

Responsible Citizenship and Good Governance

N. R. Madhava Menon

Challenges Today

What are the challenges that India is facing today? What can responsible citizens do to help the country overcome those challenges? What are the institutional mechanisms available to organize citizen action towards realizing the constitutional goals? I propose to address these questions from the perspective of the Indian Constitution that, we, the people of India have adopted, enacted and given to ourselves sixty years ago on 26th November 1949.

Challenges are many and varied. Some of our own making and some imposed on us by external forces and developments. Among those of our making are, corruption, religious fundamentalism, social exclusion, discrimination and inequality, violence and disregard of rule of law. There may be other challenges too, big and small, which plague our nation and society in different ways and degrees. Whatever be the causes for these problems, the cumulative effect has been the weakening of the constitutional goals of –

*“Justice, social, economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of Status and of opportunity;
Fraternity assuring the dignity of the individual
And the unity and integrity of the Nation”*

Role of the Constitution

Having committed ourselves to democracy, rule of law and human rights for organizing governance and addressing the aspirations of the people, the legitimate ways for resolving the problems have to be found within the framework of the Indian Constitution. The Constitution is not just a law or an instrument of governance. It is a social and moral document embodying the manifesto or vision of one billion Indians, diverse in several respects but united in terms of the social contract to build a Sovereign, Socialist, Secular and Democratic Republic. The philosophy of the constitution, its role in reconstructing Indian society and the relative roles and responsibilities of citizens and the State are inadequately understood by those in charge of governance and the people for whom the system is designed. The first step towards addressing the challenges we face today is to re-visit the original social contract and the preambulatory promises made to form the Republic and look at the design of governance critically. Constitutionalism is imperative for democratic governance in a plural society under a federal

polity. The impact of the freedom movement is not felt by the present generation of Indians and they need to be educated about the elements of the contract and the responsibilities it imposes on them if they were to feel national identity and be involved in nation building activities. This is what I call education for responsible citizenship.

Citizenship

What makes a person a citizen? What is the concept of citizenship and what does it imply? Why is citizenship important for good governance in a democracy? What are the rights and duties in relation to citizenship under the Indian Constitution? What happens if citizens behave irresponsibly against the basic premises and values of the Constitution? Can citizenship education help restore the balance between State and civil society thus, establishing good governance?

To constitute a State, a community of people, citizens as well as aliens, is necessary. The term “citizenship” is used to describe the state of being permanent inhabitants of a State whose rights and duties vis-à-vis the state and community are different from those of persons who are not citizens (aliens). In other words, citizenship defines membership of a political community called state. It is a status under law, which has several privileges and advantages. Some of the guaranteed fundamental rights are enjoyable only by citizens (E.g. Articles 15, 16, 19, 29 and 30). Again, citizens alone have the right to hold high political offices in the state or exercise franchise or contest in political elections. Citizenship also carries several obligations some of which are declared Fundamental Duties (Article 51 A) under the Constitution. It is a question of owing allegiance to the state, its integrity and its constitution.

Prior to the adoption of the Constitution, there was no concept of citizenship. Residents of India were British subjects. Others in princely states were subjects of respective rulers who were ‘protected’ by the British, a status not far different from that of slaves.

Nationality and citizenship are sometimes used as interchangeable terms though they are conceptually distinguishable. While citizenship defines relationship between an individual and the State, nationality is used to describe the status of a person internationally. All nationals are not necessarily citizens. We have Indian nationals who are foreign citizens. International law uses the status of nationality; municipal law deals with citizenship.

At the time of the partition of the country, some people were living in India, some nationals were abroad and some others came from Pakistan. The problem of citizenship was resolved by its conferment through three different ways normally by domicile, by migration and by registration.

Article 5 explains citizenship by domicile. It says that at the time of Commencement of the Constitution, every person who was living in the territory of India, was born in Indian, had one parent who was born in India, or who must have been ordinarily resident in India for not less than five years immediately preceding the commencement of the Constitution would be a citizen of India. "Domicile" is residence coupled with intention to live permanently at one place. There is no concept of state-wise domicile within the territory of India. Everyone is a domicile of India. Though the Constitution of India is federal and recognizes dual polity of Union and States, it does not recognize dual citizenship (like USA). Supreme Court rejected the notion of state domicile. (Pradeep Jain V. Union of India, AIR 1984 S.C. 1420).

Articles 6 and 7 deal with citizenship by migration; migration here refers to migration between 1st March 1947 and 26th January 1950. It does not extend to migration after that date which would be covered by the Citizenship Act, 1955. Article 8 deals with the right of citizenship of persons of Indian origin, residing outside undivided India at the commencement of the Constitution. They could register themselves as citizens of India by making an application to the Consular Representative of India. Article 9 declares that a person who has voluntarily acquired the citizenship of a foreign state shall not be deemed to be a citizen of India.

Citizenship of India after the commencement of the Constitution is a matter dealt with under the Citizenship Act, 1955. The Act recognizes the following modes of acquiring Indian citizenship:

(a) Citizenship by birth - As the law stands today (Section 3 of Citizenship Act) a person born in India shall be a citizen of India by birth if at the time of his birth both his parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant.

(b) Citizenship by descent (Section 4) - A person born outside India on or after 1950 shall be a citizen of India by descent if, at the time of his birth, either of his parents is a citizen of India.

(c) Citizenship by registration (Section 5) - The Government of India has unrestricted power under Section 14 of the Citizenship Act to refuse citizenship without assigning any reasons whatsoever and a foreign national has no legal right to claim Indian citizenship. He cannot claim equal rights under Article 14 with that of the Indian nationals (AIR 1996 S.C. 1234; AIR 1997 Mad 366)

(d) Citizenship by naturalization (Section 6) - It is the act by which rights of citizenship are conferred by a state upon a person who was before an alien to that state.

(e) Citizenship by incorporation of territory (Section 7).

Citizenship of persons of Indian origin who had come to Assam before 1st January 1966 is determined under Section 6-A introduced after the Assam Accord of 1985.

Dual citizenship to “Persons of Indian Origin” residing in Sixteen Countries was accommodated by the Citizenship (Amendment) Act, 2003. As per its provisions, the PIOs who seek dual citizenship would be allowed free movement without visas and be able to own properties, build or invest directly in projects in the country. However, they will not have any political rights, will not be allowed to vote or run for office or take jobs in defense services.

A company or a corporation cannot be a citizen of India, and therefore can not claim such of the fundamental rights as have been conferred upon the citizens only (AIR 1963 S.C. 1811). A company may have nationality, which is determined, by the place of its incorporation. This decision did result in some anomalies. So long as individuals are carrying on their business individually, Article 19(1) (g) protects them, but, as soon as they associate and register themselves as a company, they are denied that protection. However, the fundamental rights of the shareholders as citizens are not lost when they associate to form a company (R.C. Cooper V. Union of India AIR 1970 S.C. 564).

Responsible Citizenry

A responsible citizen is one who consciously participates in the common destiny with fellow citizens respecting the dignity of each individual and the unity of the Nation. He is one who is prepared to limit his personal interests, if needed, in the larger interest of the community. He must voluntarily abide by the Constitutional duties and agree to obey the law and legal processes in his relations with the State and other citizens.

If we disregard the rule of law when it suits us, how can we complain when somebody else disobeys laws that hurt our interests? One can look at strikes and boycotts by lawyers, doctors, teachers and service providers and ask oneself, whether it is justifiable for responsible citizens - particularly in the professional world, to resort to such practices whatever the grievances.

Why is it that in the General Elections the percentage of voting is lesser than 50 per cent? Why do we vote on the basis of caste and religion without considering merits? Why do we elect people with criminal records so that they occupy positions of power? The answer lies in the lack of citizenship - even in the so - called educated class in India.

Corruption

All of us speak against corruption, the menace that eats into the vitals of our democracy and public life. But how many of us come forward to assist the anti-corruption agencies, of which there are many in India, to put down the evil? How many are prepared to ostracize corrupt elements? We do understand that neither laws nor governments by themselves can do much to curb corruption unless citizens individually and collectively act against it. Lack of responsible citizenship is contributing to the growth of corruption.

Diversity

When we look at the multifaceted web of manifold identities to which we belong and which makes this country unique, we are proud to be Indian citizens. We acclaim the unity in diversity that prevails. We celebrate all religious festivals and share a common brotherhood on all festive occasions. Yet at the slightest provocation we take to arms and kill our brethren mercilessly, as if we are at war with other communities. What has happened to India's secular spirit and indomitable tolerance that made this nation a microcosm of the world with all its beauty and diversity?

Do we not cherish the ideals of equality and dignity, which are the constitutionally guaranteed rights of every individual? Can we not understand that to achieve equality in an unequal society, we need to take affirmative action in favor of disadvantaged sections and change our inherited attitudes based on caste, sex and race. If discrimination and inequality were to continue, would it be possible for democracy and social solidarity to be maintained? Is it not the disregard of good citizenship, which leads us to our own destruction in ways we refuse to recognize?

A Bond

Without being romantic or philosophical, one can safely argue that the Constitution is the best guarantee for the unity and progress of our Republic. Without it we are an aggregate of many nations and identities constantly in fear and enmity and open to easy exploitation by invaders and enemy countries. It is the common citizenship which unites us under a modern Constitution for our tryst with destiny which we celebrate every Republic Day.

Thus understood, citizenship is a bond, much more than the one developed out of contract, arising from birth and regulated by law. This bond of Indian citizenship governs the life of one-sixth of the human race throughout their existence in Planet Earth. Though the bond is dormant and unnoticed in normal times, it becomes critical and decisive in times of emergency and need.

If we become aware of it and behave accordingly, responsible citizenship will enable this country to achieve its rightful place in the comity of nations. To make everyone aware of this reality, we need citizenship education particularly for youth who are future leaders of this country. Let us at least devote a week every year, as IIM Indore does, to celebrate our Constitution and understand the implications of responsible citizenship.

Author's Profile

N. R. Madhava Menon

The author was the former Director of National Law School of India University, the first Director of the National Judicial Academy of Bhopal and the Vice Chancellor of West Bengal National University of Juridical Sciences. He has been instrumental in shaping the legal education policies in his career of five decades. At present he is the Member, Commission on Centre-State Relations, New Delhi.