

MINORITIES IN INDIA: CONSTITUTIONAL RIGHTS AND ACTUAL GOVERNANCE RESPONSE TO MR. DHONDY'S PAPER

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The title of the presented paper is quite explicit. It gives a glimpse of both the commendable range and depth covered by the author's inquiry into the sensitive subject which is highly relevant to the present context.

The author is stating only the painful truth when he laments in his opening words of the unfulfilled expectations of the people that, with out noble Constitution in place, "*justice and Equality before Law would prevail, and, caste, class and creed distinctions would be obsolete*".

Be that as it may, while nobody entertains any doubt about the sincerity and concern displayed by the eminent Jurist Mr. Palkhivala in matters related to the working of the Constitution, I am not persuaded to go all the way with the views attributed to him when he stands quoted having stated that: "*In the last fifty years we have a constitution which is 'defaced and defiled'*".

Having lived quite consciously and sensitively as a lawyer in the social milieu obtained in our country through the last several years of the working of the constitution, my belief has remained rather reinforced with the passage of such years that the Constitution has not failed the people but it has been the people who had failed the noble Constitution, time and again, leading to the present state of affairs.

While the persuasions behind the majority party in the present ruling alliance at the Centre sponsoring the review of the Constitution at this point of time necessarily continue to evoke suspicion, the Constitution of the Reviewing Committee with eminent persons of proven integrity and sobriety nominated to it, has gone some way to dispel the well-founded earlier apprehension that the whole exercise has been conceived and put in place in a indecent hurry in order to 'saffronise' the constitution, to make it an instrument of intolerance towards, and oppression of, the minorities and the under-privileged in our country. It will indeed be reassuring to note that the terms of reference issued to the Committee has spelt out that there shall be no tinkering with the "basic features" of our Constitution. Even though the

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“basic features” envisaged only illustratively, not exhaustively by the Supreme Court, has not been exhaustively spelt out, such salients as the system of governance of the country through parliamentary democracy, guaranteed fundamental rights, secular orientation of the state and the eminence of rule of law, are by now well defined as the inalienable and “basic features” contemplated, and as such, beyond tamper. This aspect, I am afraid, has not received the degree of attention of the author, due perhaps to his preoccupation with the many recent episodes reported from the different parts of the country, of the Christian community being singled out to vex and harass.

I am in agreement with the author in his identification of the malaise affecting the social harmony in the country: it is the overt and covert attempts by the fanatic and die-hard elements of the majority community “going about imposing their will on all sane segments of the society and state institutions.” In such attempts these elements have been receiving both active support and tacit encouragement from the government machinery and the political establishments in some of the states who pursue their own agenda with the sole object of securing votes for staying in and holding on to power. The very scheme of such collusion has effectively kept away the normal law enforcement machinery of the states from the scene of crimes and vandalism unleashed with impunity. As the author has rightly put, “good governance and rule of law” have consequently become casualty, spreading a feeling of insecurity among the minorities, especially, the Christians in many of the states. It is true that politicians both in the governments and outside have been conniving with goons to spread the sense of insecurity among the target segments of the community with little or nor fear of retribution or even censure.

There is no denying the author’s observation that the Constitutional guarantee available to Christians has been seriously impaired by a section of fundamentalist Hindu fanatics as evidenced by the many episodes mentioned by the author in the paper. The instance cited wherein the troops of the regular army have had to intervene to protect and significant majority holding liberal views beyond the narrow confines of religion unaffected by such aberrations. As the author has pointed out, the higher judiciary of the country has stood by those noble principles enshrined in the constitution which fact does portend a conscious preference and stern adherence to welcome sanity and sobriety in their attitude to the Christians among the people of this

country. However I do not subscribe to the view found expressed that some form of "constitutional fundamentalism" has afflicted the judiciary on its forward move in pursuit of the objects set in the constitution. What Articles 25 and 26 are set to protect are religious practices which form the essential and integral part of the particular religion as distinct from those other ones which could yield to the secular priorities set by the state for all its citizens. Such a view, I believe, cannot be faulted both in the eyes of law and in view of its expediency as a necessary, and even voluntary restraint for greater good of the populace.

What has been laid down in the Stanislaus case is that "forcible conversion" has tendency to disturb the law and order in the community for obvious reasons and, as such, forcible conversions cannot draw legitimacy from the constitutional guarantee for the right to practice and propagate one's religion. I respectfully, endorse the said view as it has the stamp of both tolerance and a cognition of practical compulsions which mark the realities in the community life. Author has rightly quoted liberally from the decision in the Bommai case which is explicit on the enlightened views of the Apex Court on the matters raised therein. It is no doubt regrettable that the ground realities in states such as Gujarat, Orissa and UP bear testimony to an orchestrated opposition to the free exercise of the rights guaranteed under the relevant provisions of the constitution. The judgement in that case has clearly explained the concept of the secular state it has gone ahead to indicate secularism as one of the basic features of our constitution. I do share the author's concern at the erosion of the values clearly referred to, as set out in the said judgments.

The author's concern at the hurried creation of a Constitution Review Committee by the coalition now in power at the Centre is legitimate and the anxiety in this regard is shared by all right thinking persons. But there appears to be a saving grace in the choice of the person to chair it and the choice of most of its membership and also in the restricted sweep envisaged and laid down of its terms of reference

Author's prescription to pay more attention to what we are teaching the children under schooling in our various educational institutions, is unexceptionable. The welcome attitude of tolerance, almost amounting to a practiced indifference to what religion the other may be following, in effect amounting to a "*sarva dharma samabhava*" observed these days amongst the

children who come out of the educational institutions in the urban environs do point to the relevance of the author's own prescription in this regard.

No doubt, there is cause for serious concern at the recent untoward developments indicating an increased intolerance towards the members of Christian community; but all is certainly not lost. There are positive strokes visible in the direction of repair and restoration of broken bonds. The highest judiciary's interpretation of the relevant provisions of the constitution and the pressure exerted from the vast majority of saner elements among the public do hold out promises for a yearning and effort towards the goal of tolerance and social harmony in the days to come. Eternal vigilance from an enlightened people indeed will be the need of the present as well as in the days to come to guard against discrimination and intolerance.