

THE PHILOSOPHY OF THE CONSTITUTION

What is meant by philosophy of the constitution?

We have three things in mind.

- i. First, we need to understand the conceptual structure of the constitution. What does this mean? It means that we must ask questions like what are the possible meanings of terms used in the constitution such as 'rights', 'citizenship', 'minority' or 'democracy'?
- ii. Furthermore, we must attempt to work out a coherent vision of society and polity conditional upon an interpretation of the key concepts of the constitution. We must have a better grasp of the set of ideals embedded in the constitution.
- iii. Our final point is that the Indian Constitution must be read in conjunction with the Constituent Assembly Debates in order to refine and raise to a higher theoretical plane, the justification of values embedded in the Constitution. A philosophical treatment of a value is incomplete if a detailed justification for it is not provided. When the framers of the Constitution chose to guide Indian society and polity by a set of values, there must have been a corresponding set of reasons.

A political philosophy approach to the constitution is needed not only to find out the moral content expressed in it and to evaluate its claims but possibly to use it to arbitrate between varying interpretations of the many core values in our polity. It is obvious that many of its ideals are challenged, discussed, debated and contested in different political arenas, in the legislatures, in party forums, in the press, in schools and universities. These ideals are variously interpreted and sometimes wilfully manipulated to suit partisan short term interests.

Constitution as Means of Democratic Transformation

It is widely agreed that one reason for having constitutions is the need to restrict the exercise of power. Modern states are excessively powerful. Even if these institutions were created for our safety and well-being, they can easily turn against us. Experience of state power the world over shows that most states are prone to harming the interests of at least some individuals and groups. If so, we need to draw the rules of the game in such a way that this tendency of states is continuously checked.

Constitutions also provide peaceful, democratic means to bring about social transformation. Moreover, for a hitherto colonised people, constitutions announce and embody the first real exercise of political self-determination.

Nehru understood both these points well. The demand for a Constituent Assembly, he claimed, represented a collective demand for full self-determination because; only a Constituent Assembly of elected representatives of the Indian people had the right to frame India's constitution without external interference. Second, he argued, the Constituent Assembly is not just a body of people or a gathering of able lawyers. Rather, it is a 'nation on the move, throwing away the shell of its past political and possibly social structure, and fashioning for itself a new garment of its own making.' The Indian Constitution was designed to break the shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice.

This approach had the potential of changing the theory of constitutional democracy altogether: according to this approach, constitutions exist not only to limit people in power but to empower those who traditionally have been deprived of it. Constitutions can give vulnerable people the power to achieve collective good.

What is the political philosophy of our constitution?

It is hard to describe this philosophy in one word. It resists any single label because it is liberal, democratic, egalitarian, secular, and federal, open to community values, sensitive to the needs of religious and linguistic minorities as well as historically disadvantaged groups, and committed to building a common national identity.

Individual freedom

The first point to note about the Constitution is its commitment to individual freedom. This commitment did not emerge miraculously out of calm deliberations around a table. Rather, it was the product of continuous intellectual and political activity of well over a century. As early as the beginning of the nineteenth century, Rammohan Roy protested against curtailment of the freedom of the press by the British colonial state. Roy argued that a state responsive to the needs of individuals must provide them the means by which their needs are communicated. Therefore, the state must permit unlimited liberty of publication.

Social Justice

The liberalism of the Indian Constitution differs from this version in two ways. First, it was always linked to social justice. The best example of this is the provision for reservations for Scheduled Castes and Scheduled Tribes in the Constitution. The makers of the Constitution believed that the mere granting of the right to equality was not enough to overcome age-old injustices suffered by these groups or to give real meaning to their right to vote. Special constitutional measures were required to advance their interests. Therefore the constitution makers provided a number of special measures to protect the interests of Scheduled Castes and Scheduled Tribes such as the reservation of seats in legislatures. The Constitution also made it possible for the government to reserve public sector jobs for these groups.

Respect for diversity and minority rights

The Indian Constitution encourages equal respect between communities. This was not easy in our country, first because communities do not always have a relationship of equality; they tend to have hierarchical relationships with one another (as in the case of caste). Second, when these communities do see each other as equals, they also tend to become rivals (as in the case of religious communities).

It would have been very easy to resolve this problem by not recognising communities at all, as most western liberal constitutions do. But this would have been unworkable and undesirable in our country. This is not because Indians are attached to communities more than others. Individuals everywhere also belong to cultural communities and every such community has its own values, traditions, customs and language shared by its

members. For example, individuals in France or Germany belong to a linguistic community and are deeply attached to it. What makes us different is that we have more openly acknowledged the value of communities.

Secularism

Secular states are widely seen as treating religion as only a private matter. That is to say, they refuse to give religion public or official recognition. Though the term 'secular' was not initially mentioned, the Indian Constitution has always been secular. The mainstream, western conception, of secularism means mutual exclusion of state and religion in order to protect values such as individual freedom and citizenship rights of individuals. It is to safeguard the freedom of individuals. States which lend support to organised religions make them more powerful than they already are. When religious organisations begin to control the religious lives of individuals, when they start dictating how they should relate to God or how they should pray, individuals may have the option of turning to the modern state for protecting their religious freedom, but what help would a state offer them if it has already joined hands with these organisations? To protect religious freedom of individuals, therefore, state must not help religious organisations. But at the same time, state should not tell religious organisations how to manage their affairs. That too can thwart religious freedom. The state must, therefore, not hinder religious organisations either.

Universal franchise

Two other core features may also be regarded as achievements. First, it is no mean achievement to commit oneself to universal franchise, specially when there is widespread belief that traditional hierarchies in India are congealed and more or less impossible to eliminate, and when the right to vote has only recently been extended to women and to the working class in stable, Western democracies.

India, had a right to take part in the affairs of the country and be admitted to public office. The Motilal Nehru Report (1928) reaffirms this conception of citizenship, reiterating that every person of either sex who has attained the age of twenty-one is entitled to vote for the House of Representatives or Parliament. Thus from very early on, universal franchise was considered as the most important and legitimate instrument by which the will of the nation was to be properly expressed.

Federalism

Unlike the constitutional symmetry of American federalism, Indian federalism has been constitutionally asymmetric. To meet the specific needs and requirements of some sub-units, it was always part of the original design to have a unique relationship with them or to give them special status. For example, the accession of Jammu and Kashmir to the Indian union was based on a commitment to safeguard its autonomy under Article 370 of the Constitution. This is the only State that is governed by its own constitution. Similarly, under Article 371A, the privilege of special status was also accorded to the North-Eastern State of Nagaland. This Article not only confers validity on preexisting laws within Nagaland, but also protects local identity through restrictions on immigration. Many other States too, are beneficiaries of such special provisions. According to the Indian Constitution, then, there is nothing bad about this differential treatment.

Procedural achievements

All these five core features are what might be called the substantive achievements of the Constitution. However, there were also some procedural achievements.

- i. First, the Indian Constitution reflects a faith in political deliberation. We know that many groups and interests were not adequately represented in the Constituent Assembly. But the debates in the Assembly amply show that the makers of the Constitution wanted to be as inclusive in their approach as possible. This open-ended approach indicates the willingness of people to modify their existing preferences, in short, to justify outcomes by reference not to self-interest but to reasons.
- ii. Second, it reflects a spirit of compromise and accommodation. These words, compromise and accommodation, should not always be seen with disapproval. Not all compromises are bad. If something of value is traded off for mere self-interest, then we naturally have compromised in the bad sense. However, if one value is partially traded off for another value, especially in an open process of free deliberation among equals, then the compromise arrived in this manner can hardly be objected to. We may lament that we could not have everything but to secure a bit of all things important cannot be morally blameworthy.

Criticisms

The criticism that it is unwieldy is based on the assumption that the entire constitution of a country must be found in one compact document. But this is not true even of countries such as the US which do have a compact constitution. The fact is that a country's constitution is to be identified with a compact document and with other written documents with constitutional status. Thus, it is possible to find important constitutional statements and practices outside one compact document. In the case of India, many such details, practices and statements are included in one single document and this has made that document somewhat large in size. Many countries for instance, do not have provisions for election commission or the civil service commission in the document known as constitution.

People must be recognised in their own language or voice, not in the language of the masters. If we look at the Indian Constitution from this dimension, it is indeed unrepresentative because members of the Constituent Assembly were chosen by a restricted franchise, not by universal suffrage. However, if we examine the other dimension, we may not find it altogether lacking in representativeness.

- Many Indians have not only adopted modern ways of thinking, but have made these their own. For them westernisation became a form of protest against the filth in their own tradition. Rammohan Roy started this trend and it is continued to this day by Dalits. Indeed, as early as 1841, it was noticed that the Dalit people of northern India were not afraid to use the newly introduced legal system and bring suits against their landlords.
- When western modernity began to interact with local cultural systems, something like a hybrid culture began to emerge, possibly by creative adaptation, for which a parallel can be found neither in western modernity nor in indigenous tradition. This cluster of newly developed phenomenon forged out of

western modern and indigenous traditional cultural systems have the character of a different, alternative modernity. In non-western societies, different modernities emerged as non-western societies tried to break loose not only from their own past practices but also from the shackles of a particular version of western modernity imposed on them.

Limitations

- i. First, the Indian Constitution has a centralised idea of national unity.
- ii. Second, it appears to have glossed over some important issues of gender justice, particularly within the family.
- iii. Third, it is not clear why in a poor developing country, certain basic socio-economic rights were relegated to the section on Directive Principles rather than made an integral feature of our fundamental rights.