which is leading the coalition government at the center, they cannot be taken lightly. One can also remember that the Babri Masjid demolition campaign led by the BJP was preceded by the series of efforts of VHP to rouse the Hindu sentiments of elite and other gullible sections of population around the issue of Ram *Janmbhumi*. Also these organizations have a strong clout due to their affluent following and have lot of means and resources to spread the lies and propagate their goals in ruthless manner.

Currently the BJP led Government at the center has appointed a commission to review the Constitution with the purpose and ideas which have been left purposefully vague. Earlier there was also a talk of examining the possibilities of doing away with the parliamentary system and to bring in the presidential form of government. There is also an unofficial debate to fix the term of the members of the Lok Sabha for five years and to do away with the provisions of mid-term polls. The provision to bar citizens whose birthplace is outside India from holding the high offices is also being contemplated. We should see all these as anti-democratic moves, that will be detrimental to the basic spirit of our Constitution i.e Liberty, *Fraternity and Equality*

Indian Constitution was formulated by the constituent assembly which was representative of all the people and it involved careful effort aimed at incorporating the most enlightened aspects of most of the constitutions of the world. It was finalized in the backdrop of the situation when many countries, princely states and colonies were becoming and aspiring to become a modern Nation state. It was a challenge to come up with a document, which could ensure the representation of diverse interests of different communities. It had to ensure that starting from colonial legacy we should be able to lay the foundation of a state which is not only acceptable to different sections of people but also is democratic down to the core. It had to ensure the incorporation of the principles of welfarism in the same. Its emphasis was to be on the democratic principles while consideration was to be given to the plural

and diverse nature of Indian society. Its first major achievement was to introduce the Universal adult franchise, the basis of democracy.

In most of the fundamentalist countries like Iran, Afghanistan, Pakistan etc. the democratic institutions are not only conveniently done away with, but the downtrodden sections is also marginalised from the mainstream of society. The Mullahs and other vested interests rule the roost in the name of religion. They derive legitimacy from the selected/narrowly-interpreted parts of scriptures and impose other practices suitable to the interests of the elite by keeping the weaker sections out of the political processes. This type of marginalisation is extreme. compared to that of democracies. The proposals of the Indian Fundamentalist organizations to restrict the franchise to the educated and Sadhus and Mahants is fairly close to these fundamentalist tendencies. Before we come to present moves to curb the democratic spirit of our Constitution we should register that even Hitler went in for major constitutional changes before he could impose the Fascist rule and cause havoc in Germany and major parts of Europe. In the same way many amendments were also brought into the Constitution in the early 70's which laid the ground for the imposition of emergency in 1975. But even those changes were much mild compared to what is being asserted today by different communal and fundamentalist groups, the conglomerate called Sangh Parivar. These current proposals have the potential of undoing the very foundations of our democracy carefully articulated by the founding fathers and nurtured by the Indian People.

The other current opinions to revise the Indian Constitution, so as to have the presidential system should be viewed in the light of its initial debates on the same issue. During the formulation of our Constitution this point did come up and the founding fathers did consider it in all

seriousness before rejecting it. The argument was that ours is a diverse country with people with many cultures, religions, languages and ethnicities living in different parts of the country. The elements of parliamentary were already present in the rudimentary form as established by the British and that the parliamentary model avoids the arbitrariness of the presidential system. To recapitulate, the presidential form depends on the fixed term of the house (Lok Sabha). The president is close to irremovable and he chooses his executives (ministers) from the general citizenry who are not answerable to the house of the representatives in contrast to the parliamentary form where the ministers are generally the members of the either house, except for brief periods at the best. These members are much more answerable than the handpicked ones, chosen by the will of the president. Again the presidential form and the fixed term for the Lok Sabha is being demanded by those for whom 'stability' is more important than accountability to the people, who should be the sovereigns in a democracy.

During the dreaded Emergency, which Smt. Indira Gandhi imposed in 1975, most of the current champions of the constitutional renewal which will restrict the rights of the 'uneducated masses', shouted from the housetops about the murder of democratic rights. Bur now as it suits their interests they are unashamedly propagating the norms which will slowly puff the libertarian life out from our polity and bring in a Religion based Nationalism or to put it in more forthright terms –Hindu Rashtra (Brahminical Hinduism based Nationalism).

Ours is a democracy in the process of formation, i.e. the Constitution is democratic but the social and political norms have yet to fully mature as democratic ones. Ours is a Nation in the making i.e. the concept and the reality of diverse parts are striving towards the nation state in practice. These are processes and to imagine them as static

'arrived' things is wrong. It is very likely that we will be facing several tests in this arena. Just because of the recent frequent mid-term elections it is wrong to bring in all the restrictions on the evolving democracy of ours. We need to ensure that the central point of our democracy has to be its genuine representative character. Not only the educated and religious elite, whatever their intentions may be, can represent the aspirations of all the people. In a diverse, plural country like ours a patient observance is needed and to jump to throttle the rights of citizens is ruled out as a matter of principle. We have to oppose such attempts to strangulate the democracy and its attendant strengths and limitations in our country. Two party systems if it evolves in our system as a part of democratic process will be a welcome phenomenon, but than it has to emerge out of the grass root realities. Its imposition on the people will be counterproductive. The present multiparty system is a real reflection of the ground realities. It represents the diverse pulls and pressures of different sections of society. As we have pointed out above, ours is a plural society in more ways than one. In such a society multiparty system is but natural till a time when substantial development and progress ensures the betterment of our countrymen and women.

The current argument that poor and illiterate are not capable of exercising their democratic options and can be bought over by corrupt politicians is the most elitist way of humiliating the deprived and weaker sections of society. They do exercise their options very judiciously as seen in the results of different elections. It is only the communal parties who reject the right of the poor and illiterate. What is needed is to increase the democratic rights of these sections through education and empowerment. The present tirade against the illiterate is a motivated one aiming to bring in a religion based nationalism where only the elite will dominate and hegemonise the powers and

privileges. To emphasize on the merit of educated ones alone, will strengthen the status quo, which will result in the rigidification of the caste system and other prevalent inequalities.

As a matter of fact what we need is an improvement in the representative character of our system. This can be achieved by ensuring the increased accountability of the elected representatives to the people. The present pattern is ensuring that the elected representatives can remain aloof from the citizens. Those who can get elected are the ones who have the vast sums at their command and who once having got elected can remain in their own world of manipulations and keep doing further politicking for enhancement of their own social, economic and political interests. Mechanisms like small electorates and right to recall those not doing their representative duties well may be some of the measures in this direction.

Myth: Ours is a Constitution based on Western values. What we need is a Hindu Constitution.

Fact: There is a difference between Western and Modern values, though there may be an overlap between the two. The concept of democracy and secularism began with the industrial revolution. The newer formations brought the concept of Liberty, Equality and Fraternity to replace the Feudal values of birth based social, economic and gender hierarchies. These were rigid and inflexible because of which the poor peasants, in our case the shudras, were tied to the land as semi-bonded labour with very little independent rights. They were under the political control of Zamindars and social control of priests, in our case mainly Brahmins. Similarly patriarchal notions were deep rooted and the right of Men over the lives of Women was absolute. Women were also regarded as the property of men. The industrial revolution changed this scene totally. This phenomenon occurred first in many western

countries. In India with industrialization the same trends started occurring and along with the freedom struggle there went on a process of transition in social values from that of feudal times to the ones of Industrial times. Though this transition is not complete the present aspiration and longing is for the relations based on equality. And our Constitution is based on these modern values of formal equality, and gives us space for striving to achieve the real equality through democratic struggles.

The 'Hindu Constitution' as being demanded by the members of Sangh Parivar (SP) is the assertion for abolishing these values of formal equality and oppression. Hinduism as presented and projected by SP is the one based on inequality. Most of the ideologues of RSS and SP uphold the Manu Smiriti. The second Sara Sanghchalak of RSS, Mr. M.S. Golwalkar wrote in his book 'Bunch of Thoughts' that Manu has been the first and greatest ever law maker of the world and his laws are of eternal nature, which were applicable not only for that time but are and will be relevant for all the times to come. By now most of us are aware that Manu Smriti forbids shudras to go in for study and if they do dare to go in for that they have to be suitably punished or have to face the fate of Ekalavaya. For example an Adivasi boy for whom archery was prohibited but he learnt the same on his own and as a punishment his thumb was cut. The status of women in this is also very low and they are advised to serve their husbands in an unquestioning manner, and of course they too are denied education as for them serving Husband is equal to learning process. Though the present language of SP is fairly sophisticated the sum and substance of it remains the same. That's why the Chairman of the drafting committee of Indian Constitution Dr. Baba Saheb Ambedkar went on to burn the Manu Smriti. The present chief of RSS Mr. Sudarshan is more forthright in his demand for re-imposition of the laws of Manu when he

says that the present Constitution should be scrapped and the one based on Hindu *Dharma Granthas* should be brought in. The other ideologues of SP are cleverer and they say the similar thing with more attractive and modern looking language.

The idea of Hindu Constitution being demanded by those playing politics in the name of religion and those spearheading the politics of hatred against minorities, not only need to be rejected but also need to be fought on intellectual and social terrains. These (SP politicians and ideologues) are the political forces, which in the wake of Babri demolition were openly asserting that their loyalty is more to Lord Ram than to Indian Constitution. One can very well see that this sort of play with emotions in the name of Lord Ram has nothing to do with the good of society but only for the sake of political power. These fundamentalist political formations like SP have no democratic aspirations. In the wake of Babri demolition they violated all the norms and rules in the Indian Constitution and broke the promises of protection of the Masjid given to the Supreme Court. As pointed out above fundamentalists across the countries have an agenda similar to each other in its retrograde values and premodern systems being brought in under the attractive garb of 'our glorious heritage' and 'cultural nationalism'.

The present smear campaign against democracy, secularism and liberalism has support amongst the upper middle class and amongst the upper castes. They have been enjoying the privileges for centuries and with the democracy and the visible assertions of the lower castes coming to the fore, are feeling threatened about their status and gains in the society. It is this section, which has the morbid fear of the democratic aspirations of the oppressed sections of society that is keen to extinguish the light of modern values; be it democracy, be it secularism, be it welfarism or be it the very concept of universal franchise.

Myth: Our Constitution does not represent the aspirations of Indian people.

Fact: Our Constitution is one of the most democratic document. Just as the Independence was approaching, the constituent assembly was formed on the basis of elections all over the country. Since the diversity of our country is very large, all attempts were made to incorporate the opinions of all segments of population. Some eminent jurists were co-opted by the assembly, which had predominantly the elected representatives of the people. The assembly debated for long before formulating the laws. It appointed a small drafting committee with Dr. Ambedkar as the Chairman. The committee went into all the aspects of the civil laws, criminal laws, center-state relations and every conceivable aspect of governance. It referred to the best amongst the constitutions of the world before completing the draft. This draft was then debated and modified in the assembly. Thus probably this is THE most representative document, which we can have. And it is the outcome of freedom struggle in which majority of Indians threw their lot with the nationalist movement. Needless to add here that at that time also these were political tendencies that kept aloof from freedom struggle, these were the ones who played and are playing the game in the name of religion.

It is true that Indian Constitution does not represent the aspirations of some. Like the few handful of Indians who are tied to feudal values, those basing their politics on hatred for others who have different beliefs and religion, those who oppose social justice, gender equality, those who want to perpetuate the notions of pre-modern birth based hierarchies - yes the Constitution does not represent these aspirations. But surely this small section cannot and should not be equated with whole of India.



Myth: Indian Constitution is anti-Hindu.

Fact: Indian Constitution as we have seen above was made by the broad based principle of democratic representation. It was made by the constituent assembly, which had people from all the religions. The primary identity, which the founding fathers of Constitution emphasized, was the Indian identity and not the one based on this that or the other religion. It declared that India will not have a state religion and in the eyes of the law all the religions will have equal status. At social level people will have the liberty to follow their own religion or not to follow any religion depending on their own faith and belief? As a commitment to respect for all the religions, which our multi-cultural society has, equal status was accorded to all the religions. All in all the principles of a secular state were incorporated in an uncompromising manner. Also special provisions were made for the protection of the rights of minorities. This is not against any of the religion.

But then why SP members are saying that it is anti-Hindu. The ideology of SP is that Hindu Rashtra should be based on Hindutva. Hindutva is not religion but is a politics based on the values of Brahmanism, i.e. inequality and discrimination on the basis of birth. It represents the interests of the elite section of Hindus, the upper castes and the upper classes, to the exclusion of low castes and the minorities. For the elite this Constitution means a threat to their century's long 'reservation' on socioeconomic privileges, for them it means that the birth-based inequalities are no more recognized. On the contrary there is affirmative action in the Constitution, which this elite section feels as a pampering to low castes and minorities. Since the implementation of Mandal commission this elite section has come out more aggressively under the banner of SP to reassert their hegemony and they see the present Constitution as an obstacle to their interests. And that's why they are projecting this secular Constitution, which

respects all the religions equally, as an anti-Hindu religion.

Myth: Indian Constitution has failed us so there is a need to review it.

Fact: Indian Constitution represents the aspirations of Indian people in general and in its preamble it declares that India is a Sovereign, Socialist, Secular and Democratic Republic. Accordingly the goal of the state should be to secure for all its citizens socio, economic and political justice; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and fraternity, assurance of dignity of the individual and the unity and integrity of the nation. Despite these provisions being there our society is riddled with poverty, hunger, disease and misery. It is riddled with oppression of Dalits, Adivasis, Tribals, Minorities, Women and Workers. The efforts in this direction are totally supported by the Constitution. Even the founding fathers of Constitution were clear that Constitution on its own cannot deliver social justice and a lot depends on those who are in the seat of power in executive, judiciary and bureaucracy to ensure the deliverance of provisions of the Constitution.

"I have no doubt that when the country needs men of character, they will be coming up and the masses will throw them up. Let not those who have served in the past, therefore, rest on their oars, saying that they have done their part and now has come the time for them to enjoy the fruits of their labors. No such time comes to anyone who is really earnest about his work. In India today, I feel that the work that confronts us is even more difficult than the work, which we had when we were engaged in the struggle. We did not have then any conflicting claims to reconcile, no loaves and fishes to distribute, no powers to share. We have all these now, and the temptations are really great. Pray to God that we shall have the wisdom and the strength to rise above them, and to serve the

country which we have succeeded in liberating."

(Dr. Rajendra Prasad's speech made before putting the motion for the adoption of the Constitution to the vote of the House on November 26, 1949 and carried in a volume edited by Dr Subhash C Kashyap).

It is precisely for this reason that when Mr. Vajapayce in pursuance of his agenda of Hindu Rashtra was calling for the review of Constitution, the President K.R. Narayanan in a forth right manner reminded the nation the what is needed is not the review but proper implementation of the provisions of Constitution when he said, "it is not the Constitution which has failed us, but is we who have failed the Constitution.

Myth: The opposition to this review is baseless, as the Constitution has already been amended so many times by the previous Government.

Fact: There is a provision in the Constitution for the timely amendments. The provision of the amendments has been deliberately kept in the Constitution to ensure that some unforeseen and unexpected situation (at the time of drafting) is taken care of in a democratic way. It is a process of change, which is transparent and democratic, the provision of which is within the document itself. This type of amendment is the already available mechanism, which has been used in the past in the parliament by the elected representatives of the society.

Review on other hand is a process outside the constitutional provisions and is external to the whole scheme of things as envisaged by the constituent assembly. In the present review process a precedent has been set where the minority party, which gobbles up the requisite majority to form a Government, constitutes a commission of 'experts' who are NOT the elected representatives, barring one worthy. The process was not put to the debate in the parliament and those 'experts' who are supportive

and sympathetic to the BJP agenda are put in the commission to recommend the 'modifications' in the democratic document. This is one of the "least transparent acts in the history of Indian constitutional change." (U.Baxi, EPW March 11, 2000,p.895) In contrast to the amendments, which are legal and part of the process, this exercise is totally illegal and unwarranted.

Myth: It is wrong to say there is a hidden agenda of Sangh Parivar behind this review.

Fact: It may be argued that since the BJP does not have majority, and the coalition does not have two-third majority there is no possibility of the recommendations of the review committee being implemented. So why suspect the motives of BJP?

The agenda to change the Constitution started becoming clear and obvious with the rising power of BJP. During its run up to the Babri Masjid demolition its leaders started saying that the opinion of Hindu Sants and Mahants for them are more valuable and that they will prefer to act according to their advise rather than the Supreme Court's decision on the matter of Ram Janm Bhumi. Similarly over a period of time BJP has been realizing its inability to come to power on its own. The frequent change of Government during the last few years has given it a pretext to bring forth various ideas like presidential system of Government and the fixed term of Lok Sabha. The fixed term of Lok Sabha will be at the cost of representation of the aspirations of the people. And it will be similar to the experiences we witnessed during the emergency of 1975. As the MPs know that they are secure in their seats their accountability to their constituency will become far less then it is at present. The politics of manipulation will be rule of the day.

In Presidential system the President has the power to induct non-representative 'experts' in the Government and that again reduces the accountability of the Government to the people. Though it may be a workable system in some developed countries, in a country as diverse as ours, it will stifle the aspirations of large sections and regions of people. BJP's long-term agenda is that of Hindu Rashtra. A nation state based on Brahminical values, Hindu Rashtra like its counterparts Islamic fundamentalist states does not have the place for the democratic polity. Though BJP knows it cannot get the recommendations of its 'illegal' review committee passed in the Parliament, it has 'cleverly' put the question mark on the constitutional process and paved the way for future illegal manipulations of the same. It has 'succeeded' in equating constitutional amendments. which are legal, with the illegal process of review in the popular mind. Also it is providing an efficient 'cover' to the deep designs of its parent organization, the RSS to inflict a fascist -fundamentalist state and the social system.

Post Script:

It will be worth its while to have look at the differences between the present Indian Secular state which is the product of Freedom struggle and the Hindu Rashtra, which is the goal of SP. While secular democratic vision for India inspired millions to come forward to struggle against the British Rule, the ideology of Hindutva and goal of Hindu Rashtra was restricted to the group of Hindu Zamindar's, Hindu Rajas (Kings) of princely states, the Brahmins and Banias, and was an ineffectual minor stream till quiet late. It is because the aims and objectives of the two are polar opposites. The following table compares and contrasts the two.

Table showing the difference between Hindu Rashtra and Secular Democratic India

Hindu Rashtra	Secular Democratic India
This concept began as the goal of RSS and Hindu Mahasabha, which were not part of the freedom struggle.	This concept evolved as a part of freedom struggle led by the Indian National Congress. Revolutionaries like Bhagat Singh, Subhash Chandra Bose and many others led by Baba Saheb Ambedkar stood for this.
Supporters of this concept in the earlier period were Brahmins, Banias, Zamindars and now this gets support from upper caste and upper middle class Hindu elite.	Supporters: Vast mass of poor peasants, workers, Dalits, minorities and sections of industrialists.
Concept crystallised by ideologues of Hindutva: Savarkar, Golwalkar etc.	Concept enshrined in Indian Constitution which was formed by constituent assembly: fairly representative of Indian people.
This nationalism is based on race, religion and hatred of 'others' on the grounds of race or religion.	Based on recognition of pluralism and geopolitical diversities.
Inherent special status to elite.	Based on formal equality of all.
Strengthens 'status quo' based on caste, gender and class.	Provision of liberal space to struggle for the rights of the oppressed.

In this, Society to be guided by Hindu clergy (Mahants, Acharyas).	Social life to evolve through mutual interaction of people and communities.
Impose monolithic values and culture on society.	Space for plurality. Respect for diversity.
Franchsie to be controlled as per the dictates of the elite, the 'self-appointed' leaders of 'Hindu Society' i.e. by the leaders of the Sangh Parivar.	Universal franchise. Everybody has the voting power. All are equal in the eyes of law, irrespective of easte, class and gender.
Brahminical norms, elite Sanskritised values to be the 'official', mainstream laws.	Indian Consitution to guide social and political life.
Everybody has to accept 'Hindu' (Brahminical) culture.	Communities free to pursue their own culture.
Concept close to Mussolini's Italy, Hitler's Germany. Khoemeini's Iran and Taliban's Afghanistan.	Aspires to be a Democracy. Values of Liberty, Equality and Fraternity for all. Nurtures liberal space.
Hindu elite and co-opeted 'other' elite will dominate and dictate terms.	Possibility of everybody consituting the political process.

Ram Puniyani is associated with various secular initiatives and has written several articles on the theme. He has written a book "Fascism of Sangh Parivar" and has edited a compilation "Secular Challenge to Communal Politics"

EKTA (Committee for Communal Amity)

EKTA was formed in the wake of rising communalisation of society in 1987. It acts as a platform for secular campaigns. Lately it has been publishing several books and pamphlets to increase the secular awareness in the society. It also is engaged in various fact finding committees to investigate the violation of human rights of minorities.

CAHR (Campaign & Advocacy for Human Rights)

CAHR is a newly initiated unit of BUILD to promote and protect human rights by monitoring, investigating, disseminating of and campaigning against all human rights violations and discriminations.

This small booklet deals with the present debate over the Constitution Review. This author argues that there is a hidden agenda of Hindu Rashtra in BJP led Government setting up of the Constitution Review Committee amidst wide protests. BJP is controlled by RSS, which wants to scrap this Constitution and bring in the one based on Hindu Dharma Granths. By showing the differences between a Secular Democratic India and a Hindu Rashtra, this booklet counters various myths surrounded in support of Constitution Review.