

Bharatiya Janata Party's Outlook Towards The Constitution Of India

Dr. D.Ananda

Assistant Regional Director, Indira Gandhi National Open University Regional
Centre, Ahmedabad, Gujarat. PIN:382481, Email: anand.mannepula@gmail.com

Abstract

The Bharatiya Janata Party (BJP) government abrogated article 370 and Article 35A of the Constitution of India in the month August 2019. The state of Jammu and Kashmir also dived into two union territories, Union Territory of Jammu Kashmir and Ladakh. The recent Supreme Court's verdict on disputed land in Ayodhya that the Hindus would get the entire disputed land in Ayodhya where the demolished Babri Masjid once stood and the Muslims will get another alternating land of five acres. The scrutiny and screening of the Bharatiya Janata Party's election manifestos over the last few decades and other documents shows that it always talk about the abrogation of article Article 370, Uniform Civil Code, creating a "Ram Rajya", reconstructing the Ram temple in Ayodhya, are some of the core subjects of the BJP. The BJP firmly states a devotion to Hindutva, and its approach has historically reflected Hindu-Nationalism. The BJP's election manifesto of 1998 begins with the invocation of an eternal Indian mind that has found its expression in the Indian nation. In 1999 manifesto for Lok Sabha elections, BJP led alliance of political parties the National Democratic Alliance (NDA), assured electorate to review the Constitution of India. The present paper critically analysis the BJP's Political Philosophy and its outlook towards and the Constitution of Indian with particular reference to Commission set up by BJP led alliance of political parties the National Democratic Alliance (NDA) during the Golden Jubilee celebrations of Indian Constitution.

Key Words: Bharatiya Janata Party, Constitution of India, Constitutional review

Introduction

One of the promises of the BJP led alliance of political parties the National Democratic Alliance (NDA), before the elections to Lok Sabha 1999, was the appointment of a commission to review the Constitution of India. The NDA government appointed a 'National Commission to Review the Working of the Constitution' (NCRWC) under the chairmanship of Justice M.N Venkatachalaiah. The Commission was asked to make

recommendations and suggestions for amendments to the Constitution to ensure the efficient, and effective system of governance and socio-economic development of India, within the framework of parliamentary democracy, without interfering with its basic structure. The proposal to Review the Constitution drew tremendous public attention and also became a subject of an engaged public debate.

The sensitivity of the issue evoked concerns at the highest levels also. For instance, at a function in parliament central hall to celebrate fifty years of the Indian Constitution, the then Prime Minister A.B Vajpayee stressed upon the need for a commission to review the Constitution. He said, “We should never forget that there is one great test for a constitution, for any system of governance. It must deliver, and it must be durable. But even in the mightiest fort, one has to repair the parapet from time to time. The same is true about our constitution, five decades after the adoption of the constitution. The need for stability, both at the center and in the states, has been felt acutely. The people are impatient for faster socio-economic development. The country is also faced with a pressing challenge to quickly remove regional and social imbalances by reorienting the development process to benefit the poorest and weakest. That is the purpose for which a commission to review the constitution.”¹ On the same platform the then Indian President, K. R. Narayanan raised dissent on review of Constitution, he said, “To-day when there is so much talk about revising the Constitution or even writing a new Constitution, we have to consider whether it is the Constitution failed us or whether it is we who have failed the Constitution.”² There is a great significance to the president’s words because the President of India is the defender of the Constitution as the president takes the oath of office, preserve, protect and defend the Constitution and law.³

The distinction between Constitutional Review and Amendment

The distinction between “review” and “amendment” of the constitution is very significant. One has to look into this distinction. Changes in the Constitution are appropriately called amendments to the Constitution, which article 368 of the Indian Constitution justifiably allows. Article 368 of the Indian Constitution is the specific provision dealing with amendments to the Constitution. It is an outstanding feature of the Indian constitution that different procedures have been laid down for amending different

provisions of the Constitution. A review is a re-examination or reconsideration the Constitution again especially, to change the Constitution itself. Amendments stand for changes within the Constitution, and 'Review' stands for the re-examination of the Constitution to decide whether a change of Constitution is necessary or not. In the Indian Constitution, there is no provision for its review in the way that there is provision for its amendment.

The exercise to review is an executive action under the 'Commission of Enquiry Act 1952'. The government defended its action of appointing a commission on the ground that it has executive authority to appoint a commission to enquiry things under 'Commission of Enquiry Act 1952.' When a review committee was appointed under the Commission of Enquiry Act 1952', it is well-known that it is merely an advisory body and does not have any constitutional validity. It can come out with recommendations and suggestions, which the Parliament can consider. The changes, if any must come as amendments only under amending procedure of article 368 of Constitution and the implied limitation of 'Basic Structure' laid down by the Supreme Court of India in *Kesavananda Bharati v. State of Kerala* (1973).⁴

Earlier Attempts to Review and Abuse of the Power of Amendment

During the National Emergency in 1975, the power of constitutional amendment took a different kind of political turn. The Congress party, which was in power at the centre and most of the states with the absolute majority, promulgated a new style of constitutional change. In February 1976, president of Congress Party D.K.Borooah appointed a committee to study the question of the constitutional amendment and make necessary amendments to the Constitution under the chairmanship of Sardar Swarna Singh. The committee made large number of recommendations. The main issue which dominated the proposals of the Swarna Singh committee was the relative position of judiciary and legislature in the constitutional set up. The main aim of proposals was to make the Parliament more powerful. Significant recommendations of the Swarna Singh committee are incorporated in 42nd constitutional amendment by congress party government.

Not every use of the power of amendment was either drastic or controversial. Many of the amendments to the Indian Constitution seemed inevitable due to changed state of affairs. The Indian constitution is so detailed that playing around with its texts becomes necessary each time a political event occurs or when there is a slight change in policy. However, not all the amendments were just mechanical adjustments to the constitution following the declaration of a minor change in policy or consequent to some political event. Some amendments were controversial because they were brought in in order to achieve purely political aims. The best example is the 39th amendment. When Indira Gandhi faced a reversal in the election case before the Allahabad High Court, the 39th amendment was enacted in 1975. The purpose of the amendment was to contain the jurisdiction of the court in disputes about the election of Prime minister, President, Vice-President and Speaker of Lok Sabha. The amendment sought to shift control in these matters from the courts to parliament. However, the amendment was seen, and the surrounding evidence gives credibility to such a view that the amendment was as enacted with the sole purpose of protecting Mrs. Indira Gandhi. Such political intentions and misuse of amending powers were predictively described by Ambedkar in the Constituent Assembly in the following words, “The Constituent Assembly in making a Constitution has no partisan motive, beyond securing a good and workable Constitution it has no eye on getting through a particular measure. The future Parliament if it meets as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate to the passing of party measures which they have failed to get through parliament by reason of same article of the constitution which has acted as an obstacle in their way. Parliament has an axe to grind while the Constituent Assembly none. That is the difference between the Constituent Assembly and future Parliament.”⁵

The BJP’s Political Philosophy and the Constitution

The BJP’s election manifesto of 1998 begins with the invocation of an eternal Indian mind that has found its expression in the Indian nation. ‘It is this ancient Indian mind that formulated the Constitution,’ says the BJP election manifesto and ‘it is not the Constitution that shaped the Indian mind.’ The BJP assured to review the constitution of India, in the light of the experience of the past fifty years working. It also advocates the ‘abrogation of article

370' of the constitution, which confers special status on Jammu and Kashmir. It also calls for a Uniform Civil Code and promises that a high- powered committee will be set up to examine the civil codes in practice amongst various communities and to adopt the best of each in the manner that ensures gender equality. The BJP did not issue the election manifesto for the 1999 Lok Sabha elections, only NDA did, omitting as before the BJP's controversial issues of abrogation of article 370 and Common Civil Code, but repeating the pledge for a commission to review the Constitution of India.

The BJP has strong bonds with RSS and its philosophy. The BJP leaders owe loyalty to Golwalkar, Hedgewar, and Savarkar. Moreover, the BJP leaders such as L.K.Advani and others have always been quoting Savarkar and Golwakar in their speeches. Shivlal wrote about the bonds of BJP and RSS in his book titled 'Politico-Legal India' He wrote; "Let us also not forget that the RSS and the Jana Sangh or BJP though separate entities perceptibly were practically analogous to each other, like those joint-stock companies which, for the sake of didacticism (but, in actuality, for sake of evading taxes) often like to float their proteges on separate managing agencies or subsidiary companieshas been followed religiously by the two organisations with a view to Hinduising politics or even Hinduising the ideas of parliamentary democracy....."⁶ The Constitution of India as a whole was declared un-Indian by Golwakar. Golwakar favours a unitary type of Government and calls federation an obsession of mind of the framers of the constitution, and it will be unwise to entertain any hope for a bright future under such setup. According to him, "Our Constitution piecing together of various articles from various constitutions of western countries. Is there a single word of reference in its guiding principles as to what our keynote on life is? No some lame principles of United Nations Charter or from the old American and the British constitutions have been just brought in."⁷ Golwakar considers the federal structure completely ill-conceived. He argues that a unitary state ought to have been set up at the time of the framing of the Constitution, but he feels that framers of the constitution did not treat India as one compact nation in their subconscious mind and tried to satisfy various heterogeneous groups in the country. Therefore, Golwakar argued for re-examination of the Constitution. He said; "towards this end, the most important and effective step will be to bury deep for good all talks of a federal structure of a country's Constitution, to sweep away the existence of all autonomous or semi-autonomous states within one state,

i.e. Bharat and proclaim one country, one state, one legislature, one executive with no trace of ...linguistic or other type of pride being given a scope for playing havoc with our integrated harmony. Let the constitution be re-examined and re-drafted, to establish the unitary governmentand with a firm hand, change the present ill-conceived federal structure.”⁸ According to V.D. Savarkar, monarchy is better than constitutional democracy for the health of a nation. Savarkar believed that great men framed the constitutions or changed them suitably and defined them as they liked. So there was nothing sacrosanct about the constitutions. Therefore he said, “Shivaji did not fight elections. He would perhaps not have been victorious in elections. His constitution was Bhavani sword and his tiger claws.”⁹ Thus, the philosophical foundations of BJP and its nature as Hindu nationalist party and its ideological closeness to the RSS and its reference for ideologies like Golwalkar and V.D. Savarkar raised many doubts regarding its intentions to review the Constitution.

Political Discourse

The Congress and the Left parties have been critical about this exercise of reviewing the Constitution. They have accused the NDA government of trying to sabotage the Constitution and destroy some of its vital characteristics like secularism. They have also charged the NDA government of trying to Saffronise the Constitution through the appointment of a constitutional review commission. The Congress Party opposed the review, and it urged the government to hold talks with all political parties on the terms of reference and proposed changes. Several voices were raised from the BJP quarters about Sonia Gandhi’s foreign origin, the issue of an Indian citizen of foreign origin disallowing from holding high constitutional offices like President and Prime Minister. In May 1999, three members of Congress Working Committee (CWC), P.A Sangma, Sharad Pawar, and Tariq Anwar openly expressed their reservation about the Sonia Gandhi as prime ministerial candidate because of her foreign origin. These three leaders sent a letter to the Congress president. In that letter, they wrote, “The Congress manifesto should suggest an amendment to the Constitution of India, to the effect that the office of the president, vice president and prime minister can only be held by natural born Indian citizens.”¹⁰ When the P.A.Sangma was inducted in the NCRWC, it indicated that BJP is going to implement its agenda. Sumitra Gandhi Kulkarni, who quit the Congress party and joined the BJP raised her voice against

Sonia Gandhi's foreign origin. In an article published in the Times of India on September 3rd 1999 she wrote "Her foreign origin raises serious concerns on the need to enact a special provision in the constitution, has rightly been raised."¹¹ It is significant to note that Sumitra Gandhi Kulkarni also inducted in NCRWC.

The Left parties vigorously attacked the move to review the constitution. The Polit Bureau of CPI (M) remarked that executive decisions would have no legitimacy, as only parliament is competent to undertake such an issue. The CPI (M) made a distinction between specific amendments by parliament and rowing review, which it said was unwarranted. The CPI demanded that the move be put off, and parliament be taken into confidence. The party's central secretariat alleged that the objective of the BJP led government was to tamper with the constitution and create an atmosphere of doubt its secular character. The CPI (M) General Secretary Harkishan Singh Surjit said, "the BJP is opposed not to just certain tenets of the constitution; it is opposed to the very aspirations that the freedom struggle brought to the fore its whole outlook is based on the concept of theocratic state, with its staunch advocacy of greater centralization of powers. Democracy, secularism, a federal structure, etc have no place in this concept."¹² Prakash Karat CPI (M), says, "The central thrust of the BJP-RSS combine for review of the constitution is the de-secularisation of the Indian state and society. It sees the constitution as a road lock to installing Hindutva as the guiding principle of the state. At the present juncture, the infiltration of the Hindutva ideology into constitutional scheme of affairs cannot be accomplished directly by the BJP, as it does not have a majority, and it is compelled to run a coalition. It is, therefore, striving to indirectly bring it onto the agenda of the government."¹³

Views of Constitutional Experts and Political Scientists

On the other hand, constitutional experts also expressed different views on the issue in a constructive approach. Granville Austin divides the review into two parts: one, a review to see how the constitution has worked, and the other is a review to change. He said, "The review of the constitution with an idea of changing it depends upon two things. One whether changing the constitution is a way of getting around admitting responsibility for the way the constitution has been worked. In other words, finding fault with the constitution itself rather than seeing the weaknesses in implementation, which is the responsibility of human beings?

Because...constitution does not work, citizens and governments work them, and if one is going to review the constitution thinking does it need change? Then, I think one has to ask can the changes are contemplating and goals that one desires to achieve be achieved equally by legislation or by convention? And if they can, it would be better to achieve those goals by making those changes in that way than changing the constitution.”¹⁴ Further, Austin raised some critical questions. According to him, “would amending the constitution take India closer to its aims? What is the citizen’s reaction to the very idea review the constitution belongs to them? Who has the moral and political authority to initiate a review as opposed an amendment and to establish the modalities for conducting one, including who are the reviewers.”¹⁵ Justice Durga Das Basu former High Court Judge of Calcutta suggested that the constitution be reviewed instead of subjecting it to piecemeal amendments. In view of damage made by endless piecemeal amendments, Justice Basu, suggested that a commission for revision of constitution should be set up to examine objectively, each of existing provisions in the light of suggestions for amendments from the government as well as citizens, and to recommend the enactment of one comprehensive amendment act or a revision of the constitution itself.”¹⁶

Former Chief Justice of Supreme Court, A.M.Ahmadi says, an exercise to review the whole constitution would be unnecessary, and the need of the hour is only to examine certain grey areas while concentrating on more effective implementation of its provisions. He said, “In the life of a country’s constitution, 50 years is not a sufficiently long period to call for its replacement. If the idea is to review the constitution in its entirety, I am afraid it is premature. But if the objective is to review certain grey areas only that may be different matter.”¹⁷ Subash C Kashyap, former Secretary-General of Loka Sabha and member of NCRWC, argue that ‘the present is not very exhilarating, particularly the decline of values in all spheres. We have the largest number of illiterates of the world; Secularism has become a mere slogan symbolic of the hypocrisy, people are seeking to be fooled as much as in the name of masque or temple or religion in the name of secularism. Under article 356 of the constitution, the constitutional machinery is officially said to have failed on an average twice every year. A major drawback of the parliamentary system is its floor crossing by the elected members on consideration of power, ideology, and ethnic loyalty, money, or other inducements. Political defection invariably leads to political instability, brings the

administration to a grinding halt. Such political defections cut the very roots of democracy by eroding the people's faith in their elected representatives and governments. These are the main arguments put forth by Subash C Kashyap for a fresh look at the working of the constitution'.¹⁸ In this context, the question arises that why these conflicts of opinion have become so vicious today. Neither is the Indian constitutional political discourse wrong, nor has the political commitment diminished. Then what has gone wrong, and what could be done to correct it? For these, one has to evaluate the working of the constitution to find out the aims and objectives, which the founding fathers had set out to achieve at the time of framing the constitution, and to what extent these were fulfilled or realised in practice.

Working of Constitutional Democracy

Half of the century of parliamentary democracy in India has been undergoing a transition from one-party dominant system of the Congress era to the coalition system. Parliamentary democracy needs a detailed analysis. The elections of 1989, 1991, 1996, 1998, 1999 and 2004 formed hung parliaments that confirm this new trend in Indian parliamentary system over the fifty years. The Indian parliamentary democracy has passed through many ups and downs. Political events at the centre since 1989 have exposed the instability inherent in parliamentary form of government when it comes to dealing with coalitions. The last few years have seen massive problems confronted parliamentary democracy due to a spate of scams, an increase in number of history-sheeters who have entered politics and splitting up of parties not the grounds of ideology but of personalities and personal gains, despite, the fact that the parliamentary government in India is playing a crucial role to strengthen the democratic institution in the society. Indian Constitution provides sufficient provisions for a robust democratic system. In the formal sense it possessed all the ingredients of a democratic polity, constitutional supremacy, elected parliament, an accountable executive, independent judiciary, and free and fair elections. The speedy decline of the values and public accountability in political as well as public life has given rise to a significant problem. The positive or negative influences exercised by political parties, pressure groups, lobbies and extra-constitutional authorities that very often spring up politics have profound and lasting impact on the character, direction dependence, credibility and the future of the system of parliamentary government. It leads to political turbulence and political instability.

Atul Kohli, affirms that the new challenges forced on India reflect a crisis of governability. He observes; “Powerful leaders in India often have proved to be enemies of institutions such as political parties, because institutions tend to constrain personal power, Those who attain position of power because of personalistic traits usually show little interest in institutional development, or worse actively seek to weaken existing institutions... the stability of government is not the central issue of political process in India because the process has brought all major parties either in government or in opposition. The new challenge of political change in India is to evolve a multi-party consensus for governance this had not happened.”¹⁹ James Manor said, “Corrupt, unconstitutional and wilfully distractive acts have become more common among acts within political institutions. At times, a kind of galloping normlessness has appeared to take over in the politics of particular Indian states and at the national level. This had bred exasperation among social groups, which seeks responses from political institutions. Members of such groups come regard politicians as unhelpful at best, and often as malevolent and unclear.”²⁰ According to C.P.Bhambhari, “The real challenge to the modern Indian state is from organised religious groups which threaten its democratic and secular character. The state in India has to grapple with challenges from classes, castes and religious, social groups internally, and imperialism externally.”²¹

Rajani Kothari commenting on multifarious flaws in the Indian political system says, “Those at the bottom of the society still want the Indian state to fulfil their aspirations. But those at the higher levels do not. Inevitably, by stages, economic reforms on the other hand, and bureaucratic-cum-business and banking class on the other, produced the series of scams involving corruption at the highest levels, leading to a growing loss of faith in the system by all classes, new experiments in governance presumably meant to provide social justice but in fact caught in to their cobwebs of coalitions and endless parleys, adjustments, compromises and carrying on somehow but none of them able to deal with the basic malady of an increasingly corrupt and criminalised as well as increasingly communal and casteist political culture. The upshot of all is a sharp decline in the legitimacy of the system and an equally sharp sense of both dismay and disenchantment on the part of the people of India.”²² P.C Alexander observes that; “the concept of continuing accountability in the representative government has not developed adequately and this is one of the basic weaknesses of our

democratic system.”²³ The report of NCRWC observes that; “Misadministration has paralysed the creative energies of the people and has pushed people and day to day living more and more into extra-legal system. Owing to opportunistic and self-seeking politics and politicians, and an increasing scenario of politician, criminal and bureaucratic nexus, the political climate of the country has been polluted, bringing in its enormous wake corruption... There is a pervasive degeneration of values.”²⁴ Thus, today in Indian parliamentary democracy some contradictory things are going on, and India is passing through crisis in Constitutional commitments. The problem is how to arrest this decline? However, the question is whether a radical change has become imminent to overcome these problems? Is the parliamentary system not capable of tackling the above problems? The primary concern of review of the constitution, in particular, has been political stability. That any system of democratic government survives on twin principles of accountability and stability. The Constituent Assembly recommending the parliamentary system of executive has preferred more responsibility than more stability.

The alternative systemic change, the German practice of ‘constructive vote of no confidence’ has been one option. This system entitles that along with expressing no confidence in a prime minister the House proposes an alternative leader unless the house elects the alternative leader, the vote of no confidence motion is not possible. This system again has the same danger as the executive presidency. It strengthens the prime minister, as like as German Chancellor. It would give stability at the cost of accountability, an inefficient prime minister not being able to be removed by house for the lack of an alternative. Another alternative is a fixed term for Lok Sabha and state Legislative Assemblies; there can also be a situation of absolute control and no accountability or the growth of totalitarian tendencies. Moreover, what would happen if no political party or group would command absolute majority in the legislature? Considering that even under the present system it has not been easy to ensure accountability, what will happen if stability of tenure is ensured to the politicians at the cost of responsible political conduct? Granville Austin expressing on this stability question and the presidential form of government, he noted, “Parliamentary democracy was a system best suited to India’s heterogeneous ethos.”²⁵ Reacting on fixed term of legislature he said, “If we had a parliament with a fixed term, you could be re-enacting the Emergency.”²⁶ The present instability only reflects the people’s growing

dissatisfaction with the present situation and regimes. People have not expressed this dissatisfaction with the system; they have only expressed themselves against policies that are being pursued by governments. Whatever be the frequencies with which elections have been held, the people have come out in large numbers to cast their votes. This is an indicator of the people's faith in the parliamentary system. If stability of government is imposed through freeing government from parliamentary control, the result can only be disastrous. It would mean freeing the government from the control of people's will that is imposing an authoritarian system. It is necessary to mind that this same constitution has ensured a very long spell of political stability. Former President, K. R. Narayanan observes that "the parliamentary system provides this vent more than a system which prefers stability to responsibility unaccountability. Our recent experience of instability in government is perhaps not sufficient reason to discard the parliamentary system in favour of presidential or any other system."²⁷

The major cause of instability is political defections. The political defections have now hunted the parliamentary democracy, this was sought to be eliminated by the Tenth Schedule of the Constitution, but previous Anti-defection Act has failed to prevent group or mass scale defection, though it has been able to prevent defection by an individual member. The candidates those who elected based on the party that has given them a ticket, defection of candidate go to the opposite pole party which is not on the basis, which people elected them. The Report of NCRWC said, "Defections encourage corruption at the high levels. Defections usually are rewarded with political positions and other such prerequisites so openly that it makes a mockery of our democracy."²⁸ Unless there is healthy parliamentary party system and regulation of functioning of the parties, parliamentary democracies cannot function properly. The parties should prepare their members to become good legislatures, to become good ministers. So there is a significant need to find out what is wrong with political parties and electoral process. Political parties have always been grappling with one another ruthlessly on gaining access to the portals of power through any and every possible means at any cost. Taking advantage of the inadequate provisions of the Anti-Defection Act, the act of pulling down governments by encouraging defections have been practised and perfected by political parties on professional lines without any exceptions, to the utter disadvantage of parliamentary democracy. Madhu Limaye observed, "The process of cleaning public life

and strengthening democracy is a difficult and painful process.... It has to be accompanied by the democratisation of parties. There is no easy way out, no instant solution awaiting implementation through a suitable statute.”²⁹ Justice Alladi Kuppaswami says, “If parliamentary democracy has not functioned satisfactorily in India in recent times, it is not because of the defects in the system, but due to the incompetence or inefficiency of those entrusted with the task of running it, the remedy lies not abandoning the system but in plugging the loopholes, so that it may work satisfactorily.”³⁰

The core of the problem becomes visible to be with the political parties and hence reforming the political parties, electoral systems to function on more democratic lines would go a long way in strengthening of political system. So even before we look at constitutional change there is a need to reform electoral process. Equally important that, function of elected representatives is to reflect public opinion in parliament and state legislatures by debating matters of vital public importance, and thereby influence the policies and actions of the executive. The serious debate has ceased to take place in elective bodies, which we have come to resemble arenas for fighting bouts where noisy confrontation is the norm. The electoral system subverted by money power, muscle power, and vote bank considerations of castes, communities and regions. As a result, the same is being aided and abetted by the electoral process. Elections are not entirely free and fair, elections are not true will and aspirations of the people, and exceedingly high premium priced on capturing power by foul means is because of the elected representative’s conviction that power is the passport to personal prosperity.

The report of NCRWC observes that “Increasing cost of elections leading to unethical, illegal and even mafia provided electoral funding, corruption criminalisation and black money generation in various forms.”³¹ Report of NCRWC further states that “the parliament and state legislatures owing to the inherent weaknesses of the electoral system, have not acquired a truly representative character. The thirteenth Lok Sabha represents only 27.9% of the total electorate, and the recent past legislature of Uttar Pradesh represent only 22.2% of the electorate.... corruption in political life and elections is at the root of the pervasive corruption that is seen everywhere.”³² Former union minister Vasant Sathe wrote, “at present grooving tendency towards the criminalisation of politics, particularly during the

elections when violence, booth-capturing, etc, are indulging in, the same applies to the functioning within the assemblies and parliament. These dangerous and undemocratic practices have to be curbed.... their growth will ultimately destroy democracy itself.”³³ G.S Bhargava wrote, “Politics has come to denote the race of power and pelf. To some people, capacities to manoeuvre, prevaricate and befuddle the masses are its attributes, and such people do not hesitate to adopt even questionable degeneration of democratic institutions and erosion of the cherished values of our national life.”³⁴ It shows that the need and great urgency to reform the electoral system and check criminalisation of politics, rather than discarding the parliamentary form of government.

How a Constitution Works

Generally working of the constitution largely depends upon the political executive of the country. The constitution is a skeleton of political system it provides that organs of the state such as the legislative, executive and judiciary. If the political executive who is elected to implement the constitutional provisions lacking capability character and integrity, the constitution will become unworkable. Dr Ambedkar claimed in Constituent Assembly; “It is workable it is flexible, and it is strong enough to hold the country together both in peacetime and in wartime. Indeed if I may say so, if things go wrong under the new constitution, the reason will not be that we had a bad constitution what we will have to say that man is vile.”³⁵

Political parties and political executive play a significant role in the working of the constitution and democratic institutions. The framers of constitution conceived representative parliamentary democracy as the polity most suited to India’s ethos and needs. During the last six decades and more, there have been general elections to Lok Sabha and various state legislative assemblies. There are continually increasing unhealthy role of money power, muscle power, mafia power, criminalisation, corruption, communalism and casteism, cutting across party lines. Due to this, entire political system is affected. However, any machine is as good as the person operating it is unfortunate that, like inefficient workers, Indian politicians are blaming the constitution. The constitution cannot work without the spirit of constitutionalism. Rajendra Prasad, the President of Constituent Assembly said, “we have prepared a democratic constitution. But successful working of democratic institutions requires in those who have to work them willingness to respect the viewpoint of others,

capacity for compromise and accommodation...whatever the Constitution may or may not provide, the welfare of the country will depend upon the men who administer it... If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they lack these, the Constitution can not help the country.”³⁶

Further, Rajendra Prasad explained how a Constitution would work. He said; “after all a constitution like a machine is lifeless thing it acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character men of vision men who will not sacrifice the interest of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences we can only hope that the country will throw up such men in abundance... I have no doubt that when the country needs men of character they will be coming up and the masses will throw them up.”³⁷ Dr Ambedkar explained, “however good a constitution may be, it is sure to turn out bad because who are called to work it to be a bad lot however bad a constitution maybe it may turn out to be a good lot of those who are called to work it happen to be a good lot. The working of the constitution does not depend wholly upon the nature of the constitution can provide only the organs of the state such as the legislature executive and the judiciary. The factors on which the people and the political parties they will set up as their instruments to carry out their wishes and their policies.... Who can say how the people of India and their parties will behave it is therefore futile to pass any judgement upon the constitution without reference to the part of the people and their parties likely to play.”³⁸

The above ideas of framers of the constitution are quite enough to understand the working of the Constitution and prophetically reflecting the present political scenario of India. Dr. Ambedkar warned, “On 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality, and in social and economic life, we shall by reason of our social and economic structure continue to deny the principles of one-man one

value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality on our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this assembly has laboriously built.”³⁹ Such are the dreams and vision of founding fathers of Indian Constitution after 50 years of working of constitution this is an occasion for honest self-analysis, what is required is a concerted effort to realise and secure what has been enshrined in the Preambular objectives and the Directive Principles of State Policy. Granville Austin observed; “the best thing to do is to have individuals in government who have the ‘Directive Principles’ deep in their spirit and are going to work for them.”⁴⁰ He added that “political will was necessary to implement the provisions of the constitution but, this was difficult in a country where the people at the top did not care about the people in the lower rungs of society... You don’t change human character on a piece of paper.”⁴¹

Conclusion

An important matter, such as review of the Constitution, it needs to be considered at length by the people of the country. It is not a simple issue, which only some selected persons can consider. It needs to discuss the country as a whole. What is needed is not just a discussion among the politicians, but also an extended discussion amongst the people as a whole; a real national debate is required. A review is not necessarily a reversal or repudiation. It is to pause and ponder to make mid-course corrections. Moreover, if an honest proportional, credible and transparent review leads to the findings which necessitate changes, matters can be further debated and action taken. In the selected eleven members commission five retired judges, two attorney generals, a former speaker of Lok Sabha and a former Secretary-General of Lok Sabha, a former woman M.P, a former Ambassador to U.S.A. and the editor-in-chief of a daily newspaper. This type of commission is not competent to review the Constitution in the sense that it is not representing the entire country. It is the parliament elected by the people of India, represent the people of India, which is empowered to amend the Constitution as per procedure laid down in article 368. Only Parliament has a mandate and the scope and terms of the Constitution. It is not a legal document to be dissected by a

few selected bureaucrats and judicial experts. The procedure of change requires legitimacy through the democratic political process. The present review process did not take parliament into confidence. It is nothing but a clear violation of the principles of the parliamentary democracy lay down by the Constitution of India. It is significant to note that even the Parliament has no power to review or rewrite the Constitution. It can only amend the Constitution, that too it cannot alter the 'Basic Structure' of the Constitution according to the Supreme Court verdict in Kesavanda Bharati case. So the very concept of comprehensive review is outside the Indian constitutionalism, which denies legitimacy for its subversion. The Parliament's power to amend the Constitution is also subject to implied and inherent limitation in the sense that it is not authorised to destroy or damage the basic structure of the Constitution. The basic structure concept itself being in the area of value judgement defies all attempts at a precise definition or delimitation. The basic structure doctrine need not be an intractable riddle if the socio-economic operates and the concept of our constitutional values and philosophy behind the Constitution.

The debate on the review of the Constitution, one of the views is that the Constitution in its existing state has failed to allow speedy decision-making and implementation of the decisions. The parliamentary form of government has failed to give a stable government. It should be noted that the Constitution of India in its existing form alone could not be held responsible for the current state of political affairs in the country. The responsibility squarely lies on the persons who run the system, and this covers both political parties and political executive of the country. They have manipulated and misinterpreted the constitutional provisions for their interests. The main problem of the stable government is political defections. The leading cause for political degeneration is the ineffectiveness of public which has not able to keep out criminal mafia elements, the enormity of cost of election and electoral corruption has been a grievous deleterious effect on constitutional democracy and political process. However, there is a call to amend the Constitution in the crisis areas. The amendments must keep in mind factors such as progress made by the nation so far, hurdles in the path to further progress and new urges and perspectives in the changed political scenario. It is the people, who through their representatives will have the final say regarding any changes in the body of the Constitution. It has to be recommended that success

or failure of constitutional provisions in final analysis rests not upon the elegance of language in which they are written. It depends more on the way they are put into operation and implement. The change brought into the Constitution by way of amendments only substantiates the point that the Constitution has an inbuilt mechanism for changing itself as per socio-economic change. All significant changes are brought in when it was necessitated to introduce the same in order to pave the way for a welfare state. No one will object to bringing any amendment in order to further the cause of the people and to enrich their interests. Indeed the nation invites such a venture since it is very eagerly waiting for the implementation of Directive Principles, without doing this, it is nothing but an absolute farce to go in for a review of the Constitution.

Notes and References

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- ²⁶ *The Hindu*, 2&3 February 2000
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