



Constitutional morality under attack

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The Preamble to the constitution sets out the goals of the Indian republic *inter alia* to include “justice” in not just any abstract sense but in concrete socio-economic terms. In furtherance of the same spirit of “justice”, part 3 and 4 of the constitution enumerates respectively in negative and positive terms the boundaries of “statehood” and the expanse for the operations of the Indian “state”.

Any reader of the Indian constitution would find that the ‘fundamental rights’ under Part 3 of the constitution is couched in negative terms whereas the Directive Principles of State Policy” (“DPSP”) are placed in positive intonations. This clearly establishes an objective fact about Indian constitutionalism: the fundamental rights of an Indian citizen are not bestowed upon or gifted by the constitution, but one is born with them. In this regard, the Indian constitutionalism differs from its US counterpart, in which the entire narrative of ‘rights’ is born from the constitution. It differs from the British constitutionalism in the sense that it marks a break from the continuity of “traditions”/ “conventions” as the yardstick of the morality of the “state”. It is indeed unique that the Indian constitution while giving birth to a new nationhood premised upon the notion of individual and collective rights, does not give up the continuity of the nationhood of an ancient civilisation that India is. The constitution in part 3, mandates the state not to violate the rights which are born to an individual even prior to the birth of the Indian constitutional “statehood” in philosophic history. In part 4, the constitution lays down the direction that the newly born Indian ‘state’ is to move to attain the goals of socio-economic justice for all. The notions of “order” (in the acknowledgement of the continuity of an ancient nationhood of India) along with “progress” (in the acknowledgment of individual rights, agencies and liberties as the motive force to move forward) is replete in parts 3 and 4. While acknowledging the continuity of an ancient nationhood, the constitution makers did not definitely permit any appeasement of unscientific temperament. Several provisions under part 3 are broadly (even ambiguously) worded to allow different generations to fill such spaces with their contemporaneous understanding of freedom (an understanding developed over time through a plethora of judgments involving interpretation of provisions of part 3 of the constitution, like *A.K. Gopalan Vs Union of India*, *Sajjan Singh Vs Union of India*, *I.C Golaknath Vs State of Punjab*, *Keshavananda Bharati Vs Union of India*, *Minerva Mills case*, *Maneka Gandhi Vs Union of India* et al). However, the said “rights jurisprudence” faces an existential threat today with the rise of the aggressive right wing tide both in realpolitik as well as in functioning of all the organs of the Indian state.

Numerous instances in the recent times can be cited to demonstrate the failures on the part of the judiciary to uphold civil liberties of an individual in a uniform manner. While baseless lampooning and often crass name-calling on television is being offered judicial protection in the name of freedom of speech, bona fide activism in Bhima Koregaon case is being left to fend for itself in the face of an organised assault of the state or unabashed siding with majoritarian clerico-fascism (as in the Babri Masjid judgment) in the name of ‘faith’ is being sought to be peddled as ‘justice’. It may be important to note that nowhere in the constitution, the notions of justice include any molycoddling of “the religious sentiments”



of any community, which is presently in vogue with a plethora of writ cases being decided by the apex court (most recently in the matter of the web series “Taandav”). From a reading of the constituent assembly debates, it is clear that the makers of the Indian constitution had intended the spirit of scientific enquiry, a product of both the European Renaissance and Indian reformation movement of the nineteenth century, to prevail in the national life of this nation. Protection of the freedom of speech, expression under part 3 and directions upon the state to promote scientific temperament under part 4 essentially allows and in fact, promotes irreverence towards such “religious sentiments” which comes in the way of scientific temperament, expression and enquiry. However, from the dissenting judgment in *Sabarimala* verdict to the unanimous verdict in *Babri Masjid* case, we see a meltdown of scientificity and objectivity at the altar of a particular majoritarian “faith”, no matter how incompatible the latter is with constitutional morality.

The rise of a ruthless finance capital at the time when the decays in the capitalist structure all across the world is being laid bare by a continuing global recession accentuated by the recent Covid pandemic, perhaps shows the causes behind such a wilting of the rights discourse in India. For the capitalist structure to triumph at a time of its greatest challenge, it requires revitalising shots in the form of lessening of space for dissent. Such curbing of space for dissent needs and creates a pliant workforce which is easy to exploit and aid primitive accumulation. In order to extract such pliancy, scope for critical thinking and collective bargaining needs to be reduced. Bolstering a narrative of majoritarian “faith” without allowing room for any critique of its obsolete practices at once seeks to provide legitimacy for the curbing of critical thinking as well as divides the workforce on the basis of differences in religious “faith”, thereby reducing the power of collective bargaining of the labourers with the capital. The present spate of a pan-India protests against the three laws pertaining to Indian agriculture provides a fresh and much needed challenge to this process of curbing of civil and economic rights under the present NDA regime at the behest of national and transnational monopoly capital.

Indian constitutionalism thus stands at a critical juncture as on date. An effort to safeguard the constitutional morality in the present times, means throwing a challenge to the rule of the finance capital desperate to extract profits from a continuously shrinking Indian market through a further pauperisation of the Indian peasantry and the working class. The Indian constitution with its rights discourse, although by no stretch of imagination, is a working-class project; it could indeed be a tool to garner a political consensus which could be effective in combating the present onslaught of clerico-fascism.

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