

A dangerous proposition

Prime Minister Narendra Modi deserves our appreciation for repeatedly assuring the nation that for him, the only holy book is the Constitution. It seems the Rashtriya Swayamsevak Sangh and the Prime Minister do not see eye to eye on this subject, as the RSS was not happy with the Constitution **from the beginning**. The RSS chief, Mohan Bhagwat, recently said in Hyderabad that our legal system should be based on “the ethos of society”. Sangh ideologue K.N. Govindacharya has openly spoken of how the Constitution needs to be rewritten.

In all such utterances, the agenda of review too is clear — remove individualism, secularism, socialism; dilute parliamentary democracy and civil liberties; and give more prominence to fundamental duties rather than to fundamental rights, and so on. True, our Constitution is a bag of borrowed ideas, but borrowing a few Western ideas is not necessarily bad if such ideas have some value and relevance for us.

Why repeal the Constitution?

No one generation has a monopoly on wisdom. Humans are fallible but do learn from experience and thus must be empowered to change the Constitution as per the exigencies of time. Amendments are good if they reflect the evolution and maturity of constitutional democracy. Why does the RSS appear to be more interested in a new Constitution rather than mere amendments? A 13-judge Bench of the Supreme Court in the *Kesavananda Bharati* case (1973) laid down that the basic structure of the Constitution cannot be altered in exercise of constituent powers of Parliament to amend the Constitution; thus repeal of the Constitution is the only option for the extreme right. This is indeed a dangerous prospect.

It is instructive therefore to understand at what point of time a nation drafts a constitution. This is usually when there is a break from the past, such as independence from a colonial power, partition of the country or merger of the country, or a revolution. None of this has really happened, and therefore there is no occasion to draft a new Constitution. A Constitution sets the agenda for the future. It should look forward, not backward. Learning from the past is good, but glorifying the past with a desire to revive past values is nothing but fundamentalism.

The Indian Constitution has incorporated the promises that the Indian National Congress had made to the people of India in the struggle for independence. All those ideals are reflected in the Constitution. Many of our leaders had gone to Western countries and studied the concepts of liberty and individualism. They were convinced that these concepts have a universal application.

Individualism is the central theme of most fundamental rights. Sangh ideologues seek the removal of the centrality of individualism from the Constitution in the name of family and collective or group rights. Just because individualism is a Western idea does not make it bad. The India of today is entirely different from ancient India.

Fundamental rights and fundamental duties are not co-relative. Like other liberal democracies we do not believe in the theory of rights and duties being co-relative. Even Indira Gandhi during the Emergency could not make them co-relative. Thus fundamental duties were inserted by the 42nd amendment in the non-binding Directive Principles chapter rather than in the justiciable fundamental rights chapter. Autocratic regimes are always more interested in duties rather than rights.

Similarly, saying that the Constitution was not originally secular or socialist is wrong. These terms were inserted in 1976 to make explicit what was already implicit in the Constitution. In 1973 itself

the Supreme Court considered secularism to be part of the Constitution's basic structure. The Preamble and fundamental rights clearly made us a religion-neutral state. Similarly, our Preamble and directive principles were already tilted in favour of socialism. Article 39 has explicitly said there shall be no concentration of wealth, and national resources are to be distributed so as to subserve the common good. But only two directive principles — cow slaughter and uniform civil code — are debated day in and day out.

Minority rights were another subject on which we were clear from the beginning. In fact, after Partition, there has been significant dilution of those rights. The apex court has repeatedly held that these rights too are part of the basic structure and cannot and must not be tampered with.

We have failed the Constitution

It is not the Constitution which has failed us; we have failed the Constitution. Let us not repeal the Constitution and sound a death knell to the very idea of India. We are proud of our glorious history, philosophy and Hindu religion which gave birth to the very idea of India, which advocate diversity, individualism, liberty, accommodation, tolerance and acceptance. We cannot reject individualism and liberty simply because these are Western concepts. If the whole world is our family, we are entitled to adopt ideas from anywhere.

Faizan Mustafa is Vice-Chancellor, NALSAR University of Law, Hyderabad

The new U.S. Fed Chairman is unlikely to opt for policies that might upset the President's plan

END

Downloaded from crackIAS.com

© **Zuccess App** by crackIAS.com