

NEED FOR SYSTEMIC CHANGE: HISTORICAL PERSPECTIVE

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ABSTRACT

This paper examines the historical roots of Indian Constitution and argues that the crisis of political system in India is largely due to the fact that Constituent Assembly imported an alien political structure which is unsuited to Indian genus. Much of the present Constitution of India is based upon the colonial structure imposed on India by British administrators through various installments of constitutional reforms designed primarily to prolong the subjugation of India. The Constituent Assembly did not deliberate over alternatives to Westminster model or even the Gandhian ideas on the subject. The post-colonial critique from the organic intellectuals has been summarized and the necessity of structural shift from people-controlling system (Lok Niyantak Vyavastha) to a people-controlled system (Lok Niyantrit Vyavastha), has been argued to ameliorate the maladies that afflict Indian political system.

Keywords: B.R. Ambedkar, B.N. Rau, Constituent Assembly, Constitution, Mahatma Gandhi, Government of India Act (1935), Minto-Morley Reforms (1909), Lok Niyantak vyavastha ,Lok Niyantrit vyavastha , Panchayat, Swaraj

THE DREAM

“I shall strive for a constitution which will release India from all thralldom and patronage, and give her, if need be, the right to sin. I shall work for an India in which the poorest shall feel that it is their country in whose making they have an effective voice; an India in which there shall be no high class and low class of people; an India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of untouchability or the curse of intoxicating drinks and drugs. Women will enjoy the same rights as men. Since we shall be at peace with all the rest of the world, neither exploiting nor being exploited, we should have the smallest army imaginable. All interests not in conflict with the interests of the dumb millions will be scrupulously respected, whether foreign or indigenous....This is the India of my dreams for which I shall struggle ... I may fail, but if I am to deserve the confidence of the Congress, I shall be satisfied with nothing less.”¹

(Gandhiji's statement to Reuter, September 3, 1931)

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Mahatma Gandhi's above statement provides us with a glimpse into the cherished hopes and aspirations our founding fathers had from working of the constitution in an independent India.

But, it is common nowadays to assume that we bear the mantle of democracy in South Asia and that we are the beacon of hope for the people struggling against illiberal regimes in developing world. Our contemporary leadership drumbeat about the grand achievements of Indian democracy. The narrative thrive on constant theme-unlike our neighboring countries, India has never relapsed into military coups or anarchy. But any assessment of the six decades of working of Indian democracy would not be realistic if it is not made in the light of the aspirations of the founding fathers, the fundamental values and inspirations of our freedom struggle, and the cherished expectations of the teeming millions for the newly independent India. In this context, it is imperative to sum up the high hopes entertained at the time of independence: establishment of an egalitarian, participatory democratic society; all-India nationalism; secular and moral polity; and to get its rightful place in the comity of great nations consistent with her civilizational ethos.

India is passing through critical times. Our polity is under severe strain. Faith of the people in the quality, integrity and efficiency of governmental institutions stands seriously eroded. Case for a review of the working of the institutions and for urgency of political reforms is unassailable. Subhash C. Kashyap, former Secretary General of the Lok Sabha and a prominent authority on working of Indian Constitution, has argued that with India's independence, people did not feel the glow of freedom or the transfer of power into their hands. Only the colour of masters changed. The colonial model continued even after adoption of the Indian Constitution.

At this juncture, the political system of free India stands besieged with ills which our founding fathers could not have imagined. The dream of the egalitarian society dissipated into winds. Old non-citizen-centric loyalties like caste, communalism, linguistic sub-nationalism and regionalism have become more reinforced and hardened than they were earlier. Corruption has penetrated every vein of the system and the unholy nexus of money, power and crime has assumed alarming proportions. Terrorism and naxalism pose greater threat to the nation than any external enemy; and on the whole people are losing faith in the system.

Though every citizen has the right to vote, the majority of Indian people do not have effective control over their social, economic and political destiny. In fact, the social and economic aspects of democracy do not figure at all among the list of achievements of Indian democracy. Political-bureaucratic class has reduced the sovereignty of the people to a mere right to exercise their franchise at the time of sham elections which is influenced by a paid media, government advertisement, persuasion, coercion and freebies by the people in the power. The representative character of individual legislators, the party in power, and legislature in general, is itself questionable. The fragmentary polity and the vote bank politics rule the roost is evident by the statistics. Generally, support of approximately 15-20% of electorate is sufficient for individual candidates to win the elections and the central and the state legislatures themselves represent hardly 20-25% of the electorate. No wonder that caste, community, region and other narrow loyalties decide the fate of elections while the larger issues concerning the common good of the people and the nation hardly gets enough attention. It has become impossible to win election without spending huge amount of money. Idealism and ideology rarely have a role in electoral politics. Unholy nexus of money, power, crime and politics has sniffed out any morality in public life, leading to the unsavory distinction of our country being placed as one of the most corrupt nations in the world in the global corruption barometer of Transparency International. For the common man, politics has become a dirty word and by and large the people are losing faith in the democratic institutions as amply indicated by the increase in incidences of mob violence, proliferating kangaroo courts, terrorism and naxalism. Indian democracy is facing a crisis situation and there is an urgent need to reboot institutions to meet our cherished national goals.

A plethora of writings has appeared that discusses the ailments of the political system and suggests suitable remedies. But overall, the debate on the ills besieging the system has remained focused on the working of the political system rather than questioning the system itself. Moreover, there must be some clarity on certain questions like - what do we mean by the political system? What is/are the source(s) of our political system? How can the political system be remedied?

A political system is a system of politics and government. According to Encyclopedia Britannica, “political system is the set of formal legal institutions that constitute a “government” or a “state.” More broadly defined, however, the term comprehends not only the legal organization of the state but also the reality of how the state functions. The political system is seen as a set of “processes of interaction” or as a subsystem of the social system interacting with other nonpolitical subsystems, such as the economic system. This points to the importance of informal sociopolitical processes and emphasizes the study of political development.²

If we view the origins of our political system in the light of the above conception, it becomes very obvious that it is our Constitution that has given birth to a political system which has evolved further in the last 63 years. Indian Constitution has not only defined the state and the government, but also how the different organs of the state should interact among themselves as well as with non political systems such as social and economic systems. According to Subhash Kashyap³, Constitution of a country seeks to lay down the political structure under which a nation is to be governed. It establishes the basic organs of the State- the legislature, the executive and the judiciary- and defines and delimits their powers and relationships inter se and with the people. Constitution is the fundamental law which ordains the fundamentals of the polity. The legitimacy of all laws and all executive action has to be tested with reference to the constitutional provisions.

It is to be noted that Constitution is much more than a mere inert document. It is a living entity of functioning institutional structures. Also, every Constitution is an act of faith on the part of the people. The Constitution embodies the vision of its founding fathers and reflects the objective values and aspirations of society.

Surprisingly and also unfortunately, the political analysts have altogether ignored the making of the Indian political system i.e. its historical evolution. The fact that the present Indian Constitution has not been able to shake off its colonial legacy has been generally overlooked. There is a general consensus among the political thinkers and analysts that the founding fathers chose the best system possible and it is a case of wrong handling of the right system. In this context, Dr. B.R. Ambedkar’s speech in the Constituent Assembly on the eve of adoption of the Constitution is often quoted:

“... I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution.”⁴

Following this approach of ‘good’ system but ‘bad’ people to work with, piecemeal attempts have been made in the past to reform the system from time to time. So far about 118 amendments have been introduced in the Constitution, which indicates how the functioning has gone terribly wrong. It is to be noted that problems with the functioning of the democratic institutions in India have been present since the very beginning of the system. It is not that they were not present during early 1950s when towering personalities from our freedom struggle like Jawaharlal Nehru, Vallabhbhai Patel, Rajendra Prasad and Maulana Azad were in commanding positions in the new political system. The situation is only getting bad to worse with the decline of idealism and probity in the public life. The crisis in the political system is spread across the political spectrum, transcending parties and political ideologies. Every player seems to have developed a vested interest in maintaining the

status quo. They are unanimous in opposing any suggestion of making fundamental changes in the political system.

Now the question that arises is: what are the roots of this crisis? Fundamental issues relating to the working of the political system cannot be discarded completely but they do not alone constitute the core causes of the crisis. There is an urgent need to suggest a new line of inquiry: whether the present political system based upon 1950 Constitution could really be a suitable channel for expression of the democratic ethos of the Indian people, keeping in view the constraints imposed by the characteristic socio-economic matrix that has evolved and stabilized through long historical process? Could this system be expected to lead to varying results in the Indian situation? Were not these consequences already foreseen before? In short, is not the system itself burping the present crisis?

HISTORICAL ROOTS: 1861-1935

Rambahadur Rai, eminent journalist and crusader for systemic change is very forthright in saying that the present constitution does not reflect the ideals or ideology of either Gandhi or Jaya Prakash Narayan. Nor has it represented the Hindu ethos and civilization. He quotes a speech by Atal Bihari Vajpayee in 1992 in which the former Prime Minister said that this Constitution was not made by people of India, but it would be more correct to say that it was made by the British for Indian people and Indian people adopted it.⁵

It is an undisputed fact that the present Indian Constitution is a product of the historical evolution of constitutional development process during the British rule. Installments of constitutional reform (Acts of 1858, 1861, 1892, 1909, 1919, 1935) were a series of responses, one leading to another, from the colonial government to counter the advance of nationalist movement and to prolong the British rule in the new circumstances by creating new divisions in Indian society.

Not many people know that although the British rulers were imposing the representative system in bits and pieces as part of their divisive tactics to weaken the nationalist movement and prolong their rule, they were clear in their mind that the political system of Britain or her white colonies is not applicable to India. John Stuart Mill in his *Considerations on Representative Government* (1861) was categorical in his assessment that Britain would only succeed in her task in India “through far wider political conceptions than merely English or European practice can supply and through a much more profound study of Indian experience and of the conditions of Indian Government than either English politicians or those who supply the English public with opinions have hitherto shown any willingness to undertake.”⁶ True to this principle, English statesmen from Lord Ripon (Viceroy of India, 1880-1884) onwards emphatically denied that they were trying to impose English system in India.

In contrast to the British approach, Indian congressmen, from the very first session of Indian National Congress in 1885, were more interested in British rather than Indian forms of Government. Such was their obsession with British political institutions that Dadabhai Naoroji said at 1885 session of Congress: “If we are denied Britain’s best institutions what good is it to India to be under the British sway? It will be simply another Asiatic despotism.”⁷ Their cherished goal was to adopt the western representative institutions and they were certain that Britain will transfer these gifts slowly. Madan Mohan Malviya articulated this very point at the Congress session of 1886: “Representative institutions are as much a part of a true Briton as his language and his literature. Will ... Great Britain deny us, her first born subjects, the first of these when by the gift of the two latter she has qualified us to appreciate and incited us to desire it.”⁸ We can only say that Macaulay was right when he said that European Knowledge will create demand for European institutions.

Lord Dufferin, the Viceroy of India (1884-88), reacted to the Indian National Congress’ demand towards the establishment of parliamentary system in India by calling it as “a very big jump into the unknown...

which England herself has only reached by slow degrees and through the discipline of many centuries of preparation.”⁹ During the debate on the introduction of electoral principle in India in the British Parliament in 1890, Viscount Cross, the Secretary of State for India during 1886-92, said, “that no man in his senses would ever think of having Parliamentary constituencies there such as we have in England. They are absolutely unsuited to the Eastern habits and absolutely unsuited to a country like India.”¹⁰ His successor, the Earl of Kimberley (Secretary of State for India during 1882-86 and 1892-94) also argued the impossibility of “parliamentary representation of so vast a country—almost as large as Europe— containing so large a number of different races is one of the wildest imaginations that ever entered the minds of men.”¹¹ In 1906, while discussing the reform proposals which fructified in the Minto-Morley reforms of 1909, Minto (Viceroy of India, 1905-10) cautioned Morley (Secretary of State for India, 1905-1910), “However much may we admire our own constitutional history, our constitution ... is the result of a long course of historical experience unknown in India, while our political party machinery, which the Bengali would imitate, is, as we know, full of faults, which we ourselves regret, and which it would be fatal to encourage here.” On his part, Morley reassured Minto: “Not one whit more than you I think it desirable or possible, or even conceivable, to adopt English political institutions to the nations who inhabit India.”¹²

A.J. Balfour, who had been the Prime Minister of United Kingdom from July 1902 to December 1905, made a profound statement in the House of Lords on the feasibility of western representative institutions in India. “We all admit that representative Government, government by debate, is the best form of government [only] when it is suitable, ... when you are dealing with a population in the main homogeneous, in the main equal in every substantial and essential sense, in a community where the minority are prepared to accept the decision of the majority, where they are all alike in the traditions in which they are brought up, in their general outlook upon the world and in their broad view of national aspirations.”¹³ Balfour was speaking with reference to the great divide between Hindus and Muslims and also the water tight boundaries of the institution of caste among the Hindus.

Balfour’s conclusion on impracticality of adopting the British Constitution as a model for development of parliamentary democracy in India, albeit in more refined and developed form was articulated by the Joint Committee on Indian Constitutional Reform during 1933-34 while preparing the ground for the Government of India Act, 1935. The report of Joint Committee on Indian Constitutional Reform quoted Lord Bryce, a formidable authority on constitutional matters, to bring home the view that the English Constitution would suit merely England. “The English Constitution, which we admire as a masterpiece of delicate equipages and complicated mechanism, would anywhere but in England be full of difficulties and dangers ... It works by a body of understanding which no writer can formulate and of habits which centuries have been needed to instill.”¹⁴ Report then went on to give its final judgment as to why a parliamentary government on the Westminster model will not be feasible in India:

Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broader issues of policy, rather than by sectional interests; and finally the existence of a mobile body of political opinion, owing no permanent allegiance to any party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel. In India none of these factors can be said to exist today. There are no parties, as we understand them, and there is no considerable body of public opinion which can be described as mobile. In their place we are confronted with the age-old antagonism of Hindu and Muhammadan, representatives not only of two religions but of two civilizations; with numerous self-contained and exclusive minorities, all a prey to

anxiety for their future and profoundly suspicious of the majority and of one another; and with the rigid divisions of caste, itself inconsistent with democratic principle ... It is impossible to predict whether, or how soon, a new sense of provincial citizenship, combined with the growth of parties representing divergent economic and social policies, may prove strong enough to absorb and obliterate the religious and social cleavages which thus dominate Indian political life. Meanwhile it must be recognized that, if free play were given to the powerful forces which would be set in motion by unqualified system of parliamentary government, the consequences would be disastrous to India, and perhaps irreparable.¹⁵

Now the question arises: Why did Indian leadership in the Constituent Assembly chose to adopt Western political institutions for India against the prophecies and the warnings of the British statesmen and constitutional experts? As mentioned earlier, the answer to this question of immense historical importance lies in the nature of the mainstream of the Indian freedom struggle. Congress leaders, from the very beginning of their movement, dreamed of assimilating British political institutions in India in future. Indeed, they took pride in calling their agitation as 'constitutional'. Minto-Morley Reforms of 1909, which sowed the obnoxious seed of communal electorate in Indian politics, were seen by Surendranath Banerjea as the "growing triumph of constitutional agitation."¹⁶ There was division of opinion within the Congress regarding participation in the Legislative Councils formed under the diarchy scheme of Montague-Chelmsford reforms of 1919 and a section of Congressmen participated in the elections and accepted offices. Mahatma Gandhi, who was a bitter critic of the Westminster model, calling the parliament a prostitute in *Hind Swaraj* (1909), reconciled his stand by early 1930s under the pressure of the Congressmen to participate in electoral politics and approved the formation of Congress Parliamentary Board. Congress, in the beginning, opposed and rejected the Government of India Act, 1935 but later participated in the elections under the Act and was able to form governments in eight provinces. Besides Gandhi and a few other leaders like Lajpat Rai, Bipin Chandra Pal and Subhash Chandra Bose, most of the Congress leaders remained under the spell and charm of the incorrigibility of the English political institutions. Congress leadership failed to distinguish between the British constitutional experts' opinion about the unsuitability of British institutions in India and the British imperial resolve of not transferring substantial power to natives in India. At the same time, though Congress leaders vehemently opposed communal and caste agenda of the constitutional reforms but still they viewed these as steps towards the growth of representative polity in India.

WORKING OF THE CONSTITUENT ASSEMBLY

There is persistent myth that along with the transfer of power on 14-15 August, 1947 the British also transferred their institutions to India. As a matter of fact, institutions continued by us after independence and/or embodied in the constitution were those which had grown and developed on the Indian soil itself, even though only partly on Indian demands and largely by British design.¹⁷

To say that the constitution was made by the Constituent Assembly which met during 1946-1949 would be both fallacious and misleading and at best a half-truth. It was not as if the Constituent Assembly was writing on a tabula rasa. From the point of Constitutional system and structure also, the Drafting Committee or the various other committees and the Constituent Assembly itself were not engaged in the task of making an entirely original or new constitution or creating novel political institutions for India. The founding fathers had taken a conscious decision not to put the past completely behind with a vengeance and start anew on a clean state. Instead, they chose to build further on the foundations of the old, on the institutions which had already grown and which they had known, become familiar with and worked, despite all the limitations and fetters. The Constitution rejected British rule, but not the institutions that had developed during the period of British rule. Thus the Constitution did not represent a complete break with the colonial past.¹⁸

K.M. Munshi, a staunch nationalist who was also a prominent member of the Constituent Assembly, sums up the overall approach of the Constituent Assembly of looking no further than the British constitutional model:

We must not forget a very important fact that during the last hundred years, Indian public life has largely drawn upon the traditions of British Constitutional Law. Most of us have looked up to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our constitutional traditions have become Parliamentary. After this experience, why should we go back upon the tradition that has been built for over a hundred years and buy a novel experience?¹⁹

Constituent assembly of India was not set up by the people of India on their own initiative. It was not elected by them either. It was set up under the terms of the British Cabinet Mission proposals and promulgated by the joint statement of Cabinet Mission delegation and Viceroy dated 16th May 1946 (paragraphs 18-21). This statement decided its mandate, composition, method of working, limitations as well as its framework. Speaking on the eve of the opening of the Assembly on 8th December, 1946, Nehru conceded: "The Constituent Assembly in which we are going is not a revolutionary body. It is obvious that a revolutionary body cannot be brought into existence by the Viceroy or come as a gift from the Cabinet mission. Its greatest merit was that although it will be brought into existence by the British Government, they will have nothing to do with it after it has been set into motion."²⁰ Throughout its tenure, Constituent Assembly could not claim to call itself sovereign. Created by the Cabinet Mission Plan, after 15 August 1947, Constituent Assembly came under the purview of the Indian Independence Act, 1947, passed by the British Parliament.

Members of the Assembly were indirectly elected by the Provincial Assemblies which were themselves elected under the Government of India Act of 1935 on a highly restrictive franchise covering barely 11% of the population of British India. Native States, constituting 23% of the population of India, were denied even this restrictive and indirect franchise because the princes were given the right to nominate 93 members. Constituent Assembly consisted of some of the wisest men and women- great jurists, patriots and freedom fighters. But the fact remains that it was an elitist body of the chosen and not an assembly of representatives of the people. Most of the members were foreign- educated, western-oriented men who were nurtured in British concepts and culture and fascinated by the very British institutions which perpetuated colonial system in India. Neither the ethos and genius of India nor the vision and views of Gandhi or JP seemed to influence them much. Subhash Kashyap hits the nail when he writes that a slave looks to his master as the model and the ideal. He is anxious to copy. It was natural that we looked up to the system and the institutions of our rulers as the best.²¹

Muslim League, a major constituent in the original plan stayed away from the Constituent Assembly. Highlighting the crippling shortcomings of the Assembly, Gandhi asked Congress to boycott it as it would not be able to deliver an acceptable Constitution. But Congress leaders had come too close to replace the British rulers, they could no longer wait. Hence they did not heed the advice of Mahatma and went ahead with the task of Constitution making. On his part, Gandhiji was losing hold over Congress leaders and hence was not in a position to impress the power-hungry leaders with his native and revolutionary views.

The actual task of Constitution making was conducted by a few experts among whom Sir B.N. Rau deserves special mention as he was appointed as the Constitutional Adviser to the Assembly in July, 1946 by the Viceroy. Rau, a career administrator, who played an important role in finalizing the 1935 Act in the Reforms Office of the Government of India, was later appointed as Secretary in the Governor General's Secretariat.²² Rau played a leading role in piloting the prototype draft of the Constitution he had prepared. He guided the various expert committees on different aspect of Constitution in the making. He almost singlehandedly collected material from abroad. With minor changes, it was Rau's prototype draft which formed the crux of the final Constitution.

Rau's role in the Constitution making has been frankly accepted by eminent members of the Constituent Assembly. "If Dr. B.R. Ambedkar was the skillful pilot of the constitution through all its different stages, Sri B.N. Rau was the person who visualized the plan and laid its foundation", writes Dr. Rajendra Prasad, the President of the Constituent Assembly²³. But, what has not been properly realized and openly accepted is the significance of his role as an agent of Viceroy in the Constituent Assembly, to whom he was responsible. In fact, Rau also oversaw the framing of Constitution in Burma.

Most crucial fact about Rau's draft and also the final drafts (initial and later) was that they were based on the Government of India Act of 1935. Dr. Ambedkar confirmed the import from the 1935 Act in the following words, "As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution."²⁴ It is interesting to note that Dr. Ambedkar, up till 1945, was not in favour of constituting a Constituent Assembly as in his opinion the task of an Assembly would merely be to duplicate the work done by the 1935 Act.

The Government of India Act, 1935, was the culmination of the constitutional reform process initiated by the colonial rulers after the Great Revolt of 1857, to merely secure the Empire. Through the various installments of periodic reform in the year 1861, 1882, 1892, 1909 and finally 1935, colonial administration, in successive stages tried to counter nationalist challenge by introducing and fomenting the divisive tendencies of class, interests, caste, creed and region. An example would suffice here. In 1907 when Minto-Morley reforms were in the making and British officials were considering the proposal of separate electorate, R.C. Dutt (a civil servant and economic historian, twice elected as the President of the Indian National Congress), made a prophetic analysis of a system of elections based on classes, castes and religious creeds:

To create electorates or hold elections in India according to caste and creed would be attended with greater danger in the future than in any European country. It would be fanning the embers to a flame which might, under unforeseen and unfortunate conditions, leading to a conflagration. It would be creating jealousies, hatreds and evil passions in every village and in our everyday life. It would be teaching us to disunite, to vote according to religion, to nurse sectional differences, and to rekindle dying hatreds and jealousies. It would assuredly lead to an increase of religious riots and disturbances in the future...²⁵

Why did Constituent Assembly accept a constitution which to a large extent was the continuation of the colonial legislation designed to divide Indian people and prolong British rule over India? Congress leadership of the pre-independent period consisted of staunch patriots and great intellectuals of the age. But it cannot be denied that they were working in the midst of very difficult circumstances – Hindu-Muslim partition was imminent and other partitions could not be ruled out. Also, almost the entire nationalist leadership, as described earlier, had inevitably come under the influence of colonial ideology according to which India was still far from becoming a nation due to her diversities and complexities. In short, there was a tacit understanding among the important members of the Constituent Assembly that the biggest challenge before the makers of the Constitution was to maintain the unity and integrity of the nation, at whatever cost.

In a penetrating analysis, Dr. Jitendra Kumar Bajaj dwells upon the circumstances and the attitudes which were instrumental in shaping the Indian Constitution:

"The Indian Constitution was created under extremely difficult circumstances. In the initial phases of the work of the Constituent Assembly it was not clear whether the Muslim – majority areas of the country shall remain within the Indian Union or not. After formalization of the Partition of the country, the Assembly worked under the shadow of the chaos and violence associated with the climactic event

in the history of India. This, along with the prevailing uncertainty about the position of the princely states, created fears about the unity and stability of the country.

Under the circumstances, keeping the administrative machinery intact became the major concern of the makers of the constitution. This perhaps was the major reason why the Government of India Act of 1935, under which the colonial functioning, became the basis of the constitution of free India.In the debates the members seem to be worried that granting various freedoms and rights to citizens and states of the Union may weaken the administrative apparatus inherited from the colonial administration. They seem to be constantly hedging the rights of the individuals and the states with a variety of provisos and limitations.

Besides the fear of loss of administrative control, the other major concern that informed the makers of the constitution was their firm belief that the Indian people needed to be guided towards economic and political maturity through the intervention of the state. This belief was partly a hangover of the arguments advanced by the British, who had always pretended that they were in India to provide a paternalistic administration since the people of India themselves were incapable of governing and improving themselves. The belief was reinforced by the socialist milieu of the times. Those were the times when almost everyone in the world believed that the economic and political development of nations was the responsibility of national bureaucracies.

This fear of the political and economic immaturity of the Indians led the makers of the constitution not only to provide constitutional protection to the colonial administrative machinery, but also to give extra-ordinary powers to the judiciary to oversee the functioning of the political legislatures. The makers of the constitution, it seems, were not sure that the legislatures chosen by the people of India, who they believed were largely illiterate and politically immature, would act wisely. So they created a judiciary that is known to be more powerful than any other judiciary in the world.

The concern with keeping the colonial administrative machinery intact combined with the fear of the immaturity of the Indian people led to the emasculation of the political executive. The constitution first placed all initiative in the hands of the central government. And then the initiative of the central government was so hedged in by the sanctity accorded to the bureaucratic structures and the all-pervasive judicial overseeing that the political executive at the Centre itself became powerless to initiate anything substantive. The government that came into being under the constitution was thus a caricature of the central government; the colonial administrative machinery remained intact but the power and initiative that vested in the Viceroy and even the provincial governors to direct and purposively utilize this machinery evaporated.

The makers of the Constitution also seem to have believed, along with the colonial British administrators, that India is not one nation, it is a conglomerate of numerous minorities placed alongside an uncaring and orthodoxy-ridden Hindu majority. Therefore there was a deep concern to provide extraordinary constitutional protections for the minorities on the one hand and on the other hand to give powers to the state to act in order to “reform” the Hindu majority. The provisions regarding the minorities were fortuitously kept under some control because the partition had made it imperative for the leaders of diverse minorities to be somewhat accommodative. But, the concern of reforming Hindu society through the intervention of the state remained strong.”²⁶

With the Government of India Act of 1935 becoming the foundation of the present Constitution, the evil legacy of the constitutional reform process was passed to the post- independence political system. Soon after the new Constitution began to work, its imperfections began to manifest, leading many to become disillusioned.

By adopting the Anglo-American model for our constitution, India lost the chance to start afresh in consonance with our social reality and historical past. India adopted the colonizers system and ignored native wisdom in community-centric governance. We did not incorporate experiential reality but simply chose to adopt imported ideas. Veteran journalist Jawahar Lal Kaul writes, “After the independence, it was not necessary to go back to the 1750s days. We could have incorporated things we had learnt during the last 200 years. We could have been different from others especially the western world but that would not have been a cause of concern.”²⁷ Eminent thinker Devdutt rightly points out an important aspect which was altogether missed by the Constituent Assembly, “There were two agendas before the Constituent Assembly; To make India a nation-state, and social reconstruction. Constituent Assembly focused on first and totally ignored the second. Constituent Assembly worked on the assumption that by making India a nation-state social reconstruction would be automatically achieved but this was not to be. ...One thing is clear. That Constituent Assembly ignored the vision of Gandhi, Aurobindo and many others for whom independence meant the reestablishment of Indian civilization”²⁸

In a nutshell, independent India could not cut the umbilical cord from its colonial past. Maladies designed to keep it enslaved through fragmentation remained in its body politic only to overgrow worse with the passage of time.

Several scholars have raised the point that besides being created by a very small group of persons (mainly Nehru, Mountbatten, and Rau), the Constitution was drafted in a great hurry. During a recent presentation, Ram Bahadur Rai raised the following points in support of his conviction:

1. T.T. Krishnamachari, A member of the Constituent Assembly, in November 1948 made the charge that Constitution has been drafted in a hurry.
2. There was no serious debate on the nature of political system to be adopted or the available options/ alternative polities in Constituent Assembly.
3. Certain issues such as Prime Minister, President, Governor, Federal Structure, Centre State relations, etc. were debated for a very short period of time.
4. Issues like Political self government (Swaraj), democratic decentralization, Panchayat, right to employment, Cow protection, prohibition, and ancient Indian ideals of governance etc. were mandatory to be included in the new Constitution were never discussed at all.
5. The task of constitution making did not take 3 years as is usually known. Real task took only one week.²⁹

A large numbers of constitutional experts are convinced that Westminster model of parliamentary democracy is not conducive for India. Subash Kashyap argues that “The British Parliamentary system evolved through a long struggle between a hereditary monarchy and feudal lords in a small island with a large overseas empire. It is not easy to transplant foreign institutions on native soil. Also, it is not necessary that a system that succeeds in one country would succeed in another as well. For the success of the representative parliamentary democracy of the British type, there are certain pre-requisites like a. The people should have become a nation, b. There must be a general commonality of interests and agreement on fundamental national issues, c. Some economic stability and a certain level of prosperity must have been achieved already, d. There must be relative absence of social tensions and an atmosphere of reasonable peace, e. There must exist some democratic traditions, a more or less homogeneous population and political consciousness among the people at large, f. There should be a well-organized ideologically oriented, fairly stable system of two major national parties. Unfortunately, none of these pre-requisites existed in India at the time of the commencement of the constitution. They do not exist today either.”³⁰

Very few people are aware that Dr. Ambedkar, who is considered by many as the chief architect of the Constitution, soon became disillusioned with it. He vented his embittered heart in the Rajya Sabha on 2nd September 1953. "People always keep on saying to me, "Oh you are the maker of the Constitution" My answer is I was a hack. What I was asked to do, I did much against my will." He added: "I am quite prepared to say that I shall be the first person to burn it out. I do not want it. It does not suit anybody..."³¹

CRITICISM OF THE WORKING OF THE POLITICAL SYSTEM

Some of the significant defects of the Constitution can be summed as under:

1. Present Indian Constitution is not the product of the soil. It is an imported and assembled document. Constitution must be an extension of the indigenous traditions and culture. Then only the common man of the country could feel connected to the Constitution. A big problem being faced in the working of the present Constitution is that its provision do not have democratic precedents like they have in England. Taking advantage of the absence of the above mentioned precedents, the political class has developed political traditions and precedents which suit them but go against the spirit of the Constitution.
2. It is the largest written Constitution based on British model mainly which is unwritten.
3. 118 amendments have been moved so far. This no longer merely reflect the flexibility of the Constitution, but fundamental problem in the working of the Constitution.
4. There are contradictions between constitutional law and the general law.
5. Ninth Schedule, which constitutes a major portion of the Constitution, is a collection of 284 laws, created with the sole purpose of bypassing the courts.
6. Constitutional amendments have become a useful tool for party in power.
7. District Magistrate is an absolute authority in his district. Panchayats, municipalities and other local self government institutions or functionaries have to fully depend on the whims of the District Magistrate .
8. Panchayats and local self government were not discussed by Constituent Assembly.
9. Both State and Central Legislators are elected essentially to make laws, and not to execute them or to adjudicate over them. Yet, under our Constitution, they act as surrogate-makers of the executive or the Ministry, which in turns appoints the judiciary. The legislators are elected by constituencies that can relate to them. They are silhouettes of their areas. They are not necessary experts at law making but capable of representing local sentiments. Once elected, however, some of them become Ministers which calls for executive work.³²
10. 42nd Amendment has made fundamental changes to the constitution.
11. Although the Constitution entails separation of powers between legislature, judiciary and executive; in reality, judiciary is gradually taking over the functions of executive and legislature's powers vis-à-vis judiciary have declined considerably.
12. The electoral system adopted under this constitution has made vote bank politics the chief objective of the political class. Thus, a fundamental conflict has been created between the needs of nation building and the polity established by the Constitution. For nation building, India needs unity and a general agreement at least on certain minimum fundamental national issues. On the other hand, for the power hungry politicians, the highest value is vote arithmetic. Religion, caste, sub- caste, language, region, and similar other primordial loyalties are invoked to divide the people, to create vested interests in

their separate parochial identities and build vote banks. All this seems to have become essential for successful participation in the democratic process.

13. There is a fundamental dichotomy between the constitutional values and the superstructure of the political system. The latter is not oriented or suited to protecting these values and time has come to consider whether our forefathers were wrong in trying to copy the western models and the Westminster system of parliamentary polity.

Bajrang Muni, an organic political philosopher, has dedicated his life to the systemic change campaign and has done seminal work in this field. He is convinced that most of India's current problems are rooted in a singular malady i.e. her Constitution has discarded the societal control over polity. In Indian tradition since time immemorial, society held a pivotal position over individual, state and even religion. Due to its colonial origins, the Constitution has pushed society completely out of the picture. Family and village have no role to play in the current constitutional structure. Gandhiji's vision was to reinstate societal authority, keeping political authority secondary. But the political class which replaced British rulers took over and social authority receded into background. Decline of the power of society resulted in a moral and social decline leading to a spurt in corruption, caste conflicts, communalism, individual crimes, economic disparity and exploitation.

Many nationalist thinkers and workers share Muni's conception. Govindacharya, another prominent political thinker, argues that "There is a total disconnect between the ancient traditions of India and today's constitution. The present constitution has inverted the ancient Indian four-pillared order of Dharm Satta (religious authority), Samaj Satta (social authority), Raj satta (political authority), and Artha Satta (money power), needed to run a country. Today when it comes to running the polity, Artha Satta seems in the forefront and Dharma Satta and Samaj Satta have become redundant. Centuries of slavery have sowed doubts in our mind about our glorious past. British rulers and anglicized natives saw India through the eyes of Europe. But, even after the freedom from British rule, anglophiles not only continue to look at India from the western perspective, they have made it their mission to turn/transform India into a brown Europe. This psyche, alien to Indian thought and traditions, is clearly visible in the present Constitution. As a result of the disconnect between the constitutional provisions and the basic features of Indian society, there has developed a skewed relationship between State and the society, which can be illustrated through several examples:

- Indian society has traditionally considered family as the basic unit of society. All the traditional rights were vested in family. Whereas the constitution and legal system recognise individual as the basic unit of the society and therefore Constitution and the legal framework derived from it talks about individual rights ignoring the privileges of the family.
- Marriage as a lifelong sacrament is a distinct conception present in Indian society but the modern legal system and individual rights promote divorce, a concept unknown in our past.
- On one hand, Constitution condemns caste privileges and atrocities but on the other hand it recognises caste through reservations and protections. All of us are aware that the electoral system has almost institutionalised caste politics.
- This Constitution has caused social disintegration through divisive politics based on caste, language, gender, and backwardness.

Constitution has squarely failed to achieve the task it set before itself in the form of Preamble. The high principles and values embodied in the Preamble and Directive Principles of State Policy have largely remained mere words on paper and have not been followed or fulfilled in practice.

SOCIALISM AND JUSTICE

Nehru had vowed that so long as there were tears and suffering, the work of the Constituent Assembly would not be over. He had told the CA that its first task was “to free India through a new constitution, to feed the starving people, and to clothe the naked masses, and to give to every Indian the fullest opportunity to develop himself according to his capacity.” The Constitution was relevant only as an instrument of social change. A Constitution which was not able to solve the problem of the ‘poor and the starving’ was merely ‘a paper constitution-useless and purposeless.’ But the current predicament is unsavoury:

- Poverty is endemic and growing consistently.
- After six decades of independence, our basic problems remains the same - poverty, illiteracy, backwardness, overpopulation, shortage of food supply, unemployment,
- After 1992-93 Indian government has deliberately dumped whatever façade of socialism it used to boast about.

SECULARISM

The Constitution of India as given to us by the founding fathers did not recognize any state religion. It embodied the principles of non-discrimination of religion among the fundamental rights vide articles 14, 15, 16 and 19. Under Article 25, the Constitution guarantees that all persons are “equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. Every religious denomination is free to manage its religious affairs (Article 26). No one can be compelled to pay for promotion or maintenance of any religion or to take part in any religious instruction; wholly state-funded educational institutions are barred from imparting any religious instruction (Article 27 and Article 28). The language, script and culture of minorities are protected and no citizen can be denied admission to any educational institution on the ground only of religion etc. (Article 29). Article 30 ensured the right of minorities to establish and administer their own educational institutions.

Thus, the Constitution can be said to have sought to establish a secular order under which the dominant religion or majority of the population does not enjoy any special privileges or preferential treatment at the hands of the state and the religious rights of the minorities were protected in different ways.

But what has happened during the last 63 years is quite different and far off the mark from the vision of the founding fathers. The Constitution has been amended to allow discrimination on communal/caste grounds. Religious minorities as well as religious majority have been converted into political minority and political majority, respectively.

We are still plagued by the virus of communalism. Discrimination on communal grounds are common. Politics of minoritism has led to the disenchantment of the majority. Slogan of secularism is used as mere political expediency. Where there is discrimination between man and man on the grounds of religion, where governors, ambassadors, Ministers and other high functionaries are appointed or not appointed because on the criteria of the community or caste to which they happen to belong to by accident of birth, where even for the highest office of the Head of State, caste and communal calculus are seriously and shamelessly discussed, where there are separate laws and codes for different communities, where the administration of places of worship can be entrusted to Government Officers, where under a 1925 Sikh Gurudwara Act, the state government spends lakhs of rupees for conducting elections for the Shiromani Gurudwara Prabhandak Committee and this Committee controls the huge gurudwara funds and runs the Akali politics, where no government has the courage to enforce the laws with regard to misuse of religion during elections, where parties with communal denominations not only exist but participate in elections, where even fundamental rights are demanded and conceded on grounds

of communities, it has become a cruel joke to evoke the notion of secularism to characterize the nature of Indian state. This constitution has reduced India into a hypocritical nation.

Against the dreams of our founding fathers, as a people and as a nation, we are more divided than ever before. We are all anxious to find and strengthen identities of counter- national narrative. The smallest minority in the country today is that of 'being Indian'.

THE WAY AHEAD

The only alternative that can be visualized is to reduce the role of the State. The State must be minimalist in its scope and should recede in the background while focussing on security and justice. The society's role should once again be maximalist. All residuary powers apart from the law, order and justice must be vested in the society. There is a need to establish people controlled system (Lok Niyantrit Vyavastha) in place of people controlling system (Lok Niyantarak Vyavastha)

AT INTELLECTUAL LEVEL

1. Intensive research on the origin and working of our political system to clear myths surrounding it and to infuse clarity
2. Redefining the rights and privileges of state and society.
3. Initiating debate on the Constitution in the intellectual forums: universities, colleges, bar councils, etc.

At the level of masses:

1. Taking the debate to electronic and print media.
2. Public awareness through meetings, pamphlets etc.
3. Use of the religious class especially the spiritual teachers could very effectively drive home the message to big section of society.
4. Mass movements to be led by apolitical leaders of the society. The systemic change will never come from the political class as it has vested interest in continuing with the present system.

Any questioning of the Constitution draws a lot of ire from liberals and Dalits. They get perturbed at the very mention of drafting a new Constitution and allege the academic community with hidden intention to humiliate Dr Ambedkar who drafted this Constitution. They also apprehend that it is because of this Constitution that Mayawati, Mulayam and other backward leaders got a chance to come in power and if the new structure is implanted, this might be antagonistic to the rise of backward communities in the echelons of power. Such people should be convinced that their apprehensions are misfounded and there can not be any framework for a political system without the fundamental concept of egalitarianism and non-discrimination.

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