

Comment

The Culture of Constitutionalism

Syed Jaffar Ahmed*

Where as a constitution embodies the terms of the social contract which the people of a country become a part of, constitutionalism represents the manner in which constitution is implemented, accepted and responded to, and made use of in the society. Moreover, while the merit of a constitution lies in how appropriately it represents and addresses the needs of the society, the measure of the success of constitutionalism is the level of its permeation in the culture and lifestyle of the people.

As far as Pakistan is concerned, the country has had a very chequered constitutional history. Apart from interim and provisional constitutional arrangements, Pakistan experienced three constitutions adopted in 1956, 1962 and 1973. Of these, the earlier two were short lived, the last has survived despite being suspended and put in abeyance for significant periods of time. As against the earlier two, the last one was made by elected representatives of the people and was adopted unanimously. These merits of the constitution enabled it to be backed by the people and the political class during times when it was tried to be mutilated. Its weaknesses were also apparent even to its most adherent supporters. The 18th Amendment in the constitution introduced in 2010, addressed many of these weaknesses and made it more democratic and devolved.

Constitutionalism in Pakistan, however, does not present a very good picture. The very fact that constitutions were abrogated or suspended four times in the country's history show that the fundamental document was not accredited the sanctity that it deserved. Moreover, the fact that the courts also endorsed the military take-overs, proves that the basis of constitutionalism is weak.

The culture of constitutionalism makes it imperative that certain values should be there in the society and should demonstrate themselves in everyday life, both individual and collective. The constitution never

* Prof. Dr Syed Jaffar Ahmed, Director, Pakistan Study Centre, University of Karachi, Karachi.

gets implemented by itself even if it provides the best of provisions. It is the state and society who implement it. The latter does so through its representatives, ensuring that essential laws are made and the required institutional framework is put in place in order to bring to life the spirit inherent in the constitutional provisions. In Pakistan, a number of articles of the constitution still need proper legislation and institutional mechanism for their implementation. This is all the more important for the articles pertaining to the fundamental rights.

For the culture of constitutionalism rule of law is essential. Unfortunately in our society laws are supposed to be meant for the less privileged; whereas the influential people, both in social and political domains, appear to be above law. Similarly, constitutionalism requires that all citizens irrespective of their religion, ethnicity, gender, or whatever identity they hold, should be treated on equal basis by the laws and policies of the country. In this area our situation is quite unsatisfactory. All sorts of discriminations are rampant in the country and despite all voices of agitation and resistance no meaningful change has occurred so far. In this respect, it would be unfair if whatever has been done so far by the successive governments, after the removal of the last military ruler in 2008, is disregarded with a stroke of pen. Useful steps have been taken but they are insufficient when compared with what was required. Our legislatures need to be highly functional with very smart committee systems working round the clock and producing the best solutions to the problems whose severity is increasing with the passage of time. The issues, whose solution cannot be postponed any more, are numerous. There are problems of law and order and the withering away of the state's writ. All the provinces share these problems, but Khyber Pakhtunkhwa, Balochistan and the city of Karachi are all the more prominent in this respect. There is need to get into the causes of the failure of the state machinery and to see how it can be revitalized. In other words, this is also the crisis of governance. We must know that, to breathe, constitutionalism needs governance in the society and an effective role of the state.

For the promotion of constitutionalism media's role is vital. It can and should, on the one hand, unearth the incidents and practices of the breach of laws, and on the other, should promote awareness about what the constitution ensures. It can also promote constitutionalism by highlighting the success stories and bringing to limelight the individuals, institutions and practices who provide examples of adherence to constitution and rule of law. Unfortunately, our media has not been able to depict an objective picture of the state of affairs. Its concern for better rating compels it to cover negative aspects and examples, and it does so

in such a rush that it leaves almost no time to look into whatever positive things are around. This one-sided portrayal promotes cynicism which instead of preparing one for a meaningful change, abidance actually demoralizes him. A balanced picture with good examples of law abidance can encourage others to do the same.

The civil society has lots of responsibilities with respect to the promotion of constitutionalism in the country. In all democratic societies, the civil society does what the state is unable to do or what is outside its direct ambit. The civil society gets its energy and vigor from the constitution, it then permeates that into the wider society. Our civil society has by and large remained alive to its responsibilities. Today, whatever awareness we have about issues relating to women, the minorities and other under-privileged sections of the society, owe a lot to the work of civil society organizations. A number of good laws were made under the pressure of the civil society. Quite a few policies favourable to the under-privileged were initiated at its behest. This is, however, not to say, that everything within the world of civil society organizations are above criticism and scrutiny. Numerous loopholes, inconsistencies, lack of coordination with others, low standards of professionalism, and rushing from one project to another without a critical evaluation of the previous one, are some of their more noticeable weaknesses. By overcoming such shortcomings the civil society can play a more vibrant role in promoting constitutionalism.

Finally, constitutionalism can be realized on a more firm and long term basis, if it is cultivated in the younger generation through a well thought-out curriculum and creative co-curricular activities. In this respect it is essential to include chapters on constitution in the courses of different classes, particularly, the chapters on 'Fundamental Rights' and the 'Principles of Policy' should be included in the courses. For making this whole exercise meaningful, it is important to create constitutional awareness among the teachers; their methods of teaching and pedagogy should also be brought in line with what a better dissemination of constitutionalism requires. Moreover, teacher's own conduct should be a reflection of respect for law, indiscrimination and what is required of a responsible citizen. Our teachers should be made to realize that examples and conduct speak louder than the words. Constitutionalism has its nursery in the schools.