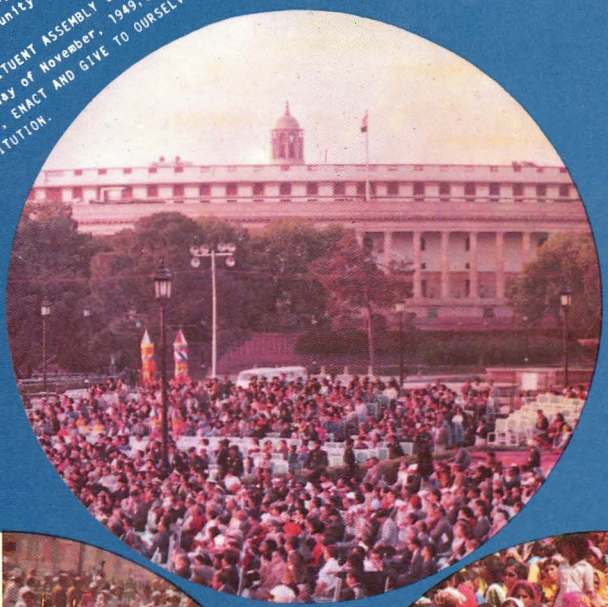
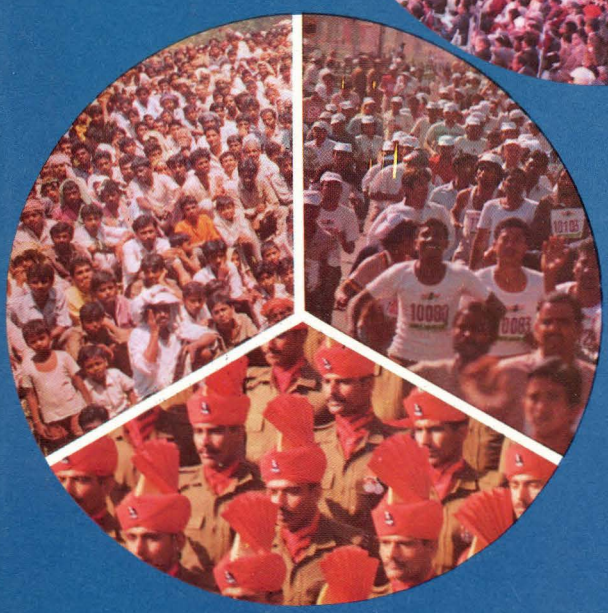
CONSTITUTION OF INDIA

In Precept and Practice

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.





More than four decades have passed since we adopted our Constitution. While our Constitution has enabled us to successfully cope with many a challenge, some lacunae have also become apparent in its working, more so in the face of the growing needs and requirements of our people and the rapidly changing socio-economic and political scenario, both national and international.

Although the need for a review of the Constitution has been felt time and again from the very beginning, the debate seems to have become more pronounced in the recent past, often encompassing it its fold almost the entire gamut of structures and relationships envisaged in the basic law of the land.

The purpose of the present volume is to facilitate a wide-ranging national debate and discussion on a subject of such vital concern to all of us. This publication is a conscious effort to bring together the views of a number of distinguished contributors with diverse persuasions and yet sharing a common interest in improving the system.

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Editor

C.K. Jain

Secretary-General, Lok Sabha

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अध्यक्ष लोक सभा
SPEAKER LOK SABHA

06 Nov 1992

FOREWORD

The Constitution of India, adopted 42 years ago, in an atmosphere surcharged with joy at the birth of a new democratic republic, carries the distinct imprint of men of vast and lofty vision and great juridical prudence. For a country of sub-continental dimensions, and for a vast and variegated national community embracing a multiplicity of sub-national identities based on race, religion, region, language and culture, the framing of the Constitution was indeed a gigantic exercise.

The Constitution which the people of India gave unto themselves is a unique document. It reflects, in a manner perhaps very few other Constitutions do, the values which we, as a people, have cherished through the ages and, more particularly the beliefs, faiths and aspirations, which we had come to imbibe during the years of our national struggle for freedom. It is indeed a testament of faith and blueprint for future of an ancient people reborn as a modern State.

A Constitution, however nobly conceived, comes alive and acquires its fibres of strength only in the constructive tensions of practical politics. And the years since Independence in India have indeed been a saga of such a crowded history that almost every provision of the Constitution has come to be tested against the reality of concrete situations in our national life.

In the light of the working of the Constitution during the last four decades, a debate has been going on for some time and at different fora as to whether the Constitution has really achieved the objectives for which it was designed or has it failed us. What I feel is that the Constitution has been fairly workable during all these years and it has achieved a fair degree of success in realising our national objectives and meeting popular aspirations. However, much more needs to be done to effect reforms in various spheres of national life such as electoral system; making fundamental rights meaningful and really enjoyable; providing for optimum utilisation of natural and human resources; devolution of more powers to local bodies and ensuring effectively, accountability of the Executive to the Legislature and through it to the people at large. We can also think of according

अध्यक्ष लोक सभा
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constitutional status to bodies like the Planning Commission, National Development Council, etc.

With a view to articulating and putting at one place various opinions on the issue emanating from different quarters, the Lok Sabha Secretariat has brought out the present volume which contains the thoughts and reactions of eminent Parliamentarians, Jurists, Journalists, Scholars, Academicians and other luminaries.

I congratulate the Lok Sabha Secretariat for bringing out the volume in its present form. I am sure that the work would be found useful by all sections of readers, and would provide a clearer understanding and better appraisal of the working of our Constitution during the last four decades. This endeavour could also set the pace and be a catalyst for a constructive national debate on the subject.

New Delhi,

06 Nov 1992

(Shivraj V. Patil)

PREFACE

The Constitution of a nation is a living organism and not a mere parchment of dry papers. Being the basic law of the land, it is the institutionalisation and embodiment of the cherished ideals and aspirations of the nation as well as the goals of political system. And the Constitution of India is no exception. It is indeed a unique document in itself.

As a charter for social revolution, it reflects the soul of India, the personality of a timeless society, her distinct national ethos and the values and ideals we as a people have held high down the ages. Embodying the hopes, faiths and beliefs that we have come to acquire through the long years of our struggle for freedom, it is a product not of a single mind but of the collective wisdom of the best of minds fully conscious of the enormity of the task entrusted to them.

A period of more than four decades has passed since we adopted our Constitution and gave it unto ourselves. While our Constitution has enabled us to successfully cope with many a challenge, some lacunae have also become apparent in its working, more so in the face of the growing needs and requirements of our people and the rapidly changing socio-economic and political scenario, both national and international.

Even our founding fathers were aware that the Constitution, which they had so painstakingly drafted, may not be able to serve the people for all times to come and, therefore, made it open to amendments. Pandit Nehru had observed :

> "While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital, organic people... In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through a

very swift period of transition, what we may do today may not be wholly applicable tomorrow."

Although the need for a review of the Constitution has been felt time and again from the very beginning, the debate seems to have become more pronounced in the recent past, often encompassing in its fold almost the entire gamut of structures and relationships envisaged in the basic law of the land.

The purpose of the present volume is to facilitate a wide-ranging national debate and discussion on a subject of such vital concern to all of us. This Publication is a conscious effort on our part to bring together the views of a number of distinguished contributors with diverse persuations and yet sharing a common interest in improving the system.

Thus we have, as our honoured contributors, the Former President, Shri R. Venkataraman, Speaker Lok Sabha, Shri Shivraj V. Patil, Leader of Opposition in Lok Sabha, Shri L.K. Advani, several present as well as former Union Ministers, Governors, Chief Ministers, Diplomates, Presiding Officers of State Legislatures in India, members of Parliament and State Legislatures, distinguished jurists and noted academicians.

The work opens with an illuminating introductory write-up from the pen of Hon'ble Speaker, Shri Shivraj V. Patil, wherein he has dealt at length with the varied aspects of the working of the Constitution and the areas which deserve particular attention in an attempt to have a fresh look. The other contributions have been sought to be arranged into different parts of the book on the basis of the subject matter of the article purely for the purpose of practical convenience although we are conscious that given the complex nature of the subject and the varied treatment given to it by different authors, such classification is not always feasible and some overlapping cannot altogether be avoided. All such articles that do not appropriately fit in our classification or which cover a number of diverse aspects, have been placed in the part titled "Need for Review of the Constitution."

In the penultimate part of the Book, we have included brief synopsis of the proceedings of two important Seminars on the subject organised recently. The Seminar on 'Constitution of India in Precept and Practice' was organised in Parliament House Annexe, New Delhi on 25-26 April,

1992, under the joint auspices of the Parliamentarians Group for Dr. B.R. Ambedkar Centenary Celebrations, the Indian Parliamentary Group and the Bureau of Parliamentary Studies and Training of the Lok Sabha Secretariat. The Seminar that was inaugurated by Hon'ble Speaker, Lok Sabha, Shri Shivraj V. Patil and attended to by the Leader of the Opposition in Lok Sabha, Shri L.K. Advani, several Union Ministers, Presiding Officers of State and Union territory Legislatures, Parliamentarians, jurists, constitutional experts, political scientists, academicians and journalists, debated at length the varied aspects of the working of the Constitution in the light of the experience of the last forty years. The other Seminar on "Indian Constitution : A Case for Review" was held under the aegis of the Delhi Metropolitan Council and the Bureau of Legislative Studies at Old Secretariat and was also inaugurated by Hon'ble Speaker, Shri Shivraj V. Patil.

In the ultimate part, we have given a Comparative Statement of Articles of the Constitution of India with the corresponding clauses in the Draft Constitution and the dates on which these were discussed and approved. In the same part, we have also given a gist of all the Amendments to the Constitution that have taken place so far, together with some basic information relating to each one of them. These, I hope, would enhance the reference value of the work.

For our eminent contributors, it has been purely a labour of love. I am grateful to each one of them for having responded to our request and making our venture a success. I would, however, like to emphasise that the views expressed in the articles are those of the individual authors and the Lok Sabha Secretariat does not assume any responsibility either for the opinions expressed by the authors or for the facts cited by them.

I am deeply indebted to Hon'ble Speaker, Shri Shivraj V. Patil, for providing a "Foreword" to this volume, besides contributing the introductory article. His keen interest and benign guidance have been a constant source of inspiration and encouragement to us in the preparation of this volume.

I would also like to compliment the officers and the staff of the Secretariat, especially Shri G.C. Malhotra, Director, Shri S.K. Sharma, Joint Director, Shri P.K. Misra, Assistant Director and Ms. Samita Bhowmick, Research Assistant of the LARRDIS (Library, Reference, Re-

search, Documentation and Information Service) who have worked hard and assisted me in accomplishing this task.

Lastly, I would like to thank Messers. C.B.S. Publishers and Distributors for ensuring quality production within a short time inspite of manifold constraints.

I hope the volume will be read with interest both by the general public as well as scholars interested in the study of supreme constitutional values and help in achieving the objective of forming an informed citizenry which is a condition essential for successful functioning of democracy.

14 November, 1992 **C.K. Jain**

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Speaker, Lok Sabha

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Leader of Opposition in Lok Sabha

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CONTENTS

Constituent Assembly met for the first time in New Delhi on 9 December, 1946. On 11 December, 1946, the Assembly elected Dr. Rajendra Prasad as its President.

The total membership of the Constituent Assembly was 389.

Among the members of the Constituent Assembly were : the Presidents of the Indian National Congress, All India Muslim League, All India Hindu Mahasabha, All India Depressed Classes League, All India Women's Conference, All India Landholders Association, Leader of All India Scheduled Castes Federation and President-In-Chief of the Anglo-Indian Association.

On 13 December 1946, Jawaharlal Nehru moved the Objectives Resolution on the Assembly's aims and objects. The Resolution *inter-alia* envisaged the Indian Union as an Independent Sovereign Republic based on the will of the people and comprising autonomous units with residuary powers, with the ideals of social, political and economic justice, equality of opportunity and freedom of expression, belief and faith guaranteed to all sections of the people and adequate safeguard provided for minorities and backward communities and areas. Thus, it gave to the Assembly its guiding principles and the philosophy that was to permeate its task of Constitution making.

Late in the evening of 14 August 1947, the Constituent Assembly met in New Delhi and on the stroke of midnight, tookover as the Legislative Assembly of an Independent India. Next morning, Mountbatten was sworn in as Governor General of India.

On 29 August 1947,the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar to prepare a draft Constitution of India.

The Constitution was adopted on 26 November, 1949 and came into force on 26 January, 1950. On that day Constituent Assembly ceased to exist, transforming itself into the provisional Parliament of India until the constitution of a new Parliament under adult suffrage in 1952.

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Dr. Rajendra Prasad, President of the Constituent Assembly, addressing the Independence Day Session on 15 August 1947.

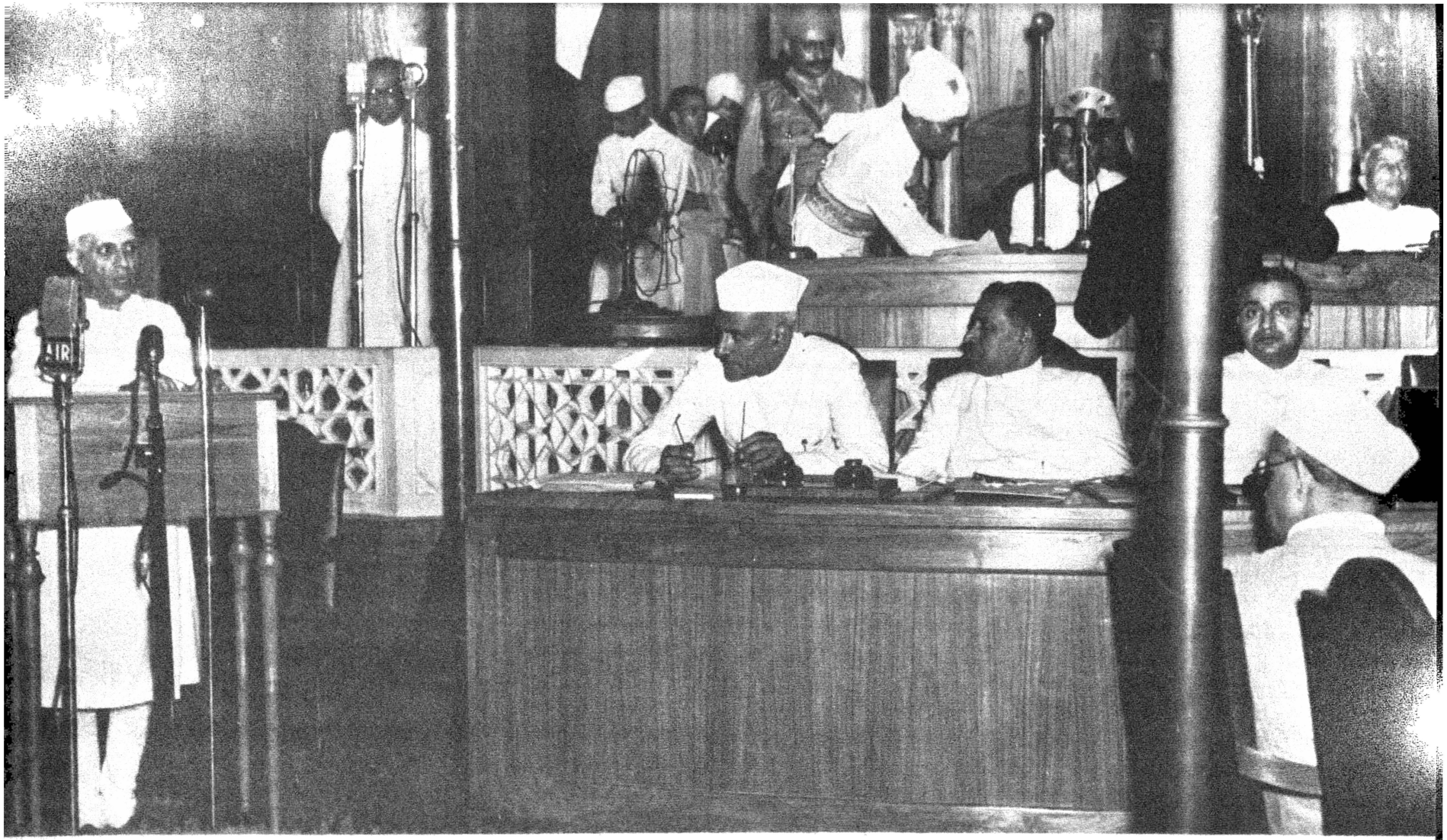
Tryst With Destiny

Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity...

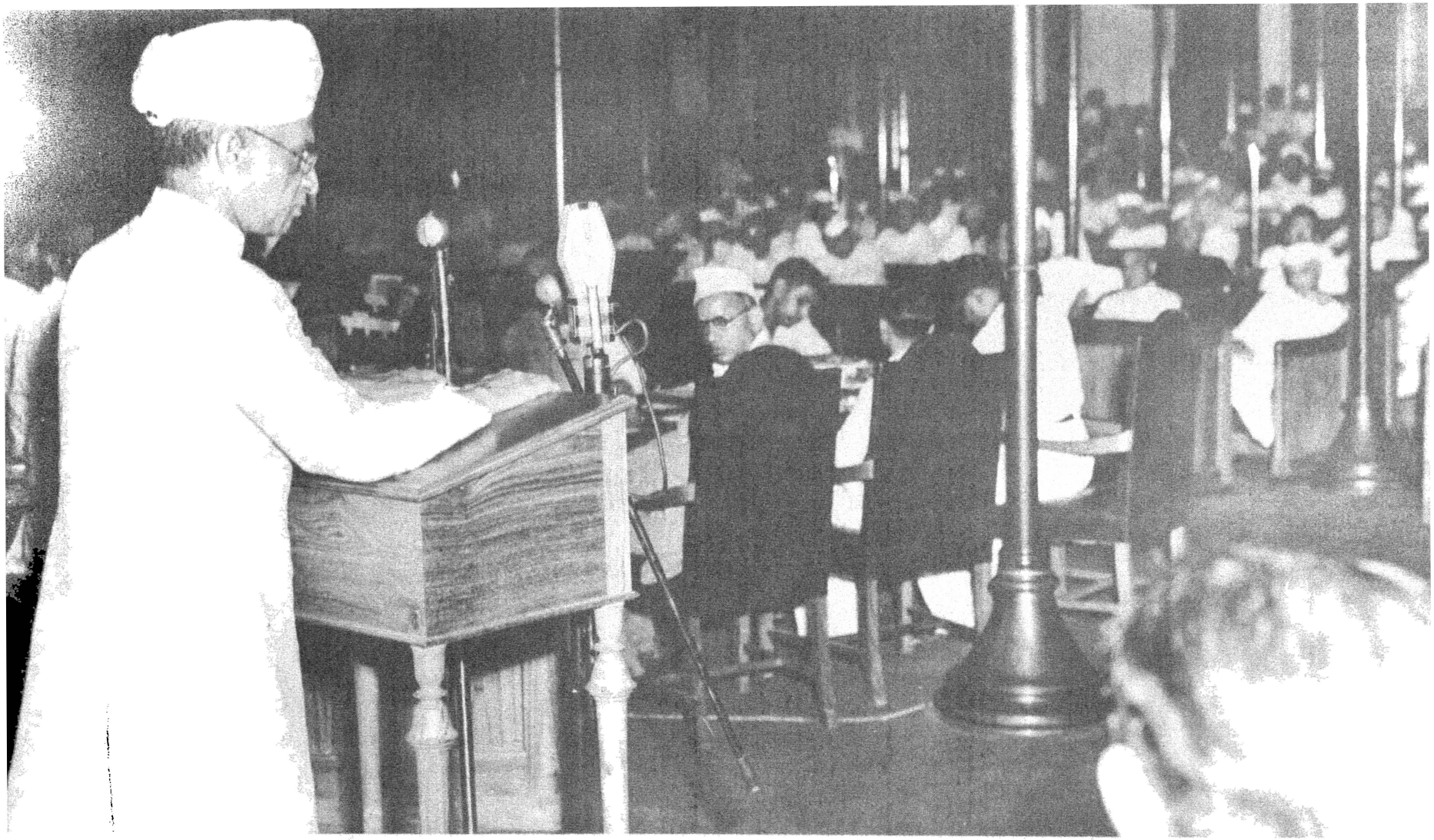
Freedom and power bring responsibility. That responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India. Before the birth of freedom we have endured all the pains of labour and our hearts are heavy with the memory of this sorrow. Some of those pains continue even now. Nevertheless the past is over and it is the future that beckons to us now...

To the people of India, whose representatives we are, we make appeal, to join us with faith and confidence in this great adventure.

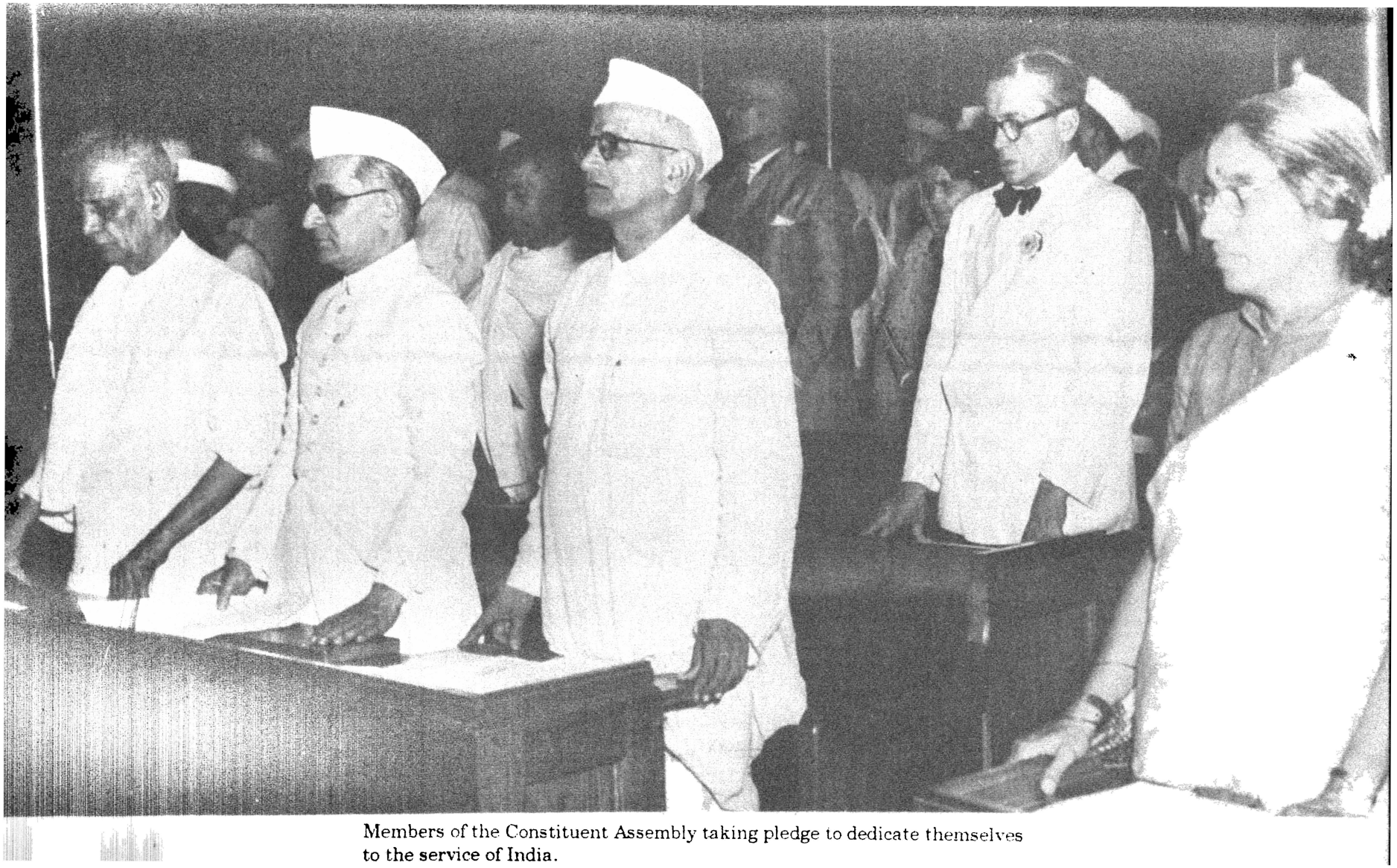
Pandit Jawaharlal Nehru in Constituent Assembly
on 14/15 Aug. 1947.



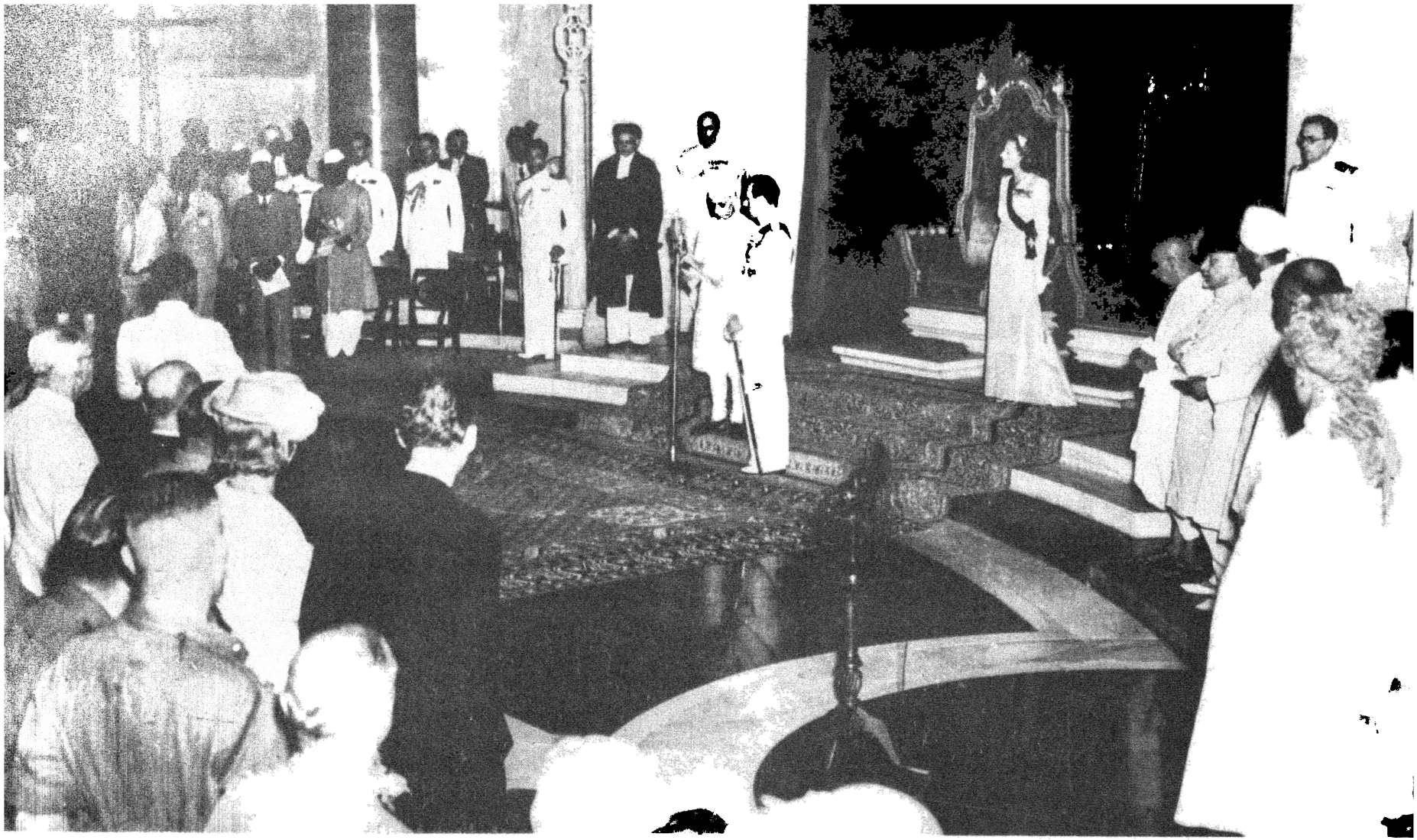
Pandit Jawaharlal Nehru addressing the mid-night Session of the Constituent Assembly of India on 14/15 August 1947.



Dr. S. Radhakrishnan Addressing the mid-night session of the Constituent Assembly on 15 August 1947.

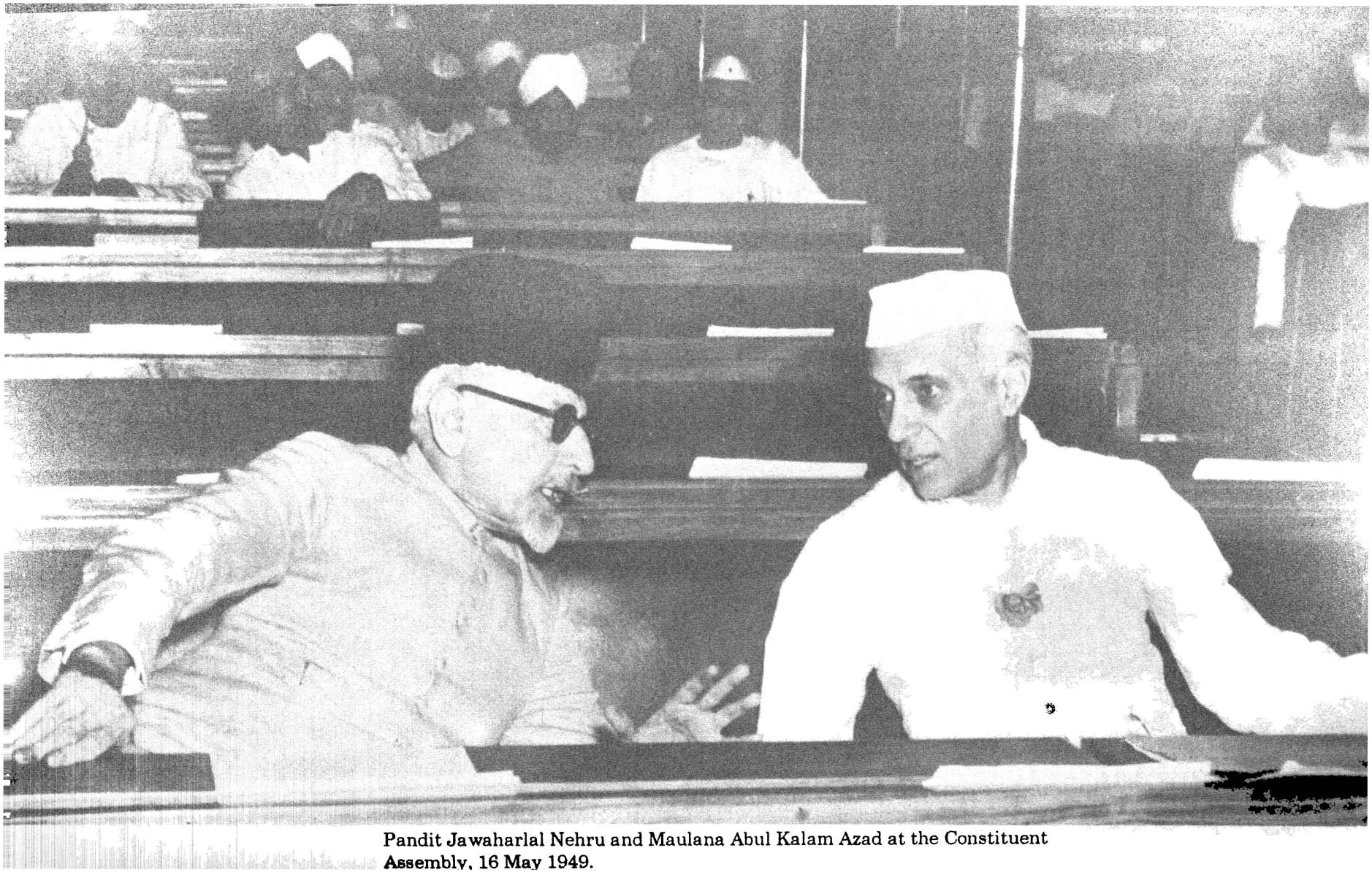


Members of the Constituent Assembly taking pledge to dedicate themselves to the service of India.



Jawaharlal Nehru taking oath of office as Prime Minister of Independent India, 15 August 1947.

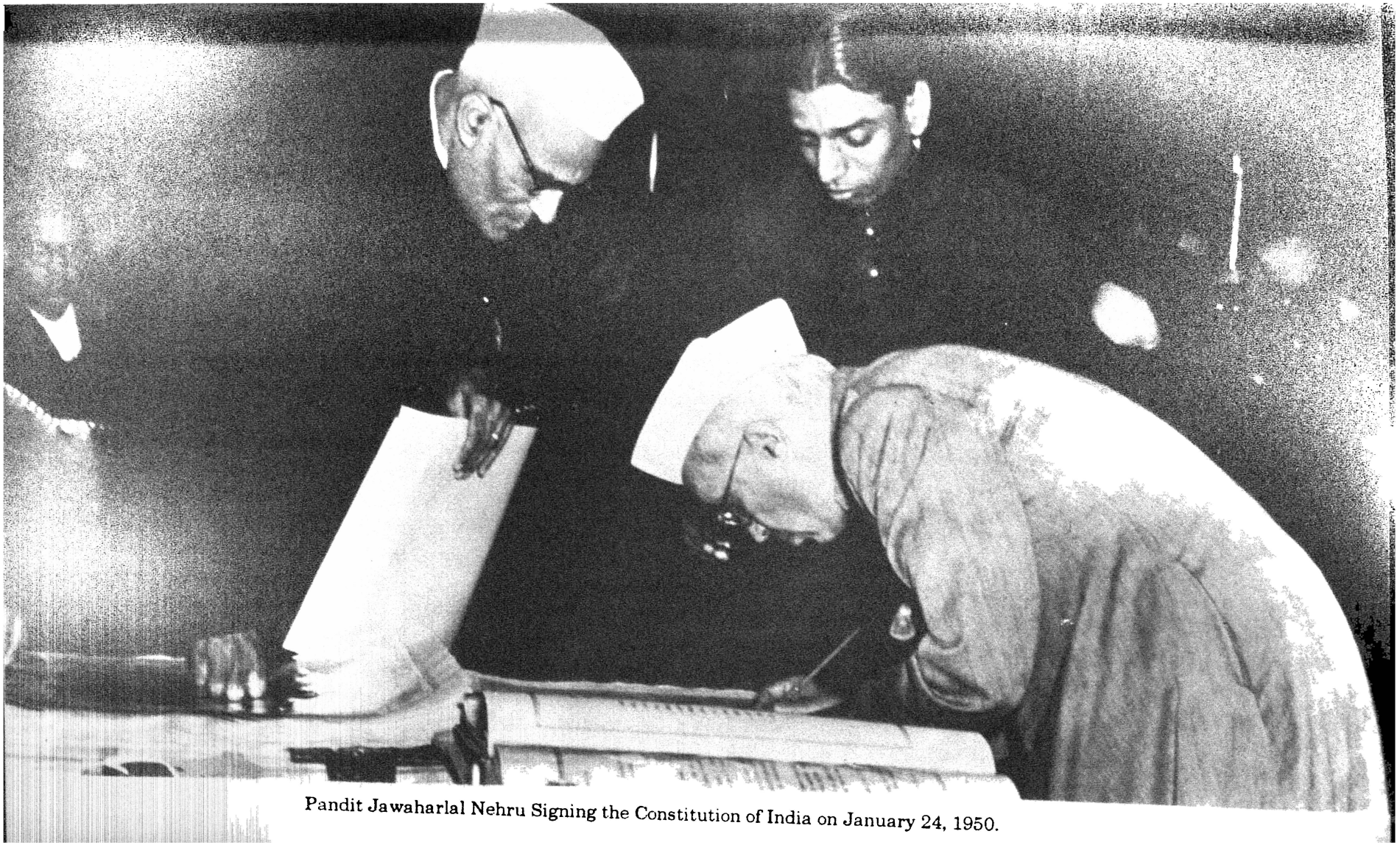
Dr. B.R. Ambedkar at the Constituent Assembly, 16 May 1949.



Pandit Jawaharlal Nehru and Maulana Abul Kalam Azad at the Constituent Assembly, 16 May 1949.

Sardar Vallabhbhai Patel, Deputy Prime Minister seen alongwith other Members of the Constituent Assembly at its Final Session held on 24 January 1950.

Prime Minister Jawaharlal Nehru congratulating Dr. Rajendra Prasad on passing of the new Constitution 1950.



Pandit Jawaharlal Nehru Signing the Constitution of India on January 24, 1950.

Members of the Union Cabinet signing the Constitution seen in the Picture are - Rajkumari Amrit Kaur, Dr. John Mathai, Sardar Vallabhabhai Patel and others 1950.

Part I
Introduction

Constitution of India In Precept and Practice

Shivraj V. Patil

The Indian Constitution was drafted and adopted by the representatives of the People. It enshrines the aspirations of the citizens of India.

The Preamble indicates that the country is socialist, secular, sovereign, democratic republic. The word "Socialist" and "Secular" were not in the original Constitution and were added later on. The country has accepted the principles of mixed economy. At times, it appears to be inclined more towards socialism and at other times against socialism. It appears to be following a pragmatic policy.

The country needs to be secular. It means that it should respect all religions alike and should not act as if it is a theocratic State. It should not allow the majority or the minority to have the upper hand. Justice should be done rightly to one and all.

The Preamble does not refer to the technological, scientific, cultural and spiritual aspects of the lives of the people. Some countries in the world have included these concepts in their Constitutions. They make references to the environment also. To make it more comprehensive, it would be useful to have them inducted into the Preamble and other parts of the Constitution.

The Constitution is very vivid and forthright in giving fundamental rights to the Indian citizens. They are enforced through the Judiciary. However, there are certain other basic rights which are essential for

existence and are not given to the citizens. They are right to life, education, health, employment etc.

In the Constitutions of other countries, belonging to the socialist, non-socialist and capitalist countries, they are given to the citizens. It should be possible for India also to give these rights to the people, with the help of the entire society, as such, and not only with that of the Government.

The rights and duties of the citizens go together. If there are rights given and duties are not enjoined, they cannot be enjoyed properly. So, they should be provided comprehensively in the Constitution. The right to work and duty to work should go together.

The Executive in India is accountable to the Legislature, every moment of its existence. It is good and that should be continued. However, the Executive should be reasonably stable also to produce results and deliver goods. The Executive at the Union level was stable, because of the ethos generated in the freedom movement and also because of the leaders' respectability, acceptability and capability. However, there is no provision in the Constitution which can make the Executive reasonably stable. It appears that the time has come, when the provision for this purpose should be made in the Constitution. For this purpose, the basic structure of the Constitution need not be changed. Small changes in the functioning of the Constitution can help.

The concept of decentralisation is part of the Constitution of India. There are provisions in it for sharing of the authority between the Union and the States. However, the constitutional provisions can be brought into existence to recognise and regulate in broad parameters the authority at the district and lower level also. In the Constitutions of some other countries, such provisions do exist.

The Judiciary has been doing its duties well. However, it is over burdened. Its burden should be reduced. It should also have some elective element involved in it, at least as in USA and some other countries.

The Constitution mainly deals with matters on the land and to a very small extent, matters in the oceans, sky and space. It should have provisions, which can give greater scope for dealing with these matters

on a greater scale. It deals with matters of outer world, more than with matters of the inner world. The discrimination and the visible dichotomy are not useful. The world inside should be given equal, nay more prominent place in the scheme of things - governmental, societal and personal. Only then, the challenges of the coming millennium can be faced.

The Constitution has kept the country united, allowed the Democracy to survive and function, has helped in producing good and all round development. All the same, it can be improved upon. There is always a scope for improvement. It is true with the Constitution of India also.

Part II
The President

1

The Indian President : An Emergency Lamp

R. Venkataraman

The President under the Indian Constitution is something like an 'Emergency Lamp'. When the power fails, the emergency lamp comes into operation; when the power is restored, the emergency lamp becomes dormant. The power is both electrical power and political power. We framed a Constitution on the Westminster model and several experts have given the opinion including Sir Chimanlal Setalvad, Sir Aladi Krishnaswamy Iyer and others that the executive responsibility for the administration of the country rests with the Prime Minister and the President is not, I repeat 'not', either an appellate authority over the Prime Minister or a supervisory authority over the Prime Minister and the Cabinet. If the political power is there, the responsibility for the acts and omissions are taken by the Prime Minister and the Cabinet and the Parliament. If anything goes wrong, the President is not either accused or challenged. It is the Prime Minister and his Cabinet that is criticised and even thrown out. Therefore, the President should, in my opinion, be dormant when the political power is effective.

Take, for instance, some of the suggestions that are emanating from time to time from legal experts and also pseudo-experts. They say that the President should interfere when a recommendation, say, for imposition of President's Rule comes before him for acceptance. Suppose, there is a situation in which law and order is very serious and bad and the President delays it or asks for clarification and in the meanwhile rioting takes place and people are massacred, killed and butchered. Who will take the responsibility in such a situation? Can the Prime Minister go to

Parliament and say, "the President delayed or withheld his assent or his approval and, therefore, I am not responsible but the President is responsible?" Can the President be criticised and even abused in the House? The Consitution protects the President's right. It is my opinion that as long as there is a properly and duly constituted majority Government, the responsibility for all acts rests with the Prime Minister and the Parliament and the country must give the support to them. Support does not mean that they must blindly and implicitly accept whatever he says. The Parliament is there to criticise. The Parliament is there to oppose but the Parliament should exercise its function in that manner.

Of course, there may be occasions when there is a constitutional infirmity and the President notices it. In that case, the President always sends it back for consideration or for legal opinion. But that must be only in cases where there is a constitutional infirmity in the proposal placed before the President. In such circumstances, the President should not fail to exercise jurisdiction vested in him. Once there is no power — either electric or political — then this emergency light comes into operation.

The President becomes responsible for choosing a Prime Minister ensuring the experienced administration of the country and making arrangements for a democratically elected Government to take charge. When the Prime Minister has resigned and the Prime Minister's resignation has been accepted and the President asks him to continue till a new Government is formed, then the responsibility for seeing that the norms of administration are maintained is with the President. The country must reconcile to two situations. When there is a popularly elected Government commanding the majority of the House, the confidence of the House, the acts of the Prime Minister must prevail. If there is no Government and the country is plunged into a situation in which immediately a government cannot be formed, then the responsibility for the President arises to see that the administration is being carried on according to the established norms and to see that a democratically elected Government comes into power. I want this to be clarified because there is a growing opinion which, in my humble thought, is dangerous to the democracy itself. There should be only one authority in any Government, in any State, in any country. There cannot be a second centre of power in a country and if you develop a second centre of power in the

country, conflict between the main centre and the other will develop; confusion and chaos will follow. Of course, the President may be taunted that he is a rubber stamp President. But a President who gets annoyed with the taunts is not fit to be President. You will have to take the good with the bad, criticism with praise, abuse with encomium. In fact, you must develop a spirit in which neither arrows will pierce you *'Nainam Chidanti Shastrani'* nor will the praise and encomiums flatter you to do something.

I have never been of the opinion that I was always right. But I have always put forward opinions so that the country may debate them and then find a solution to these problems. If you hide all these problems under the carpet and sweep them under it, you will never solve the problems. It is better to have the problems discussed openly, in a straight-forward manner and then conclusions reached. There are people who said that I have been an activist President. Unfortunately, power in Delhi fails too often and too frequently and for too long a time. And therefore, it looks as if the President is active. On the other hand, I have also been accused of being a 'rubber stamp' because there was a period when the Parliament had absolute majority Government and the country was safe in the hands of the elected representatives.

I am sure that years later, somebody will do research on what had happened in 1990-91 or rather 1989—91 and see how far the Constitution had been upheld at that time. When I assumed the Office of the President, I had said that I will neither fail to exercise jurisdiction vested in the President nor will I clinch the jurisdiction which is not vested in the President. I am happy to say that I kept my plighted word and was able to maintain both the letter and spirit of the Constitution.

The article is based on the Address delivered by President Shri R. Venkataraman on the occasion of the farewell function organised in his honour at the Central Hall of Parliament House on 21 July, 1992.

2

The President and Council of Ministers

Madan Bhatia

The question as to whether the President of India is always bound by the advice of his Council of Ministers has been a subject matter of fierce controversy in the country during the recent past. The debate revolved around article 74 of the Constitution which provides that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in exercise of his functions, act in accordance with such advice." Prior to 1976 article 74 did not provide that the President "shall act on the aid and advice of his Council of Ministers." Nevertheless, the Supreme Court held in *Shamsher Singh's case* in 1974 that the President was only the constitutional head and was required to exercise his powers on the aid and advice of his Council of Ministers. Their Lordships observed : "Sir Ivor Jenning has acknowledged that the President of India is essentially a constitutional monarch. The machinery of government is essentially British and the whole collection of British conventions has apparently been incorporated as conventions."

The constitutional amendment of article 74 therefore only made explicit what was already implicit in the Constitution, to put the matter beyond the pale of any future controversy or judicial review. The amendment did not change the constitutional scheme, nor was it intended to override the constitutional conventions which, as the Supreme Court has said, are integral part of the Constitution. There are, however, two circumstances in which the advice of the Council of Ministers is not binding on the President. They are as follows :

(i) When the Council of Ministers has lost the confidence of the House of the people.

(ii) When the advice violates law or the Constitution of India.

Let us take the first circumstance. Overwhelming number of constitutional jurists and some famous Prime Ministers of England have expressed the view that the advice of a Prime Minister, who has lost the support of majority in Parliament, to dissovle the House of Commons is not binding on the Crown. They include Jennings, Moodia, Markesinis, Professor de Smith, Sir Allen Haselles, Anthony King, Hood Phillips, Asquith, Winston Churchill and Attlee.

However, the matter has to be considered in much wider perspective and cannot be confined merely to the advice relating to dissolution of the House. It has acquired special significance in view of the recent political events in the Country. Article 74 (1) cannot be read in isolation from Article 75. Both have to be read together and harmoniously. They are part of one integrated constitutional scheme.

Article 75 provides as follows :

1. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
2. The Ministers shall hold office during the pleasure of the President.
3. The Council of Ministers shall be collectively responsible to the House of the People."

In *U.N. Rao V. Indira Gandhi* [1] the Supreme Court held: "we must harmonize the provisions of article 75 (3), article 74 (1) and article 75 (2). Article 75 (3) brings into existence what is usually called 'Responsible Government'. In other words, the Council of Ministers must enjoy the confidence of the House of the People."

The Council of Ministers mentioned in article 74 (1) is the Council of Ministers referred to in article 75 (3). Therefore, if a Council of Ministers loses the confidence of the House of the People and the latter is not dissolved but the President asks the said Council of Ministers to continue in office till a new government, is formed which will command

majority in the House, such Council of Ministers cannot insist that its advice is binding on the President. It holds office on the sufferance of the President. It is asked by the President to continue in office because, as held by the Supreme Court in *U.N. Rao's Case,* the existence of a Council of Ministers at all times is mandatory in view of article 74 (1). And it will be travesty of all logic to suggest that if the President dissolves the House of the People on the ground that no party is in a position to enjoy the confidence of the House, orders fresh elections and asks the same Council of Ministers to continue till the elections are held, the latter can insist that its advice would once again be binding on the President and that any such constitutional right stands restored to it.

This consequence follows from the very concept of democracy. Jennings writes in his book, *The British Constitution:* "The Government governs because it has a majority in the House". That is democracy. In his book *Cabinet Government*, he said, "If the major parties break up, the whole balance of the Constitution alters; and then possibly, the Queen's prerogative becomes important."

The position will of course be altogether different if the Prime Minister, who enjoys the confidence of the House of the People, advises the President to dissolve it. The President is obliged to dissolve it and under the established constitutional convention that Prime Minister is entitled to remain in office till the elections are held. Such a Prime Minister and his Council of Ministers do not hold office on the sufferance of the President. The point may be elucidated by one example. Under article 85, the President is required to summon Parliament from time to time. But in the exercise of this power, the President is bound by the advice of his Council of Minsiters. However, if a Prime Minister loses the support of majority in the House, but refuses to resign on the plea that he has not lost it and the President calls upon him to prove his majority in the House, can the Council of Ministers refuse to do so and instead advise him not to summon the House for an indefinite period? To hold that the President is bound by such advice by virtue of article 74 is to make mockery of the Constitution and reduce article 74 to absurdity. The President, in fact, in such a situation would be justified in dismissing the Council of Ministers. It is, therefore, implicit in article 74, read with article 75 (3) that the President is bound by advice of that Council of Ministers which enjoys the support of majority in the House.

The other circumstance in which the President is equally not bound by the advice of his Council of Ministers is when such advice violates and constitutes an assault upon the Constitution of India. He is bound by his oath of office to reject it. Article 74 again, has to be read subject to article 60 which prescribes the oath or affirmation for the President. There is a marked difference between the oath prescribed for the Vice-President or the Ministers and that prescribed for the President. The oath or affirmation required to be taken by the Vice-President or a Minister reads "..... I will bear true faith and allegiance to the Constitution". The oath or affirmation prescribed for the President, however, assigns to him an activist role and casts solemn constitutional duty upon him to defend the Constitution. It says, "I will.... to the best of my ability preserve, protect and defend the Constitution and the law." His constitutional oath cuts him out as the protector, defender and preserver of the Constitution and law against any onslaught that may be mounted on them and from whichever quarter it comes, including his Council of Ministers.

A few examples may be given to elucidate this point. Supposing the Council of Ministers decides that Muslims, Sikhs or Christians shall be ineligible for recruitment to any branch of public service and advises the President accordingly. Is the President bound by such outrageously unconstitutional advice? Certainly not. Supposing the Council of Ministers decides to cede Kashmir to Pakistan and advises the President to that effect. Will the President be bound by such an advice to disintegrate India? The answer again has to be resounding. The Council of Ministers advises the President to promulgate Presidential Rule in a State by alleging that though the constitutional machinery in the State has not broken down, it has no personal liking for the Chief Minister of that State. Will the President be bound by such advice which flies into the very teeth of article 356? The answer again has to be in the negative.

Reference may also be made to some relevant provisions of the Constitution in this context. Under article 53 "The Executive power of the Union shall be vested in the President." Article 74 provides that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in exercise of his functions act in accordance with such advice." Article 77 says that "All Executive action of the Government of India shall be expressed to be taken in the name of the President."

Now the question is as to what is the extent of the Executive functions of the President in regard to which his Council of Ministers have the power to advise him and its advice is binding. The answer lies in article 73 which says, "Subject to the provisions of the Constitution, the Executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws."

Therein lies the limitation. If any advice relates to a matter with respect to which parliament has no power to make law, such advice will fall outside the Executive power of the Union. The Council of Ministers is not constitutionally competent to give such advice and it will not be covered by article 74. For example, if the Council of Ministers gives any advice to the President in relation to state public services, which is an exclusively state subject, the President will not only be not bound by such advice, but must reject it.

If the Council of Ministers is not willing to accept the stand of the President of India as to the constitutionality or validity of its advice, it is open to the Council of Ministers to advise the President to obtain the opinion of the Supreme Court upon it in terms of article 143 of the Constitution and the President in that eventuality is bound to do so. Parliament by law, or the Supreme Court can frame rules under article 145 for regulating the procedure of the Supreme Court whenever such opinion is sought, so that the matter does not turn into public adversary proceedings and the response of the Supreme Court is prompt enough to meet exigency of the situation.

REFERENCE

1. AIR 1971 SC 1002.

3

The President and His Powers : Urgent Need for Fresh Look

Inder Jit

Does the President of India have any power? This question has been asked time and again over the past forty years and more ever since free India gave itself the world's biggest Constitution on 26 January, 1950. It was sharply posed following tne proclamation of the Emergency by Smt. Indira Gandhi, the then Prime Minister, on 26 June, 1975, both within the country and abroad. It was raised again during the latter half of the Presidentship of Giani Zail Singh. He was then widely believed to be toying with the idea of sacking the Union Government led by Shri Rajiv Gandhi in the wake of the Bofors scandal, dissolving the Lok Sabha and ordering a general election to enable the people, the ultimate masters in a democracy, to give a fresh mandate and popular legitimacy to the Government of the day. He was even reported to have consulted the former Union Law Minister, Shri Asoke Sen, and other legal luminaries on the subject. The Supreme Court, for its part, has expressed itself on the issue in some judgements. Nevertheless, an adequate and complete answer is still not available.

This has prompted me repeatedly to advocate, over the past 15 years and more in my syndicated columns as the Editor of India News and Feature Alliance (INFA), the need to take a good fresh look at the Constitution and more especially at the powers of the President and his role under the Constitution. There can be no two opinions that power ultimately rests under our Constitution with Parliament. But then can we overlook the fact that Parliament as defined in our Constitution

consists not only of the House of the People and the Council of States but also of the President. Again, can we ignore the fact that the President is elected by a larger and more representative mandate of the people of India than the Prime Minister. He is chosen by an electoral college which comprises both the Houses at the Centre as also all the State legislatures of the Union. Is it, therefore, fair to equate the popularly elected President of India with the hereditary British monarch?

The Constitution was, no doubt, amended by the Janata Government which took office early in 1977 on the popular wave against the Emergency, to clarify that the President is no longer hide-bound to carry out the advice of his Council of Ministers. The 44th Constitution Amendment now permits him to disagree with his Council of Ministers and ask them to reconsider their advice. The President is now required to act only if the Council of Ministers, on reconsideration, hold by its earlier advice. Some legal luminaries, however, believe that this amendment was not necessary and that India could have escaped the Emergency and all its horrors if only the then President, Shri Fakhruddin Ali Ahmed, had shown enough guts and declined to sign the proclamation on the night of 25 June, 1975 at the instance of Mrs. Gandhi. The Council of Ministers, as we all know now, met only hours later to approve the proclamation post-fact.

Many leading people believed then and many more believe today that it is not the Constitution that has failed the country and democracy but people in key positions in the Executive, the Legislature and the Judiciary. According to some experts, the President could have changed the course of history if only he had exercised what is described as his inherent right to warn, to be consulted and to advise. But the question is does the President have this right or for that matter any right? Or, has he been reduced to the position of a mere rubber stamp even after the 44th Constitution amendment and other relevant constitutional amendments?

Doubts in regard to the precise powers of the President *vis-a-vis* the Council of Ministers were originally raised by India's first President, Dr. Rajendra Prasad, who had earlier presided over the Constituent Assembly. According to Durga Das in his memoirs, *India from Curzon to Nehru and After*, Rajendra Prasad raised three points of constitutional

importance and claimed that he was not bound hand and foot by the advice of the Council of Ministers. He contended that he had the power to withhold assent to bills in his discretion, dismiss a Ministry or Minister and order a general election and as the Supreme Commander of the Defence Forces, send for the military Chiefs and ask for information about defence matters. These powers, he argued, flowed from the President's oath of office which is as follows: "I will faithfully execute the office of the President of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

Jawaharlal Nehru was taken completely by surprise by Dr. Rajendra Prasad's stand and promptly sought the formal opinion of Attorney-General M.C. Setalvad—a recognised legal colossus. Setalvad was clear that the office of the President was essentially that of a titular head like that of the British monarch. He, therefore, held that the President was bound by the advice of his Council of Ministers and could not withhold assent to a bill as claimed by Rajendra Prasad. At the same time, however, he was of the view that the President could, like a constitutional monarch, exert his influence in other ways, as spelt out by Bagehot, the acknowledged authority on British constitutional law. According to Bagehot, the Crown had "the right to be consulted, the right to warn and the right to encourage."

Setalvad's views were equally of interest on the two other issues. First, he said that the President could not dismiss a Minister but he could get rid of a Ministry and order elections. The power to hold elections in his own discretion was not according to the letter of the law but could be exercised as a reserve power if the President felt strongly that Parliament did not reflect the political balance in the country. Second, the President could not send for the Service Chiefs but he could send for the Defence Minister and direct him to make inquiries. Setalvad further held that the President should avoid speeches which might embarrass the Government. But he conceded that if the Ministry was mismanaging affairs there was some justification for public expression of presidential disapproval. Presumably, Dr. Radhakrishnan's Republic Day broadcast in 1967, which Congressmen described as a parting Kick, fell within this category. He said : "The feeling should not be encouraged that no change can be brought about except the violent disorders. We make the prospect

of revolution inescapable by acquiesing in such conduct. As dishonesty creeps into every wide of public life we should beware and bring about suitable alterations in our life."

Then came the clash over the Hindu Code Bill. Rajen Babu, as Dr. Prasad was affectionately called, did not oppose the measure as such. According to Durga Das, he only argued that the Bill should not be enacted and his assent sought until the issues involved had been submitted to the verdict of the people. He said he had discussed the Bill threadbare with more than half the members of Parliament and had discovered that the majority of them supported his views. Nehru was ruled; he appeared to agree with Law Minister Ambedkar, who had fathered the Bill, that the President was "reactionary", but there was nothing he could do in the face of Rajendra Prasad's determined stand. When the Bill came before Parliament after the general election, Rajendra Prasad kept his word honourably. He supported the measure, examined its draft and made no attempt to tone it down.

That, however, was not all. Rajen Babu also wanted things to be sorted out in regard to day-to-day functioning. Among other things, he had strong reasons of complaint against Nehru on the ground that he often read of appointments of Ambassadors and Governors in the Press and was officially informed only afterwards. As a result of his spirited protest, an order was passed by the Cabinet stipulating that all the papers relating to the appointments of Governors, Ambassadors, Chairman of the UPSC, Auditor-General and Secretaries to the Ministries be submitted to him before orders were issued. Rajendra Prasad also took umbrage at being kept in the dark about the crisis precipitated by the resignation of Gen. Thimayya, Chief of the Army Staff. This, he held, was a violation of his authority as the Supreme Commander of the Defence Services. Krishna Menon, reprimanded for the lapse, had to apologise.

Later, Rajen Babu remonstrated with Nehru and is reported to have told the Prime Minister : "You are laying down bad precedents. A President who did not like you could have given you a lot of trouble." The then President was clearly getting new ideas about his constitutional role and powers — ideas, which to Nehru's chagrin, he spelt out on the occasion of laying the foundation-stone of the Indian Law Institute at New Delhi in November, 1960. He suggested that legal experts should

study the presidential powers under the Constitution. Under-lying the proposal was Rajen Babu's reluctance to equate his position with that of the British monarch and his anxiety that the subject be studied scientifically so that the scope of the powers and functions of the President were spelt out precisely.

Nehru disfavoured Rajendra Prasad's plea and felt that such an exercise was unnecessary in view of the clear opinion given by Setalvad. Indeed, he is reported to have complained to the President that his remarks were not calculated to promote the national interest and that he had apparently been "misled" by K.M. Munshi. Rajen Babu is said to have explained that Munshi had no hand in the affair and that the kind of study he had in mind was essential "while we are still a young Republic" and that he could think of no better body than the Law Institute to undertake it. One result of Nehru's reaction was that the President's speech was not issued to the Press and was virtually blacked out. But the constitutional issue regarding the President's powers became alive again in 1969 and not only caused the biggest political storm but led to a split in the Congress Party and the consequent struggle for power with no holds barred.

Nevertheless, opinions are bound to differ, especially in the context of the points raised by Rajen Babu. I recall the late Fakhruddin Ali Ahmed expressing interesting views on the subject during my meetings with him. He was clear that the President was obliged to act in accordance with the advice of the Council of Ministers. At the same time, however, he agreed with Rajen Babu's views (as also of Setalvad) that the President could use his "reserve power" to dismiss a Ministry and order a fresh poll in case he felt strongly that Parliament no longer reflected the opinion of the country. Whether or not he expressed himself in writing is not known. Sadly, indeed tragically, the personal diary of Fakhruddin Ali Ahmed has not yet seen the light of day. This, as the late President indicated to me, throws much-needed light on the "Emergency-drama" and his own views. His widow, Begum Abida Ahmed, had sought my help as "a journalist friend" of the late President in the publication of the diary. Subsequently, however, she changed her mind for reasons best known to her.

Not just that. The issue of the President's powers also got highlighted in May, 1977 in what then came to be known popularly as the

"Proclamation Drama". The Janata Government, which was headed by Shri Morarji Desai and included Shri Charan Singh as the Home Minister, decided to dissolve the Assemblies in nine States on the ground that Congress-I, which ruled these States, had lost the mandate of the people as reflected in its "ignominious defeat in the Lok Sabha poll. But the then acting President, Shri B.D. Jatti, wanted time to study the matter before signing the proclamations dissolving the nine Assemblies. The drama heightened and the unprecedented constitutional crisis deepened when Shri Jatti had a meeting with the then Chief Justice of India, Shri M.H. Beg. Shri Jatti felt, that he must first go through the proclamations and the relevant papers carefully in view of their historic significance. After all, what was proposed to be done was unprecedented—dissolution not of one or two State Assemblies but of as many as nine. Second, the satisfaction was that of the President. Shri Jatti did not wish to appear as a mere rubber-stamp, notwithstanding the 42nd Constitution Amendment.

At one stage, both Shri Charan Singh and the Law Minister, Shri Shanti Bhushan, called on the acting President. After the Law Minister explained the constitutional position, Shri Jatti told Mr Shanti Bhushan that the latter did not have to carry conviction to him in regard to article 356 of the Constitution. He himself was a lawyer and with his 30 years' experience as an administrator he accepted both the legality and the constitutionality of the Government decision. Moreover, doubts sought to be raised by four State Governments in regard to the powers of the Centre had been laid to rest by the Supreme Court's verdict. But one thing mainly bothered him: the propriety of the action proposed. "I can understand action in regard to one or two States on the ground of the breakdown of the Constitution", he is reported to have argued. "But nine States with one stroke..."

Shri Jatti sought some clarifications, which were promptly offered by Shri Charan Singh. However, the talk ran into difficulty again when Shri Jatti insisted on his personal satisfaction about the breakdown of the Constitution on the strength of the reserved powers flowing from the oath which the President takes, namely to "preserve, protect and defend the Constitution...". Once it was explained to Shri Jatti that the satisfaction of the President was the satisfaction of his Council of Ministers, the acting President put forward an argument which helped

Shri Morarji Desai to clinch the issue. Shri Jatti said the proclamation had also raised for him a question of sentiment. He had been a Congressman all his life and was beholden to the party for everything — for bringing him from his village in Karnataka to New Delhi. He could not, therefore, destroy a party which had in turn given him the offices of Panchayat Pradhan, Minister in Bombay, Chief Minister of Karnataka, Lt. Governor of Pondicherry, Governor of Orissa and, finally, Vice-President of India.

Dismayed, Shri Charan Singh and Shri Shanti Bhushan reported back to the Prime Minister and then to the full Cabinet at its third emergent meeting at Shri Desai's residence. Almost all present reacted sharply and at least a couple of them felt so disgusted as to propose that the only way out of the crisis was for the Government to resign and thereby force the hands of the acting President. But Shri Desai cautioned against acting in a huff and playing into the hands of those conspiring against them. Could the acting President be expected to go by the rules of the game when he had refused to act in accordance with the article 356 of the Constitution? An alternative strategy was then forged. The Prime Minister sent a letter to the acting President with the Cabinet Secretary making three points. First, Shri Desai reaffirmed the Government's view that the President was bound by the advice of his Council of Ministers. In case he was unable to act accordingly, he should honourably resign. Second, he impliedly referred to Shri Jatti's inability to sign on the ground of sentiment in regard to the Congress party and reminded him that the President was expected to be above party and should always put the nation before any partisan consideration. Third, Shri Desai told Shri Jatti to let him have his final decision by 8 p.m., so that, if necessary, he could go on the air "tonight" and take the nation into confidence. Meanwhile, it was decided to ask AIR to stand-by for the PM's broadcast at 9 p.m.

Shri Desai's letter handed over to Shri Jatti by the Cabinet Secretary at 4.30 p.m. clinched the issue. What the Cabinet Secretary conveyed to the acting President persuasively on behalf of the Government also greatly helped against the back-drop of an angry demonstration mounted by Janata supporters outside the acting President's residence on Maulana Azad Road. Shri Jatti asked the Cabinet Secretary to come back at 7.30 p.m. by which time he decided to sign the proclamations, and

not to deepen the constitutional crisis. As Shri Jatti himself told me at that time, he felt he should adopt "a constructive approach", and not push the country towards tumult and turmoil notwithstanding the fact that he could easily face any move for impeachment which some of the Janata leaders had threatened to bring forward. He was clear that he could not be impeached for refusing to sign the proclamations since the Government lacked the requisite majority in the Rajya Sabha.

All in all, there is clearly a need for an urgent review of the President's powers. Many legal lights and leading politicians are of the firm view that the President should not be tied down hand and foot and, what is more, that he should be given some flexibility to enable him to play a constructive role in preserving, protecting and defending the Constitution in accordance with his oath of office. This flexibility is all the more imperative in the light of the general decline of the legislative process both at the Centre and in the States as also the general decline in the quality of the highest temples of justice and the highest temples of education. Laws today are passed without adequate thought and homework and almost without any discussion. More often than not, legislators who are supposed to have been elected to legislate have by and large little interest in legislation. Should the President be obliged to give his assent to such legislation automatically? Should the President rubber-stamp all appointments to the country's highest courts and the universities? Or, should he have some say in the appointment of High Court and Supreme Court Judges and the Vice-Chancellors? Many other related matters in the Constitution also require to be thrashed out and checks and balances provided in the light of experience over the years and its potential for the future. We can go on delaying crucial matters only at our own risk. Much time has been lost already.

4

New Challenge to Parliamentary Democracy

Samar Mukherjee

India opted for parliamentary democracy after independence. This was the result and reflection of the objective of the freedom movement declared by the Indian National Congress for which millions made great sacrifice. This created the basis on which the edifice of democracy built. India delcared itself to be a Sovereign Democratic Republic on the 26 January, 1950. This year we observe the 43rd anniversary of our Republic.

Sovereign Democratic Republic

Just one year before the Constitution of India was adopted by the Constituent Assembly under the Presidentship of Dr. Rajendra Prasad, Pandit Jawahar Lal Nehru, who was main guiding spirit, had moved the resolution on the aims and objects in the Constituent Assembly. The Constitution which was adopted, incorporated the Preamble and a chapter on Directive Principles enshrining the aims and objects on the basis of the resolution moved by Pandit Nehru.

Some of the basic features of our Democratic Republic are :

1. Federal structure;
2. Elected governments both in the Centre and in the States;
3. Bicameral Parliament consisting of President and two Houses—Lok Sabha and Rajya Sabha and elected Legislatures in the States on the basis of adult franchise;

4. Accountability of the government to the Parliament in case of Central government and to the Legislative Assemblies in case of States;
5. The federal structure are based on three pillars :
   (a) Legislature
   (b) Executive and
   (c) Judiciary

The Constitution has guaranteed some Fundamental Rights the citzens enforceable under law. The system of parliamentary democracy introduced in India is generally based on the model of British system with the difference that while in England the nominal Head of the State is either the King or the Queen whereas in India the Head of the State is Rashtrapati (President) who is also considered as constitutional head. He is elected indirectly by the legislators. Another difference is while the central government in England is unitary in character, in India it is federal in character. While in England and parliamentary system has grown through a long process with the growth of capitalism and developed strong traditions, in India it is young without past traditions. In this respect in comparison to pre-independence conditions under British rule, it is a big advancement in the lives of the Indian people.

In the Constitution the high aims and objects which were proclaimed in the Preamble and in the chapter of Directive Principles, reflected the aspirations of the people. That is why the Indian National Congress earned wide popularity among the masses and the then leaders of the Congress like Gandhiji, Pandit Nehru, Subhash Chandra Bose and a galaxy of Congress presidents were in great esteem. Now after more than four decades of our independence and the establishment of parliamentary democracy and its operation, a critical evaluation is necessary to ascertain how far we have been able to achieve our objective and how far we are lagging behind and why. It is also to be ascertained what are the situations prevailing today. Whether they are deteriorating and turning to be more serious or not. What are the factors and what are the forces responsible for the present state of affairs?

The Preamble

The Preamble is considered not as a part of the Constitution. So it does not come under law. It expresses the noble spirit and philosophy of the framers of the constitution. The preamble which was originally adopted in the Constitution was amended by the Constitution 42nd Amendment Act, 1976 by adding the words — "Socialism and Secularism". The amended Preamble says :

> "We, the People of India, having solemnly resolved to constitute India into a *Sovereign Socialist Secular Democratic Republic* and to secure to all its citizens :
>
> *Justice,* social, economic and political;
>
> *Liberty* of thought, expression, belief, faith and worship;
>
> *Equality* of status and of opportunity; and to promote among them all;
>
> *Fraternity* assuring the dignity of the individual and the unity and integrity of the Naiton;
>
> *In our Constituent Assembly* this 26th day of November, 1949, do *Hereby Adopt Enact and give to ourselves this constitution."*

Later on The Representation of People's Act, 1951 has also been amended to the effect that no political party which wants to set up its candidates in the general elections will be allotted any symbol unless that party declares in its own party constitution that that party is loyal to the Constitution and stands for sovereignty, secularism, socialism and democracy. Through this method and through oath-takings after the victory in the elections, each legislator is committed along with his respective party to the aims enshrined in the Preamble.

Directive Principles

These principles are enunciated as directives to guide the State policies. Though these principles have been mentioned as fundamental, yet they cannot be enforced by the courts. Article 37 in Part IV of the Constitution categorically stated :

> The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental

in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 39 dealing with some such principles provides that the States shall in particular direct its policy towards securing :

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) That there is equal pay for equal work for both men and women;

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuitable to their age or strength;

Article 41 states about right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want (within the limits of its economic capacity).

Article 43 states about endeavour to secure living wage etc. to all workers, agricultural and industrial by suitable legislation or economic organisation or in any other way, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 43-A emphasizes on the participation of workers in management of industries. Article 46 calls for promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections etc.

As both the Preamble and the Part IV of the Constitution on Directive Principles are not enforceable by courts, they remain limited in the sphere of objective, aim, spirit, philosophy and intention of the Constitution makers having only moral binding on the State. Now after more than four decades of the existence of the Republic and its performances, the people will compare through their own experiences the

results achieved and the relationship between the professions and performances.

Fundamental Rights

The Constitution provided some rights to the people as Fundamental Rights for which the people fought in course of their fight for independence such as

(a) Right to freedom of speech and expression;

(b) Right to assemble peacefully and without arms;

(c) Right to form associations or unions;

(d) Right to move freely throughout the territory of India;

(e) Right to reside and settle in any part of the territory in India;

(f) Right to acquire, hold and dispose of property;

(g) Right to practice any profession, or to carry on any occupation, trade or business;

(h) Right to equality before law;

(i) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth;

(j) Protection of interests of minorities;

(k) Right of minorities to establish and administer educational institutions etc.

Unlike the Preamble and Part IV of the Constitution on Directive Principles which have been kept outside the perview of the court, in case of the Fundamental Rights, some constitutional guarantee has been provided under article 32 by granting the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. This is no doubt a big achievement as it guarantees some democratic rights to the masses but simultaneously it also guarantees the interests of the vested interests — capitalists, landlords and imperialists by giving protection to the right of property owners. It is clear from the following speech of Dr. B.R. Ambedkar delivered in the Constituent Assembly on 17 December, 1946 on the Resolution regarding Aims and Objects, that the constitutional guarantee to the above demo-

cratic rights was not originally proposed by Pandit Nehru in the Resolution. Dr. Ambedkar said :

> "All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula that no man's life, liberty and property shall be taken without due process of law, finds no place in the Resolution. These fundamental rights set out are made subject to law and morality. Obviously what is law, what is morality will be determined by the Executive of the day and when one Executive may take one view, another Executive may take another view and we do not know what exactly would be the position with regard to Fundamental Rights, if this matter is left to the Executive of the day. Sir, there are here certain provisions which speak of justice, economical, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the mover of the Resolution. I should have expected some provision, whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from this point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, there would be nationalisation of industry and nationalisation of land. I do not understand how it could be possible for any future government which believes in doing justice socially, economically and politically unless its economy is a socialistic economy."[1]

Experiences of Four Decades

The Preamble and the Directive Principles in the Constitution projected those high aims — social, democratic and moral values which our national movement has created. After independence, those leaders who led the national movement came into power not only at the centre but in the overwhelming majority of States. Now after four decades of experiences can we claim that the country is moving towards the same direction as has been projected in the Constitution? Is it not the fact that day by day moral and social values are collapsing? Society is engulfed with corruption, social oppressions and economic exploitations have further increased, atrocities on Harijans and women have also increased, communal, caste and ethnic riots, secessionists activities are growing in a

menacingly way and threatening the unity and integrity of the country. Is it not that the economic crisis has reached a stage of bankruptcy and economic sovereignty is being mortgaged to the World Bank and International Monetary Fund (IMF) leading to the dangerous consequences of debt trap? Is it not a fact that prices are rising continuously and growth of unemployment has assumed phenomenal character particularly after the adoption of the new economic policy of opening the flood gates to foreign multinationals and full-scale privatisation. As a result the country is witnessing all sided intensification of the crisis and aggravated economic, social and political tensions have created favourable situation for the communal and devisive forces to take advantage for their anti-national disruptive activities. Further the imperalist forces are also playing their role to take full advantage of the situation.

Now that the situation has reached a stage which is considered to be grim, is being admitted by the ruling party and the government but what are the reasons behind this development and who are responsible, is not yet realised by them. They are not admitting yet that this is the result of their policies while in the governments since independence. Though they have proclaimed lofty objectives before the country from their platform before independence and in the Constitution after independence the performances of their successive governments have proved beyond doubt that they have pursued the path of capitalism in compromise with imperialism and feudalism. Unless the government policies are analysed from the class point of view and in a scientific way the real character and class essence of the economc policies will not be clear.

The features of the present situation are that the right reactionary forces are consolidating their strength and Imperialist forces are in league with them. Country has already witnessed how Gandhiji, Indira Gandhi and Rajiv Gandhi became victims of communal forces and extremists. In this dangerous situation if all secular and democratic forces fail to unite and take up the challenge on the basis of their commitment to defend and strengthen the ideals of sovereignty, secularism, socialism and democracy, the future of our country will be doomed.

What is therefore needed in this situation is to fully restructure the Constitution of India on a true basis of Federalism conferring full autonomy to the States. Only this step will help us to build up real unity and to safeguard the integrity of the country. Only this step can squarely

meet the serious challenge to Parliamentary democracy posed by vested interest, disruptive and divisive forces within as well as outside the country.

However, the call given by our Rashtrapati to the nation on the eve of the Republic Day this year for moratorium on strikes, struggle will not help us to meet the serious challenge to our Parliamentary democracy because the call seeks to curtail the democratic rights of the people without providing remedies to their mounting problems which make their life miserable. The working class and the toiling masses are bound to reject such retrograde call and the government is bound to resort to authoritarian measures as was done during the black emergency days in the past. Therefore all talks of constitutional reforms without actually providing the rights conferred by the Constitution and protecting them will amount to a farce. Challenges before parliamentary democracy in our country cannot be met without actually providing the basic rights to the people—right to work, right to education, shelter and health and the right of the people to struggle for getting these rights.

REFERENCE

1. Ambedkar, B.R . : *Man and his Message,* p. 202.

Part III
The Parliament

5

PARLIAMENT VIS A VIS EXECUTIVE

Ishwar Singh

Parliamentary democracy is participatory system in which the people, the Parliament and the Government have their own responsibilities and roles to play. The correct functioning of each of these and the right inter-relationship between them is an essential pre-requisite for sustaining desirable standard in the democracy. Parliament is one of the chief instruments of democracy and therefore effectiveness and accountability are ordinarily considered its principle attributes. In theory, Parliament is sovereign; it is "the grand inquest" of the nation. It should influence, supervise and put a check on the actions of the Government. But in practice, it is not reflected in the working of the modern Government. Over the years, the power and responsibility have been more and more concentrated in the hands of Executive. Though this may appear to be a slightly exaggerated view, it cannot be denied that there is some truth in it. It is a fact that over the past four decades there has been a considerable expansion in the range and complexity of the activities of the Executive.

The successful functioning of the Parliament depends to a great extent in its ability to scrutinise the political and administrative actions of the executive. In other words, the basic political function of Parliament is to examine and question Government policy and activity. The Select Committee on Procedure of the House of Commons points out that Parliamentary control means influence, not direct power; advice, not command; criticism, not obstruction; scrutiny, not initiative; and publicity, not secrecy. There is now almost unanimous opinion that Parliament should be adequately informed with regard to the working of the Executive.

In order that Parliamentary control over the Executive may be more effective, it has been suggested that all policies approved and laid down by Parliament should be stated in specific terms. At present, Government motions on policy matters are vague and too general. For instance, Parliament has never defined what our Foreign policy is or should be, despite debating it in every session. What they have always approved is Government's policy in regard thereto. What is true of foreign policy is also true of Governmental policies in other areas such as defence, food and housing. The intention of the Parliament at best can be gathered from the various speeches of its members and Ministers from time to time. Speeches can never be precise. They are arguments, facts, opinions, intentions—all put together. No administration can be effectively called upon to account for on this basis. It will always find an escape route in the speeches for what it has done or has failed to do. Parliament should never encourage omnibus motions such as "such and such policy or situation be taken into consideration and having considered it, the policy of Government in regard thereto is approved". What is passed by Parliament is this motion alone and not the Government speeches which have been made during the course of the debate. This imprecision in the working makes Parliament ineffective in enforcing what it wants and what it thinks it has accepted.

Another suggestion for making Parliamentary control more effective is to take away some of the most crucial but non-controversial issues from the purview of partisan debates on the floor of the Legislature. The members of Parliament may be allowed to vote according to their conscience, free from party affiliation. In the recent times, such freedom of voting has been allowed on many issues in the British House of Commons, like Britain's entry to the European Economic Community, abortion laws, capital punishment, divorce, censureship of Theatres, etc. Such step in the Indian Parliament may be more helpful, specially when there is a tendency to look at everything through partisan eyes and many issues, particularly relating to administrative and political corruption seem to get lost even when there is a general consensus to censure the concerned authorities amongst members of the ruling party and other opposition parties as a whole.

Parliament cannot and does not govern. It only exercises its control over the Executive through certain devices. A problem constantly under

consideration in Parliamentary democracies is the reform of these legislative devices and instruments of control. Each device of control should occupy its proper place in the legislative mechanism, and preserve its identity. There are rules of Procedures which provide various effective techniques, but few of them are properly utilised. The Parliament spends a good deal of time in its sittings. Spending of more time on Parliamentary sittings may perhaps hamper other multifarious activities of the individual members including a large number of hours which may be spent in Parliamentary Committees and other Committee meetings. However, effective utilisation of the services, talents and interests of the individual members of the Parliament has so far not been made. The opposition members and the backbenchers have very often felt neglected. The greatest obstacle to an effective Parliamentary control is perhaps the apathy or forced apathy shown by the majority of members towards making a constructive criticism and supervision of governmental policies. Seldom, if ever, the debates and discussions in the Parliament have shown a dispassionate analysis of government policies. Very often than not, they are discussed and motivated, but it is not an easy task to change the attitude of the individual member of Parliament who should rise above the narrow partisan outlook and discuss the issues on merit. Besides, we have adopted the methods such as Question Hour, Half-an-hour discussion on a reply to a question, Adjournment Motion, Calling upon the Minister to make a statement on a matter of Public importance by way of Calling Attention Motion, Reference of Bills to Select Committees, Parliamentary Committees like Public Account Committee, the Estimate Committee etc; Private Members' Resolution, Private Members' Bills and Consultative Committees on the various Ministries which are intended to bring to bear the thinking of the members of the Parliament on the Executive. We have, thus, a vast complex of arrangements and procedures. The question is to what extent all these have been fully utilised by the members of Parliament.

As stated earlier, our Constitution is the most comprehensive document in the world providing for three main pillars of our Parliamentary democracy, namely, the Legislature, the Executive and the Judiciary. It is like a living organism which is fulfilling all the emerging needs and is well equipped to cope with future eventualities. It has been amended seventy one times within the short span of time since the date of its commencement. Our Constitution empowers the Parliament as supreme.

The idea of supermacy of Parliament germinated in the speech of the First Prime Minister of India, Pandit Jawaharlal Nehru during the consideration of Constitution (Fourth) Amendment Bill, when he posed a question, "Why should eight judges in the Supreme Court be permitted to outlaw the Acts passed by elected legislators, of the actions of their Ministers or of the Officers controlled by the Ministers? Why should this undemocratic process be permitted in the name of judicial review? Why should one have more faith in the Court than in the Parliament?"

The Parliament is undoubtedly a supreme authority to which the Executive including the Council of Ministers, has been made expressly responsible. The work of the Executive has to be scrutinised and questioned by the Parliament and subjected to its ultimate control. The Rules of Procedure and Conduct of Business of both the Houses of Parliament are framed with these principles in mind. The rules therefore, should be such as to ensure effective Parliamentary control over the Executive as also to see that the Executive, while implementing the policy approved by Parliament as well as the Directive Principles contained in the Constitution, is to run smoothly and whenever there are bottlenecks and hurdles, to cut them to size. Thus, a very good Government can only be said to be an inevitable consequence of very alert members of the Legislatures and also the response of the Ministers and the bureaucracy to their scrutiny. It is, therefore, necessary that Parliament or its members must make their scrutiny and control a reality and make it felt by the Government. The Executive should be made responsible to the suggestions and pressures of the members so that real progress in the implementation of the policies and programmes for upliftment of the poor in the desired direction is achieved.

There is also a very essential feature in the Indian Parliamentary practice, the so called 'Zero Hour'. This is a practice of raising matters of interest there and then and not covered by Call. Attention Notices or Adjournment Motions, by members of Parliament and to ask the Government to make statement just after the Question Hour and before the commencement of the scheduled Business. This so called 'Zero Hour' appears to be very popular and also many a time becomes vociferous. The Ministers sometimes are anxious to make statements on matters of interest and use this 'Zero Hour' practice. Although, there are many ways and means available to a member of Parliament to work for the cause he

represents for his State, or to serve the cause of the country, is he really in a position to effectively use them for bringing about the abolition of economic disparity, social inequality and injustice, especially to the very large section of our poverty stricken people?

Now, a member of Parliament is either a member of the Ruling Party or that of one of the opposition parties/groups. In so far as the actual working of the House is concerned, a member of the Ruling party suffers from many handicaps and disadvantages, whereas a member from the opposition party has freedom to do almost anything or act in any way he chooses. Many a time, members are not even ready to follow at the time of the discussion the decorum and the Rules of Procedure and Conduct of Business of the House. This is specially so during the 'Zero hour'. A large number of members stand up all together and each asks or shouts about his notice or about some subject or motion. On occasions they wave newspapers or even proceed to the well of the House. The Speaker directs, nobody listens. The Speaker asks them to take seats, they protest. Many a time one does not know what is happening. Efforts must be made to find ways and means so that our Procedure, Conduct and behaviour do not degenerate any further.

It is, therefore, clear that a member has many limitations and constraints in the House although the Parliament is the Supreme authority to control the Executive including the Council of Ministers. In fact, quite a large number of them cannot or do not play their part, let alone effectively. In the present democratic set up in which we are working, if we want fruitful results of all efforts we make, we need to make a lot of improvements in the present style of working. India is to be governed in a democratic manner and no infringement to this mode of governance should be allowed. In order to ensure greater and direct participation of the people, Chief Executives at the Centre, State and Municipality levels should be directly elected by the people. Today, the basic problem in the sphere of Parliamentary control over the Executive stems from the enormous expansion of the scope, functions and powers of the Executive as a result of the socialistic and welfare objectives of the State. The Executive today is assuming the character of an "administrative Leviathan" with its new departments, commissions, corporations and rules. It is also being increasingly vested with legislative and quasi-judicial functions. While it is essential for the Executive to retain

flexibility and initiative, its policies and activities must be supervised by the Parliament. Therefore, it is imperative that a balance is to be struck by law and people should be given direct powers to elect the Chief Executive at the Centre, State and Municipality levels, so that the fast increasing power of the Executive may be brought under control.

6

The Parliament of India : Its Role Under the Constitution

S.S. Ahluwalia

> 'India will find herself again when freedom opens out new horizons, and the future will then fascinate her far more than the immediate past of frustration and humiliation. She will go forward with confidence, rooten in herself and yet eager to learn from others and co-operate with them . . . . ' Jawahralal Nehru

Precisely, this was the destiny which the framers of Indian Constitution have set for the nation to tryst with. The Nation inherited an unique gift in the form of "Constitution of India" which would not only guide us to our destination but would also remain as a testimony of the concern of our forefathers about their future generations for whom they had first struggled to secure freedom by breaking the shackle of foreign rule and then dedicated themselves to build a secured castle constructing it piece by piece with utmost care and affection in true Indian tradition. So long as we conduct ourselves from within this castle our safety against turmoils will be assured.

I tend to draw this conclusion about the Costitution of India whenever I sought to imagine, particularly since my days as a student of law, the delicate and tedious process through which this document was built by collective wisdom of such a large number of social, political and legal stalwarts and historic personalities, and, as a member of Parliament, I indeed feel duty-bound to contribute to strengthening the 'Castle' so that the future of our country can be left secured and capable of surging

forward and, should I be remembered affectionately by the future generations for any of my ocntributions, that would be an extra reward.

In the following paragraphs, therefore, I have sought to analyse briefly the relation between the Constitution of India and the Parliament as I view it, and also endeavoured to point out the achievements as well as short falls of the Parliament in accomplishing the task enshrined in the Constitution, in the last four decades.

Emergence fo People's Legislature

Ours is a Parliamentary form of Government. Evolution of Parliamentary form of Government the world over has been shaped by events marking emergence of peoples Legislatures over monarchal power which lost its character gradually. The State having assumed greater responsibilities in welfare activities, it became absolutely necessary to delineate precisely the fields of action of its various institutions enshirned in the Constitution of the land.

Inception of the Parliamentary system in Inddia dates back to the period around the first World War when under the growing pressure, mounted by the Indian National Congress demanding self-government popularly known as 'Home Rule', the British Government made a declaration on 20 August, 1917, entrusting the then Secretary of State for India, E.S. Montagu and the Governor-General, Lord Chelmsford with the task of formulating a policy of "gradual development of self-governing institutions" and "increasing association of Indians in every branch of administration". This culminated into emergence of the Government of India Act, 1919. The main features of the act included :

Dyarchy in the provinces: To introduce responsible governments in the provinces, by resorting to 'Dyarchy' or dual government was introduced through which the subjects of administration were divided into two categories viz., central and provincial.

Representative Legislature: To make the Legislature more representative and bicameral; the Upper House consisting of 60 members of whom 34 elected, and a Lower House comprising of 144 members of which 104 elected, was introduced.

However, the sustained over-riding powers of British Government over the Indian Legislature and other shortcomings in the Act, led to agitation for "Swaraj", under the leadership of Mahatma Gandhi. In a desparate last effort to retain, as Winston Churchill had claimed, "the most truly bright and precious jewel in the crown of the King, which, more than all our dominions and dependencies, constitutes the glory and strength of the British empire", the imperialist regime imposed the Government of India Act, 1935, which in effect, did not provide any provided for some kind of provincial autonomy along with a federal structure but economic or political power to Indians. This Act was opposed bitterly by all sections.

The Indian Independence Act, 1947, altered the position with the lapse of the suzerainty of the British Crown over Indian States and set the process of formulation of our own Constitution. Thanks to the collective wisdom of the members of the Constituent Assembly, which had been entrusted with the task of drafting the Constitution of India, who did a superb job and gave the nation a written Constitution dividing the sovereign powers amongst the three organs of government viz., Legislative, Executive and Judiciary, duly defining their respective territories. The concept of separation of powers, which had assumed prominence in the polity of several countries in the world, served as a framework of our Constitution as well.

Our Parliament, Basic Features

The Constitution of India provided for Parliamentary system of Government both at the Centre and in States with all its essentials i.e., form of Government such as a nominal executive head of the State who acts exclusively on the advice of a Council of Ministers called Cabinet which is the real executive; the Prime Minister occupying a dominant position as the principal executive, tenure of Cabinet dependent on the will of the Legislature; collective responsibility of Cabinet etc. Therefore, as envisaged by the founder fathers, it is natural that Parliament plays a dominant role in our polity.

Structure: Article 79 of the Constitution envisaged a Parliament for the Union which should consist of the President of India and two Houses to be known respectively as the Council of States, namely Rajya Sabha, and

the House of the People or Lok Sabha. The two Houses sit separately and are continued on different principles. The President is an integral part of the Parliament. He summons the two Houses for sessions, prorogues them, dissolves the Lok Sabha and also gives his assent to legislations passed by both the Houses of Parliament. Sometimes he exercises his pocket veto too in respect of Bills passed by both the Houses of Parliament as he had done in cases of te Indian Post Office (Amendment) Bill, 1986 and the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 1991. However the role of the Parliament of India under the Constitution of India is not confined to Legislation alone but it is manifold which may be summarised as under :

The Parliament plays a dominant role in shaping the executive. The Union execuitve or the Council of Ministers is drawn from both the Houses of Parliament which is collectively responsible to the Lok Sabha. The clause 5 of article 75 of the Constitution stipulates that a Minister must be a member of either House and, even when anybody from outside is inducted in the Cabinet, he must become a member of either House within six months of his induction in the Cabinet. This *inter alia* ensures intimate relationship between the Executive and the Parliament.

The said article 75 of the Constitution of India provides for the collective responsibility of Ministers to the Lok Sabha which is joint and indivisible and the Council of Ministers can remain in office so long it enjoys the confidence of the Lok Sabha. Expressed Parliamentary approval is required for the Governments legislative and fiscal proposals as well as for expenditure of the Government. If the Lok Sabha shows that it does not propose to support the Government or if the Government loses the confidence of the Lok Sabha it must resign. Our Parliament has played this role maticulously. For example, in 1978, when Janta Party Government headed by Shri Morarji Desai resigned, Late Shri Charan Singh took over as the Prime Minister. He was asked to prove his majority in the Lok Sabha within a stipulated period of time but due to political reasons he did not face the Lok Sabha with a confidence Motion but opted instead for dissolution of the House.

In the recent past, the National Front Government headed by Shri Vishwanath Pratap Singh was also asked by the President to prove his majority in the Lok Sabha on the 7 November, 1990, but the Lok Sabha voted the Government out of power resulting in formation of an alterna-

tive Government by another party albeit with minority strength which enjoyed the support of the largest party in the Lok Sabha.

This role of our Parliament came to the fore again when the Chandrashekhar Government apprehending its defeat in the Lok Sabha, on the Motion of Thanks on President's Address to both Houses, opted to resign on the floor of the House and dissolve the Ninth Lok Sabha and to seek mandate of the electorate afresh.

As is well known, no single party in the newly formed Tenth Lok Sabha could secure absolute majority strength which under normal circumstances should have made the country to face elections once again. But, since yet another election within such a short period amidst the prevailing social and economic crises has not been considered to be advisable, the President had no choice but to summon the largest single party in the Lok Sabha to form the Government.

The social, political and economic condition, as prevailing, has been found to be not conducive to holding yet another election in such quick succession, third in two years, but neither the Constitution nor the Parliament pose any problem for the people to adjust the system of Government with the prevailing situation. Although it is basically the maturity and sagacity of the members of the Parliament that helped in evolving a consensus for the larger interest of the people, the credit for making the consensus admissible should also be showered on our Parliamentary system.

The Parliament also plays a vital role in maintaining a check on the Executive in many ways. As per the Rule 32 of the Procedure and Conduct of Business in Lok Sabha, and Rule 38 of that in Rajya Sabha stipulate that "unless the Speaker in Lok Sabha or the Chairman in Rajya Sabha otherwise direct", the first hour of every sitting of both the Houses is dedicated to asking and answering questions on the working, policies and related matters of the Government. Answers are given either orally or in writing subject to preference of the member and availability of time. Similarly there are numerous other means e.g., Calling Attention Motion, Short Duration Discussion, Half an hour Discussion, Special Mention etc. to raise matters of public interest in the Houses and attract Government attention towards it. Discussion on the demands of Grants of respective Ministries and discussion on the working of Ministries are

other means of keeping a check on the Executive and this role has been well played by our Parliament.

The Constitution of India envisaged supreme role for our Parliament which is also evident in the fact that neither Executive nor the Judiciary can interfere in the matter of Parliament but Parliament can question and discuss matters relating to the actions of both the Executive and the Judiciary as a matter of right.

The Parliament of India, however, plays its most pivotal role in the field of Legislature which includes imposition of taxes and appropriation of moneys from the consolidated fund of India. Article 107 of the Constitution lays down provision as to introduction and passing of Bills other their money Bills and financial Bills. The legislative proposal is initiated in the House in the form of a Bill. The detailed procedure relating to the passage of a Bill in a House is laid down in the Rules of Procedures and Conduct of Business which each House has formulated. The Constitution has only laid down the basic rules of procedure. It is evidently necessary to give due weightage to the fact that the volume of Legislation enacted by the Indian Parliament, about 2,500 in last 40 years, is undoubtedly a consi-derable achievement. Legislation in our Parliament can be initiated either by the Government or a Private member but generally the legislation initiated by Government finds place in the Statute Book. However, 14 Private Members' Bills have also assumed the status of Law as a part of the Statute Book. It is a matter of pride that our Parliament has played its role as the Legislating body very efficiently and, as a result, some of its enactments have been recognised as masterpieces the world over.

The fact that our Parliament has remained ever alert to the need of the people and have also found the Constitution liberal enough to be adjusted in accordance with the need of the hour, without losing its basic tenets, is apparent in the member of amendments brought about. So far, the Constitution has been amended seventy one times to take care of emerging changes in our social arena.

Firm but non-rigid Constitution

The above is a clear enough tostimony of the fact that our Constitution is firm but responsive to the need of the hour of the people for whom it is

meant. It is not rigid at the cost of the people's need. Under Article 368 Parliament is empowered to amend the existing articles of the Constitution and it has been amended seventy one times in last over forty years.

In fact, when the Indian Constitution was framed and dedicated to the People in 1952, the country comprised of 350 million people with only a few basic problems. Apparently, with the rapid growth of our population and the problems of the country growing in gigantic proportion, we would have perished as a Nation if our Constitution did not have the flexibility inherent in it.

For instance, the erstwhile U.S.S.R. which had to declare while adopting its new Constitution, perhaps the fourth Constitution within the 60th anniversary of the Great October Revolution, in 1977, that "... the constitution must correspond to definite social relations and the stage of social development. If there are no substantial changes in society and constitutional clauses remain virtually static and invariable; there is no need for its renovation. If, however, society is surging forward and achieving the ideas outlined, the Constitution will lag behind, and become outdated..." Thus, whereas the Soviet Union had to replace its Constitution, about four times, since 1918 when Lenin gave the world, first socialist type Constitution through the Constitution of the Russain Soviet Federative Socialist Republic enacted on 8 July, 1918, the Constitution of India could accommodate the needs of a growing Nation by simply amending its clauses.

Nevertheless, our Paliament could have done much more to add greater vigour to the Constitution to get rid of many problems that have been surfacing, particularly in the recent past, had the members of the august Houses been able to give greater attention to the national causes than to their party interests over the years. I will seek to explain this aspect in the penultimate portion of this article.

Private Members' Initiative

The contribution of the individual members in legislation was envisaged by the framers of the Constitution and the same has been proved to be true by the members of Parliament over the years. For instance, in the Rajya Sabha itself the members have brought in as many as six hundred

and sixteen Private Members' Bills within its one hundred and fifty-nine sessions held so far.

Out of these, the House could debate on one hundred and eighty Bills but only six Bills, including the one lapsed due to sudden fall of Government, got into the Statute Book while forty-nine Bills were negatived following debate. 132 Bills were, however, withdrawn at different stages.

The Parliament has demonstrated its resolve to overcoming deadlocks arising out of disagreement on any issue between the two Houses through joint sittings. The finest examples of solving deadlocks between the Houses were evinced in the joint sittings of the Houses on the Dowry Prohibition Bill, 1959 and the Banking Service Commission (Repeal) Bill, 1977.

While playing its legislative role, the Indian Parliament has amendend, rejected and revised scores of legislations which has shown its authority in this field. The Parliament also played a significant role in the field of subordinate legislation. There is a standing committee called the "Committee on Subordinate Legislation" in both the Houses of Parliament which scrutinise the rules and regulations made under an Act of Parliament minutely and submit their reports to the respective Houses. The reports of these committees are generally accepted and implemented by the Executive.

Judicial & Quasi-Judicial Role of Parliament

Probably it is beyond the knowledge of most of the members of public that Parliament is entrusted with such a role, particularly in connection with the hearing of the petitions from the general public, associations, institutions etc. There is a Standing Committee known as "Committee on Petitions" in both the Houses of Parliament where any citizen individually or collectively, can give a petition which is examined by the Committee, evidence collected and Report along with recommendation is submitted to the Government which is generally accepted and implemented by them.

Similarly the Parliament is the sole judge of the lawfulness of its own proceedings and no court of Law can go into the procedure adopted by either House of Parliament in conducting their business. In other

words the House is not responsible to any external authority for following the procedure it lays down for itself and it may depart from that procedure at its own discretion. If somebody tresspasses this jurisdiction of the Parliament, the respective House decides on the fate of such persons for breach of privilege. The matter is either referred to the Privileges Committtee of the House or the House itself converts into a Committee and judge the guilt of the offenders, who are summoned to the bar of the House, and either reprimanded or sentenced to imprisonment. In the recent past, a former member of the Union Cabinet, Shri K.K. Tewary was reprimanded by the Rajya Sabha for his reaction against certain comments made by the Rajya Sabha Chairman as the House adjudicated his reactions to be opprobrious against the high office of the Chairman of Rajya Sabha and amounted to insulting the august House. The Parliament has, however been discharging its judicial role efficiently and with restraint without getting provoked by the gestures of the Press, media or individuals.

The Constitution has also given the authority to Parliament to impeach the President, Vice President, Judges of the Supreme Court and High Courts, Chief Election Commissioner, Comptroller and Auditor General of India etc.

Short Falls & Omissions : Shrinking of Parliament

The above facts may tend to suggest as if the Parliament has been engrossed fully in seeking to expedite its duties assigned by the Constitution of India. In reality it has left much to be desired and it should be a matter of concern that the authority as well as the role of Parliament in our Polity has often shown a tendency of shrinking from time to time, particularly since 1975, when the number of sittings of Lok Sabha came down to 63 against around 135 sittings reommended in the Constitution for each of the Budget, Autumn and Winter session in a year. While the shrinkage of session periods in 1975-76 may be attributable to the state of internal emergency at that, but we find that in the year 1990 the Lok Sabha held only 81 sittings even though there were no such constraints.

However, it is a bare fact that there has been a steady fall in the number of sittings of the Lok Sabha and Rajya Sabha over the years. For example in 1952 when the first Lok Sabha was constituted, it held 99 sittings during the year which rose to 151 in 1956 whereas in the case of

Rajya Sabha the total number of sittings in 1953 were 60 which rose to 113 in 1956. While the first Lok Sabha averaged 135 sittings a year the Seventh Lok Sabha averaged just 101 sittings a year. The decline which set in after the 1971 parliamentary election was most evident during emergency in 1975 and about three years of Janata Party regime. The Lok Sabha Session of August 1979 set an all time record when on 20 August, 1979, the whole Session lasted for only 26 minutes.

As such, it has become apparent that the duration of Parliament sessions has been shrinking year after year. This shrinking of the sittings has also affected the performance of Parliament, in expediting its role assigned by the Constitution, adversely. For example, following presentation of the Annual Budget to the Parliament, the Demands for Grants are passed by Lok Sabha of the respective Ministeries, which provides the Parliament with the opportunity to discuss their working. But it is noticed that on an average only four to five Ministeries' demands are discussed in the Lok Sabha every year and the rest of the demands are passed by guillotine due to lack of time.

Effective Participation

To enable the Parliament to play its assigned roles effectively, it is also necessary for its members to remain present in the House and participate actively in its proceedings with constructive attitude.

The framers of the Constitution, therefore, stipulated quorum (in clause 3 of article 100) for conduct of the proceedings of Parliament. However, although the onus of watching the status of quorum, as per article 100 (4), lies with the Presiding Officers of the respective Houses, business, including important ones, are often sought to be carried on in the Houses even with presence of members falling short of the prescribed quorum until any member raises the demand for suspension of the proceedings for lack of quorum. This seems to have become an unwritten rule.

The virtual paucity of adequate and effective time at the disposal of the Parliament has not only remained as one of the major deterrent against speedy achievement of our social goals through this Institution but has sought to cause distortions in the process of the working of the State to considerable extent.

Failure to check on Executive

It may be of surprise to many of the readers if I highlight the fact that the demands of important Ministries like Finance and Railways have never been discussed in either House of Parliament. Despite the fact that Budgets presented by them are discussed year after year, the working of Ministries has never been discussed by the Parliament which allows the opportunity to the people's representatives to evaluate broadly the working of the Ministries and exert some check on the Bureaucracy. Due to the situation as has been prevailing, the Ministries need not care for the Parliament which does not have time to discuss their working.

Escapement

The apathy of Executive is also evident often in the answers given to the questions asked by the members. Tendencies are rampant to avoid rendering specific replies by resorting to evasive or generalised replies even to queries on very important matters. Tendencies of side tracking/ circumventing and hoodwinking the process of Parliament is also evinced by the Executive some time, which results in erosion of power of this Institution. For Example, Parliament passes a Bill which needs to be assented to by the President for becoming an Act. Now, for the commencement of the Act the Government has to notify the date of commencement in the Gazette of India but it is not done, often deliberately, by the Executive for years together e.g., the Hire-Purchase Act, 1972, the *Wakf* (Amendment) Act, 1984, and the *Prasar Bharati* (Broadcasting Corporation of India) Act, 1990, have not so far come into force.

There are several instances where efforts have been made by the Government of the day to circumvent the process of Parliament by deviating from its Rule and taking recourse to "conventions of conveniences". There is no mechanism to check on such deviations from the Rules in Parliamentary proceedings because the rulings of the Chair cannot be challenged before any authority.

There are also instances which show a trend of declining role of the Parliament in our polity. As explained already, paucity of time has resulted in passing the grants of several Ministries without discussing their internal working. I find that the working of as many as 17 Ministries viz., Railways, Finance, Urban Development, Parliamentary Affairs, Food Processing, Finance, Atomic Energy, Science & Technol-

ogy, Electronics, Environment & Forests, Space, Ocean Development, Food, Personal Public Grievances and Pension, Textiles, Planning and Programme Implementation, Welfare, Civil Supplies have not been discussed either in Rajya Sabha or in Lok Sabha.

Anomalous Rules

Some of the provisions in the existing rules of the Parliament seem to have been rendered outdated by the emerging developments in our system and tend to dilute the democratic spirit. As a simple example, I would like to dwell upon the procedure followed by the Houses in the question of granting "Leave" to withdraw a Motion moved by its mover. Though Parliament is the sanctum sanctorum of Democracy built on the basic doctrine of 'majority-must-be-granted', grant of Leave of the House can be denied to the mover of a motion even if a single dissentious voice is raised against it and, in that eventuality, members are not called upon to vote on the issue of grant of leave to the mover of the Motion seeking its withdrawal but the House is forced to jump that issue and decide the fate of the Motion itself even though the purpose of raising the Motion might have become infructuous. Such rules which stand to negate the spirit of democracy are also seemed attributable to negative utilisation of precious hours of the Parliament, on several occasions.

Omissions

Despite the achievement of more than two thousand and five hundred Government Bills and as many as seventy-one Constitutional amendments to its credit, the continuing omission by Parliament of India in addressing itself in last four decades to several significant existing provisions of the Constitution continue to remain an eye sore and a potential source or disappointment not only to the affected sections of the people but also to the intellectuals, including social and political workers at large about the effectiveness of this Institution.

In this regard I would restrict myself to highlighting the following provisions enshrined in the Constitution for achieving social goals which the Parliament has not yet been able to take up for implementation even though more than four decades have elapsed since its inception :

(a) Article 24 regarding Prohibition of employment of children in factories etc. emphasised that "no child below the age of fourteen

years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

Instances of violation of this provision of our Constitution are observed in abundance mainly because of, as held in the *People's Union for Democratic Rights vs. Union of India* case in Supreme Court, "absence of (appropriate) legislation prohibiting and penalising its violation the right secured under this Article hardly be effective".

Although the Parliament often devoted its time to discuss the plights of the children of poor parents and misuse of childhood, it has done precious little to prevent violation of their constitutional right except, enacting the Child Labour (Prohibition and Regulation) Act, 1986.

(b) Article 40 : The provision under this article entitled Organisation of Village Panchayats, emphasises that "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." But in reality, in absence of any statutory legislation, this provision has been made almost redundant. However, a determined move was made, perhaps for the first time, by the Congress regime led by Late Shri Rajiv Gandhi in 1989 to bring in comprehensive Panchayati Raj and Nagarpalika Legislations to strengthen the primary self governments but in vain.

The failure of Parliament to implement this clause of our Constitution has not only denied the people their right to self-government and blossoming of democracy at the grass-roots, it has virtually blocked the process of percolation of benefits of countries developmental planning to the people down the line.

A revolutionary concept of evolution of power to the people and decentralisation of our planning process was envisaged in the Panchayati Raj enactments proposed by the late Shri Rajiv Gandhi, which if implemented, would have hit at the very root of the vested interests behind the denial of self-government to the people. Unfortunately, the Parliament failed to rise to the occasion and support his mission.

(c) Article 41 entitled right to work, to education and to public assistance in certain cases, envisaged the basis on which the socialist inclination of our socio-economic order would have rested firmly as it assigned the State to, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Although the Parliament through the Constitution (Forty-Second Amendment) Act, 1976, added the word "Socialism" to the Preamble to the Constitution of India assuming the responsibility of providing social security to its every citizen from "craddle to grave", rights under article 41 continue to elude our citizens.

(e) Article 45 : Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Parliament is yet to enact any Legislation to gift our children with this most vital of all the rights despite passage of forty long years. We may find many free schools all over the country and other facilities being provided by the Government for spreading education and literacy but education is not compulsory yet in India.

(f) Article 47 entrusts the State with the responsibility to raise the level of nutrition and the standard of living and to improve public health. The title itself reveals the objective set for the State by the framers fo the Constitution. But aspiration of the citizen relating to this constitutional provision is yet to be materialised. The number of people living below the poverty line have gone down during the last forty years in technical terms but, unlike in the advanced countries of the world, we do not measure poverty of the people in terms of availability of nutrition to them but on the basis of price index of a given year. This cannot reflect realistic picture of poverty.

(g) Article 48 entrusted the State the endeavour to prohibiting the slaughter of cows and calves and other milch and draught cattle,

in addition to preserving and improving their breeds. While the endeavours of the Government and efforts of our dedicated Scientists have brought in considerable developments in the field of animal husbandry, Parliament is yet to seriously address itself to the objective of prohibiting slaughter of cows, calves and other milch cattle as set out in the constitution.

Neglect to the Futuristic Ideas

The legislators in a vast and complex country like India cannot remain complacent even if whole of the current objectives, set out in the Constitution, are achieved. The framers of our Constitution had visualised situations that would crop up in future even after several decades whereas we are keeping ourselves engaged with the present developments almost on day-to-day basis. This trend is indeed alarming as far as the future prospects of the Nation are concerned.

Five Year Plans & Parliament

The practice to let the Parliament look into the Five Year Plans only after the same has received its final shape, as if only to put its seal of approval, is itself, in my opinion, unrealistic. If the Parliament has to put its seal of approval on the Five Year Plans then it should be proper for it to look at the Plans during its drafting, so that it can avail the opportunity to incorporate the aspirations of the people in preference over often irrational priorities sought to be enforced by a handful of arm-chaired economists and bureaucrats who formulate the Plans sitting within the four walls of the air-conditioned rooms of *Yojana Bhavan* in utter disregard to the real needs of the toiling masses labouring in the fields and factories or the millions of jobseeking youths who, despite their vigour, energy and pairs of hands ready to contribute to the growth of the Nation, are seen as liability even after seven successive Plans.

However, our Planning process may not be possible to be based on the need of the people until we let it generate, as was visualised by late Shri Rajiv Gandhi, from the District level. For example, a particular District might have been suffering in absence of animal husbandry facilities but their representative in the Legislature may be giving priority to having a Maternity Hospital in the District, whereas the

Planners sitting in Delhi may decide to establish a Mental Hospital in the District since it did not have one.

Population v. Parliament-Member Ratio

With the steady growth in our population, there has been phenomenal increase in the socio-economic problems as well, whereas the number of people's representations has seen very nominal increase. The number of Lok Sabha seats increased from 489 in 1952 to 543 in 1991 and that of Rajya Sabha from 238 seats to 245 in the said years. This reflects hardly any rationale as far as the ratio of population *vis-a-vis* their representative in the supreme Legislature of the country is concerned which broadly stands today as 1 : 7, 37,000. A member of Parliament cannot afford to meet personally even one tenth of his constituents during the entire term whereas it is desired of him to be in close touch with the people to keep himself apprised of their problems to be able to discharge his duties to the society as a legislator.

Article 82 of the Constitution of India had envisaged that upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine.

But this provision stands freezed upto the year 2000 as the article further stipulates that "... until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies..."

So by the year 2000 the country's population is estimated to touch the 100 crore (against 35 crore in 1952) mark i.e., almost three times of the original population. It implies that by the year 2000 AD, which incidentally is the Golden Jubilee Year of the Constitution of India, if the ratio of seats in Parliament is to be readjusted proportionately, we need to build another Parliament House bigger enough to accommodate thrice the present number of representatives of the people. As the situation stands now, I do not think any body among the present legislators are giving serious thought to this aspect.

Growing Attraction for Sensationalism

A tendencey has been growing intensely among the members of Parliament, and politicians at large, to devote more to sensationalism and "hot issues" for cheap publicity and allied parochial gains instead of addressing themselves positively to the outstanding problems of the Nation. As a result, the precious hours of the Parliament are often wasted in unnecessary criticism and pandemonium than to making any positive contribution.

This problem is, of course not new. It had started in the late 50's when several aspirants of power, having been rendered disappointed due to victory of Pandit Jawaharlal Nehru and the Indian National Congress in successive general elections, used to adopt negative attitude towards Parliament although many of them were thinkers/orators par excellence.

Many outstanding Parliamentarians of yesteryears had, thus, taken recourse to launching opprobrious campaigns against Pandit Nehru and other political opponents and coined such denunciatory adjectives like "Ultra Parliamentarians", "Extra Constitutional authorities" etc, to their lexicons to add teeth to their exhortations against the Government and its leaders. The culture of malicious personal attack against political opponents on the floors of Parliament had taken preference over sober debate based on ideological convictions without any consideration of personal advancement, as had been the spirit of deliberations since the Constituent Assembly. For such politicians, relevance of Parliament and its sanctity had ended apparently because they did not see any hope, in normal course, of their ascendence to power.

The tradition not only continued but has also flourished into a full-fledged occupation of quite a few politicians in the present generation whose activities, as have been seen in the recent past, are poised to wrought disaster for the Nation. Political activities have virtually been restricted to culmination of Vote-Banks by perpetuating caste divide, communal hatred and secessionism and the same are also being sought to be glorified through campaigns of disinformation.

Danger to the health of our Parliament and polity is discernible in the growing emphasis among our politicians on :

(a) Catching the ears of the august Houses of Parliament by shouting down others and dramatised actions;

(b) Catching the eyes of the public by creating headlines for the Newspapers; and

(c) Catching the votes by hook or by crook.

This scenario of our parliamentary democracy can be changed for better through inculcation of patriotism along with spreading education among the masses. In addition, it has also become necessary for the Parliament to seek to amend the aberrations that have grown in its process over the years obviously due to greater indulgence of the convenience of dealing with day-to-day affairs without paying attention to its consequences on the future generations.

I would like to highlight the situation of the Rajya Sabha to substantiate my aforeasaid observation. As is signified by the nomenclature itself, "Rajya Sabha" is the Council of States which implies that it is basically meant to protect and promote the interests of the States and strengthen the Federal character of the Indian Union as was envisaged in our Constitution and, thus, prevent the emergence of "Unitary" trend at the Centre. But, in reality, Rajya Sabha is found to have been engaged almost exclusively in repitition work as a "revision House" of the matters coming from Lok Sabha, neglecting its due role as the Upper House in the Federal system. The framers of our Constitution not only awarded Rajya Sabha with veto-power but also entrusted it with exclusive power in certain vital matters. For instance, it is only Rajya Sabha which can invoke article 249 of the Constitution relating to the power of Parliament to legislate with respect to any matter in the State List in national interest.

Many of the emerging problems of the Nation, particularly those which have culminated into secessionist movements over the years and the controversies in regard to Centre-State relation could have been avoided to a great extent had the Council of States performed its role appropriately.

Despite our amending the Constitution seventy-one times so far, the Government often finds itself unable to tackle several growing demands of the people because the same are found to be contradicting with the provisions of our Constitution. While the common people, sympathetic to such demands, tend to think about the Government of the day as irresponsive and indifferent to their aspirations, prolongation of solution to

the people's demands have been providing the opportunity to anti-social and anti-national forces to intrude into the arena in disguise of the agitators and indulge in violence to cause destruction. There is no dearth of instances of such undesirable developments in the country. This ailment has assumed to a chronic nature affecting almost all parts of our country today. If the majority of the members of our Parliament think seriously about getting rid of it for good by contributing to reform the Constitution, which should be an instrument of resolving the people's problem, then they should put their wisdom together in the Parliament and review the Constitution and amend its provisions to make it even more responsive to people's needs.

I think it can be done if members take a broader outlook about their rights and duties in the Parliament and extend greater priority to the interest of the Nation.

In fact, over the last four decades, the Parliament has addressed itself to several problems the Nation has been facing and did not fail to rise upto the occasions whenever required. There are quite a large member of enactments to its credit which would remain as landmarks in the history of Indian Parliament. Most important among them are :

(a) the Constitution (Twenty-Fourth Amendment) Act, 1971 which amended article 368 of the Constitution to provide expressly that Parliament has power to amend any part of the Constitution, including the provisions relating to Fundamental Rights;

(b) the Constitution (Twenty-Sixth Amendment) Act, 1971 to derecognise the ex-rulers and abolish privy purses and other special privileges to them;

(c) the Constitution (Forty-Second Amendment) Act, 1976 to add the commitment to "Socialism" in the Preamble to our Constitution; and

(d) the Constitution (Fifty-Second Amendment) Act, 1985 to stem the rot of our democracy set in by politics of defection, among others.

The Parliament could have added another such precious jewel to its crown had it approved the enactments relating to Panchayati Raj and Nagarpalika, procesed by the Government in 1989 under the leadership

of Late Shri Rajiv Gandhi, seeking to decentralise power to the people. But Rajya Sabha refused to approve the Bill and, hence, it failed to become an Act.

As far as my personal experience in the Parliament is concerned, I am keen more to be optismitic about the future role of both our Parliament and the Constitution which have been guiding us to the destiny comparatively smoothly than various other countries in this subcontinent which were born almost together with our country.

Contribution of the Press Media

Perhaps it is not known to the members of general public as to the amount of hard work, study and other exercises that a member of Parliament has to put in to be able to raise an issue in Parliament and deliberate on it effectively. Since most of the people see parliamentarians through the eyes of the newspapers which in our country, for commercial and other interests, are often found to be more committed to presenting sensational headlines than to be informative about the Parliament and parliamentarians, they tend to love or hate a legislator virtually as per the dictates of the press.

Back-log of Work

When I think about the back-log in the Parliament, it irritates me to remember that thousands of our countrymen laid their lives and several thousands suffered for protesting against imperialistic British rule in this country and its atrocious Laws but we in independent India still continue to follow as many as one hundred and eighty five enactments enacted at the Westminster for the British Rule in India. Can't we discard all the laws enacted by the intruders and formulate our own in consonance with the aspirations of our people? We ought to face this question one day.

Despite all such shortfalls, lapses and back-logs in the Parliament, we have certainly been growing as a healthy nation because of our commitment to uphold the Constitution. This itself should appear to be a remarkable achievement if we consider the fact that we were a colony of the foreign rulers who left us after sucking our life almost out for two hundred years.

India must live and surge forward as long as it abides by the ideals inculated the founder fathers of the Nation. These ideals and visions have been recorded in our Constituttion. I would conclude with very high degree of optimism about the future role of the Parliament and our Democracy but would like to leave a word of caution as late Rajivji used to exhort :

> Our democracy is strong. It is very healthy and progressing rapidly. But that does not mean we can stop and rest. If democracy is to survive, if it is to be preserved, we have to defend it every day, every minute of every day. We have to protect and nurture it.

7

PARLIAMENT'S ROLE UNDER OUR CONSTITUTION

Palai K.M. Mathew

"The Constitution of India, republican in character and federal in structure, embodies the salient features of the Parliamentary System" (Kaul and Shakdher). The Indian Constitution is largely based on the British constitutional framework, enriched by Indian ideas, ideals, ethos and conditions. Our fairly unique 'Fundamental Rights' drew inspiration from the UN Declaration of Human Rights. Neither the British nor many other constitutions in the world have any such chapter on Fundamental Rights.

The makers of our Constitution left no stone unturned to find out the most suitable Constitution for a country of our size, tradition, history, magnitude and diversity. It should suit the unparalled diversity of this country with its multi-religious, multi-racial, multi-linguistic, multi-geographical and multi-national characteristics. This incomparable diversity has to be harmoniously built into a stable unity. This was the challenge before the framers of our Constitution.

When the Constituent Assembly discussed about our Constitution, some members argued for a unitary Constitution; but the majority favoured the federal state. In our federal set-up, power is delivered to the States from the Centre and the States are autonomous in respect of these powers. Unlike this, in USA the devolution of powers is from the States to the Centre. In India, we have three lists showing the devolution of

powers:

1. A list of Union subjects;
2. A list of State subjects; and
3. A list of Concurrent subjects.

As has been pointed out by Shri R. Venkataraman in 1984, in our Constitution, 'States have only these powers which had been transferred to them. Our Constitution is neither completely federal nor unitary; but it provides for a centralised federation, in which the important powers are centralised in the Union Government. One might argue for greater powers or greater devolution of powers to the states'. But that is a different matter.

Now, our founding fathers have adopted a system of parliamentary executive, a cabinet form of Government, instead of a presidential system as in USA in which the President is elected for a fixed period and is irremovable till the expiry of that period. This system is applicable both to the Union and the States.

In our system, the Parliament is supreme, of course, subject to certain limitations. Under the Indian Constitution, Parliament is supreme, subject to our Constitution. An Act of Parliament cannot contravene the provisions of the Constitution. But in England, any law passed by the Parliament cannot be invalidated by any authority in the world. In fact, Constitution is ultimately supreme in India whereas Parliament is supreme in Britain.

Parliament is the most supreme organ in our Constitution. Ours is a welfare state in which socialist principles also have to be put into practice with the purpose of ensuring the welfare of the overwhelming majority who are miserably poor, heavily down-trodden and cruelly ignored. A welfare state has to render greatest service and social justice to the greatest number. The Parliament should look after the interests of all, exercising its supremacy over all facets of people's life.

Parliament, as I said, is supreme only within the Constitution. As 'Kaul and Shakdher' has pointed out, "the Parliament in India is not a sovereign body — uncontrolled and with unlimited powers in the same sense as the British Parliament is. It functions within the bounds of a

written Constitution. Its legislative authority is hedged in by limitations in a two-fold way:

1. By the distribution of powers between the Union and the States, and
2. By the incorporation of a code of justiciable fundamental rights in the Constitution, and provision for judicial review which means that all laws passed by Parliament must be in comformity with the provisions of the Constitution and liable to be tested for constitutionality by an independent judiciary. All these limitations tend to qualify the nature and extent of the authority and jurisdiction of Parliament."

But the enormity of the powers of the Parliament should not be underestimated. The Parliament enjoys colossal powers under our Constitution and plays as important a role as any other sovereign legislature in the world. A study of the jurisdiction of Parliament as regards:

1. distribution of powers,
2. constituent powers,
3. emergency powers, and
4. its relationship with the Judiciary, Executive, State Legislatures and other authorities, would amply demonstrate the fullness of its vast powers.

Our Constitution 'tempers together the opposite elements of liberty and restraint in one good work' (L.M. Singhvi). This is evidently a difficult task. As pointed out by Singhvi, it is easy to make a government; this can be done by catching hold of the seat of power and enforcing obedience. It is still easier to give freedom; it only requires to loosen all controls. The process of making a Constitution, mixing liberty and restraint in due proportion, is immensely difficult. This is what India has done.

The Constitution 'provides inbuilt institutional checks and balances so as to secure an equilibrium between diverse organs of Government and to reconcile the claims of the community with the freedom of the individual. It is meant to make use of the potential of democracy for socio-economic development, to ensure justice, equality and fraternity, to

preserve the dignity of the individual, the integrity of the nation and the requirements of a welfare state. In other words, this is distribution or separation of powers in a parliamentary democracy.

'Democracy can be preserved only when there is separation of powers', wrote Montesque in the 18th century. Democracy prevailed in England, because the Legislature, the Executive and the Judiciary were separated. In England, if the legislature cannot support the executive, the Prime Minister can ask for a dissolution of the House and for a fresh mandate. In USA the legislature can reject any Bill recommended by the President. The President cannot dissolve the legislature. The Indian 'separation of powers, however, is a broad delineation and not an absolute separation. Our executive cannot survive the no-confidence of the legislature. Both are inter-dependent. But there is delineation of their respective functions. The executive has to administer; Parliament has the role of 'legislating and regulating overall policy; and the judiciary has the function of interpreting the Constitution and the laws and preventing any excess or abuse by the executive'. (R. Venkataraman)

The volume of work and functions to be discharged by Parliament is now-a-days growing even more quickly like a snowball. So many complicated questions also have to be faced. As a result, it has become the practice now for Parliament to decide only the general principles of any measure or law and leave it to the executive or departments to fill in the detailed requirements. In this way the executive is assuming enormous powers; it can do what it likes in an emergency. This means that Parliament is sidetracked in regard to many important activities of the state. Its chief role is now being reduced to legislation, criticism, questions, queries and approval of the general policy of the government. Parliament seems to be on the decline!

In Italy, Germany and many of the communist countries, Parliaments have been deprived of most of the powers after seizure of these states by Nazis, fascists and communists respectively. Even in England, it is the Cabinet or the Government which decides every big question and the Parliament only puts its stamp on it. The Government can get the Parliament agree to anything it likes. 'Power has thus been transferred, and is still being transferred, from the legislature to the executive'. "Our Government. has become an executive dictatorship tempered by the fear of parliamentary revolt" (Harold J. Laski). We have to save our Parliament from slipping into such a degradation before it is too late.

The Indian Parliament has several functions. Dr. M.P. Jain[1] has pointed out six functions:

1. *Legislation:* This is the most important and major function.
2. *Control of public finance:* This includes granting of money for expenses on public services, imposition of taxes, etc. In this, the Parliament gets several opportunities to discuss and control country's finances, budget, etc.
3. *Deliberation and discussion:* Parliament deliberates, discusses and debates public issues, shaping and influencing Government policies and ventilating public grievances.
4. *Control over the Executive:* The supreme legislature criticises and supervises administration and influence government policies.
5. *Removal of high officials:* Parliament has the power to impeach the President (Art. 61) and remove Vice-President, Judges, (Art. 67) Chief Election Commissioner, (Art. 324) Comptroller and Auditor-General of India (Art. 148).
6. *Constituent powers:* It can amend the Constitution (Art. 368).

One more function may also be added to these. Interpellation is also a very important aspect useful to the administration. The question hour is meant to bring to the notice of the executive mistakes, misdeeds and excesses, to seek clarifications on various acts and omissions and to present various problems of the people. By this, Ministers also get an opportunity to know and study many things.

All these functions and roles have to be exercised for the benefit of the people in whom vests the ultimate sovereignty. It is "we the people of India" who enacted the Constitution through the instrumentality of the Constituent Assembly. The people are the real repository of the sovereignty. They have the power to make or unmake the Parliament with its amending power under article 368. This shows that the Indian Parliament is not created in the image of Dicey's absolutely sovereign Parliament.

Parliament as the institutional organ of the Constitution with precedence vis-a-vis the other institutional organs has the paramount

duty to discharge all its defined and delineated functions and roles with utmost care, vigilance and sense of responsibility for the good and welfare of the people of India. This is mainly because of the fact that, if Parliament fails in the exercise of its sacred functions, parliamentary democracy will be the casuality.

Parliamentary democracy, as we know, is the only form of Government. under which people can be:

1. free, in the sense that they possess not only the desire but also the ability to live their lives as seems good to them,
2. moral, in the sense that they not only know how to distinguish good from bad but are also in a position, if they so desire, to pursue the former and eschew the latter, and
3. progressive, in the sense that they are both willing and able to increase those things that are good both in their personal lives and in society' (C.M. Joad).

This, in short, means that Parliament should enable people to be free, moral and progressive. This presupposes that it is the business of Parliament to make laws, policies and programmes and to do all things to alter and improve society. The structure of our society is not God-made, destined to stand for all time, nor king-made by divine providence to keep eternally in tact. It is a human-made structure which should and could be changed by the will of the citizens exercised through the Parliament. Parliament should shape our communities, retaining democracy as the constitutional instrument for effecting the required changes.

The role of Parliament, ultimately, is to alter and change society in such a way that the individual can develop his personality, live a full and satisfying life and realise all that he has in himself. The laws, policies, programmes and actions necessary for this end have to be successfully worked out by Parliament in a modern, socialist democracy. It is by its success in fulfilling these purposes and functions that the Parliament is to be judged.

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8

Accountability to Parliament and Tenure of Lok Sabha

Hari Kishan

India, being a country of different languages, cultures and religions can not remain unaffected by the recent unprecedented global, political and ideological changes.

When India attained independence, the founding fathers, after ceaseless hard work for three long years, formulated a Constitution for ushering in a new era. The Constitution came into force in 1950. At that time, the vision of our great freedom fighters and dedicated and distinguished leaders was to build a prosperous India on the basis of principles of equity, natural justice and secularism so as to safeguard the unity and integrity of the country and to maintain unity even in diversity.

If we make a serious study of our experiences gained during the course of time, we feel that our Constitution has been impeding our way in achieving our goal and thus the future seems to be bleak rather than bright in the absence of any beacon light. History stands testimony to the fact that time keeps on changing and no efforts whatsoever can stop the moving wheel of time. There are enough indications that revolutionary changes may take place in India also. Most of the political leaders have lost their credibility in the society and the problems faced by the people are striking a word of caution to them. In order to attract voters, each political party coins catchy slogans and releases luring election manifesto but the same has not yielded any fruitful result.

The world was amazed at the sudden collapse of socialism. Mr. Boris Yeltsin, the President of the Republic of Russia even went to the extent of saying that socialism is seen and envisioned to be very good, but it is unfortunate that it was on trial in a great country like Russia where it failed. There has been some influence of socialism in our country also. The political parties with socialistic inclinations have really been distributing poverty in lieu of land and wealth of the country. They have been promising the workers to make them masters of the industrial units but it has, in fact, led to closure of many running units. They gave platitudinous slogan of nationalisation as a result of which the production declined. They also kept on fiddling with the governmental money. These policies and idealogies have been tried and tested in various countries and the results are well known to all of us. The various revolutions in the world have established the fact beyond doubt that there is no place for monarchy of by-gone days, imperialism, apartheid and tyranical political institutions in the world today. Therefore, we should pay attention to resolve our problems and be vigilant and alert, lest any crisis should grip our country. Our country with a population of 86 crores is the biggest democracy in the world. In the interest of our democratic set-up and for ushering in a new India it is necessary to bring about suitable radical changes in the Constitution well within the ambit of article 368 in consonance with the changing times and as acceptable to the people of the country as a whole.

In view of dwindling judicial system and the faulty election system which is losing its credibility, there is an urgent need for making drastic changes in the Constitution of India which is largely based on the Government of India Act, 1935, thrust upon us by the then British rulers. We have to take stock of our achievements and failures during the last 40 years and set new aims and goals for future. The only way of doing so is to set up a new Constituent Assembly which may carefully deliberate on changes in the Constitution so as to make it capable of fulfilling the hopes and aspirations of the teeming millions of the country. Then, the Parliament of India should adopt these amendments.

It is a fact that a number of intellectuals are keen to be associated with the process for bringing about revolutionary changes in the Constitution. Several organisations and scholars are also agreeable to this proposal and they have been expressing their views on the subject

from time to time. It is surprisingly true that the intelligensia of the country are of the opinion that the present system of governance has miserably failed. Thus, a consensus has developed in favour of Constitutional reforms.

A stable Government and a secured full tenure for Lok Sabha are the only panacea for solving the gigantic problems like population explosion, acute unemployment and the resultant frustration among the youths, rampant corruption, acute economic crisis and threats posed to the security and integrity of the country by separatist and terrorist elements in the country. In the absence of these two basic things, no political party or for that matter any political leader will ever be able to take firm decision to tackle these problems. He would more and more get entangled in morass of these problems. If we continue to acting only with an eye on 'vote banks' (detrimental) ignoring the national interest, our whole system would suddenly collapse one day in the process.

As per the provisions of the Constitution, of course, the governmental accountability to Parliament is there but there is no provision which guarantees full tenure of five years for the Lok Sabha in the Constitution.

The Ninth Lok Sabha lasted for one and a half year only. Similarly, in Tenth Lok Sabha also, no party has an absolute majority. Anytime, the political situation can take such a turn that the Lok Sabha may have to be dissolved. Will not any Prime Minister, in such a situation, be worried about protecting his office? Can any concrete decision in such a situation, be taken for the welfare of the people? The Opposition Parties will support or oppose anything with an eye on votes. Therefore, the solution for all the burning problems of the country lies in having a new Constitution, new polity, speedy judicial system, fair electoral system and a new education policy. Strengthening of democracy and sustaining the unity of the country only will raise a ray of hope among our youth. Only then, the dream of a prosperous country, base on the principle of equality, will be fulfilled. Dedication towards one's own country should be a matter of pride for everyone but the question is as to who will come forward to shoulder responsibility of doing this great act and in whom, the entire nation may have full faith. The President of India should constitute a new Constituent Assembly. In consultation with the Vice-President of India, Prime minister, Chief Justice of India, Speaker of Lok Sabha,

former Presidents, former Prime Ministers and the leaders of the recognised political parties of India and it should submit its recommendations within one year after thorough study of the matter. The recommendations should be accepted unanimously by the Parliament.

This is the translation of the article written in Hindi.

9

PARLIAMENTARY-JUDICIARY RELATIONSHIP

G.M. Banatwalla

The Indian Constitution has achieved a remarkable success in effecting a harmony between parliamentary sovereignty and the powers of the judiciary that is an envy of all the democratic polity. The Constitution adopts the English concept of parliamentary sovereignty and harmonises it with the American model of a written constitution with Fundamental Rights, through a unique set of checks and a remarkable balance of power between Parliament and the Judiciary. An exceptional formulation restrains parliamentary sovereignty from turning into elective despotism and also holds judicial independence from assuming the form of omnipotent judicial supremacy.

Questions concerning the independence, jurisdiction and dignity of the two august bodies — Parliament and Judiciary — are crucial to the relationships between the two. The major issues are those with respect to powers of judicial review, parliamentary privileges and anti-defection laws.

Judicial Review

The power of the courts to review laws passed by the legislature has all the potentialities to cause serious friction and sour relations. The Indian Parliament and the Executive are still not reconciled to the Supreme Court decision that the basic structure of the Constitution is inalienable. Long back, Pandit Nehru had held out: "No judiciary can stand in judgement over the sovereign will of Parliament, representing the will of the entire community."

The English concept of parliamentary sovereignty frees the British Parliament from every legal limitation. The Parliament is supreme and no Act can be struck down as void, even if it is unjust. As May points out, the Parliament cannot be controlled in its direction and "when it errs, its error can only be corrected by itself."[1] Accordingly, in *Lee v. Bude*[2] the British court admitted: "We sit here as servants of the Queen and the Legislature." In sharp contrast, Chief Justice Hughes of the United States declared that the Constitution of the U.S. was what the Supreme Court said it was. Justice Frankfurter remarked bluntly: "The Supreme Court is the Constitution."

The growth of the enormous judicial power in the American system is a product of a slow, gradual process marked by deep deliberations. It is an oddity of political development that the doctrine of 'separation of powers' propounded to secure the independence of each organ of a state should lead to judicial intervention in every department through its power of judicial review, United States has no explicit provision conferring the power upon the judiciary. President Jefferson stated unequivocally that the founding fathers had wished to establish three independent departments of the government and, therefore, to give the judiciary the right to review the acts of the Congress and the President was in violation of the doctrine of separation of powers and of the intentions of the makers of the Constitution.[3] In the case of Japan, the Supreme Court, as John M. Maki has remarked, "has adhered strictly to the principle of the separation of powers but has honoured equally the doctrine of legislative supremacy." While upholding its power of judicial review, the Court has generally believed that the proper remedy for legislation not clearly constitutional is political one, to be exercised through the ballot.[4] Swiss Laws are not subject to judicial review. In the U.S.A., the powers of judicial review was invoked against the action of Federal Congress in 1803 in *Marbury V. Madison*[5] and against state action in 1810 in *Fletcher V. Peck.*[6] However, for nearly three-fourth of a century, from 1789-1865, there existed but a narrow base for court intervention as:

(i) the original Constitution dealt with only a limited number of individual rights; and

(ii) the supreme court ruled in *Barron V. Baltimore* that the Bill of Rights, adopted in 1791, operated only against federal action.

The Fourteenth Amendment in 1868 guaranteed due process of law in protection of life, liberty or property. Gradually and through an approach of 'selective incorporation of the Bill of Rights into the 14th Amendment guarantee, the Supreme Court acquired great judicial supremacy.

It is interesting to note that the judiciary in the U.S. is not as powerful as it is generally assumed to be. The Congressional authority to regulate judicial power is significant. Article III of the Constitution says that "the judicial power of the U.S., shall be vested in one Supreme Court, and in such inferior Courts *as the Congress may from time to time ordain and establish.*" Thus, a Congress irked by any exercise of federal-judicial power may withdraw, in whole or in part, such power or jurisdiction from the lower Federal Courts as it may deem fit. Several statutes depriving the Federal Courts jurisdiction over specific matters have been held valid.[7] Second, the original jurisdiction of the Supreme Court is restricted to only a few subjects mentioned in article III and its appellate jurisdiction in all other cases is subject to such exceptions and regulations as the Congress may make. In *Ex parte McCardle* (1869),[8] the Supreme Court found itself obliged to dismiss McCardle's appeal for want of jurisdiction as the Congress had, while the appeal was pending before the Supreme Court, repealed the Statute giving the court jurisdiction over such appeals.

An independent judiciary with the power of judicial review is a salient feature of the Indian Constitution. The members of the Constituent Assembly were so eager to ensure an independent Judiciary that they included such detailed provisions in the Constitution which, according to Sir Ivor Jennings, no English lawyer would have thought of doing. However, as compared to the U.S., the power of judicial review stands relatively circumscribed. In the case of the U.S. the judiciary, under the doctrine of 'due process', has wide and indefinite powers to determine the conditions and the restrictions under which the Legislature would be competent to interfere with the individual rights. Thus, judicial wisdom takes precedence over the wisdom of legislative policy and the U.S. Supreme Court sits as a 'third or super Chamber' of the legislature. In contrast, the inclusion in the Indian Constitution itself of the specific restrictions to which alone a fundamental right may be subject to, clips the wings of judicial activism to soar to the dizzy heights of

judicial supremacy. Legislative wisdom prevails and is beyond the reach of judicial power.[9] Secondly, the Parliament has repeatedly amended the Constitution to take considerable areas out of judicial power through:

(a) saving of laws providing for acquisition of estates, etc. [article 31 A],

(b) placing of Acts and Regulations in the Ninth Schedule [art. 31 B], and

(c) saving of laws giving effect to certain directive principles of national policy [art. 31 C].

Clearly, the Indian Constitution does not crown the Judiciary with unfettered judicial superiority. Nor is parliamentary sovereignty unlimited. The Constitution acknowledges Parliament as repository of constituent power of the Union, but there are significant limitations. The areas in which the Parliament is competent to legislate, the inviolability of Fundamental Rights, the unamendability of the basic structure of the Constitution, which includes the powers of judicial review, constitute limitations on parliamentary sovereignty.

The idea of limited sovereignty may appear a logical fallacy to one brought up on British traditions. But there is nothing paradoxical or self-contradictory. The term 'sovereignty', first used in the 15th century, has had a long history. Taking off from Aristotle's notion of the 'supreme power' of the state, the idea has travelled through Roman reference to 'fullness of power', the sixteenth century Jean Bodin's definition as the 'absolute and perpetual power', Austin's theory of the sovereign power commanding general obedience but itself owing obedience to none, and Dicey's concept of sovereignty being absolute, comprehensive and indivisible. The American and German federalists propounded the theory of divided or dual sovereignty consequent to the formation of the U.S.A. and the German Empire in order to explain the phenomenon of split-sovereignty between the national and the state government.[10] The pluralist school, on the other hand, deny altogether that sovereignty is the exclusive possession of the state. They uphold, in varying degree, the claim of different authorities to compete with the state for loyalties of the people.

Parliamentary Privileges

The question of parliamentary privileges has at times created difficult situations threatening to escalate into full-blown constitutional crisis. Even Great Britain, despite her traditional concept of parliamentary sovereignty, has not been free from the controversy. May points out that Parliament has invoked its power of commitment, which is the keystone of parliamentary privilege, not only against private individuals, but also against sheriffs, magistrates and even judges of the Superior Courts.[11] However, a wide area of agreement between the Parliament and the Courts has gradually emerged and there is no conflict for over a century.

The privileges of the U.S. Congress are extremely limited and specifically set out in article 1. Each House of the Congress is conferred power to 'punish its Members far disorderly behaviour'. There is no explicit power to punish outsiders for contempt of the House, but, such is the inevitable nature of the power, that the U.S. Supreme Court has responded positively and implied that power.[12] However, as Seervai points out, the exercise of this implied power can lead to protracted litigation.

Articles 105 and 194 in the Indian Constitution specifically provides for:

(a) freedom of speech in legislature, also held to be free from restraints of Fundamental Rights of citizens,[13]

(b) immunity from legal proceedings to the members and any person authorised to publish proceedings, etc., and

(c) protection as to validity of proceedings in the legislature (art. 212).

Then, articles 105 (3) and 194 (3) provide that until codification, the powers, privileges and immunities shall be those of the House of Commons as at the date of commencement of our Constitution. This latter provision has been the subject of bitter confrontation. Presiding Officers of State Legislature and the Parliament have often directed members and officers not to receive summons or notices from any court regarding proceedings in the House. The concerned House could make available to the court any information or explanation desired by the court, through the Law Ministry.

The question whether any House of the Parliament or a Legislature is the sole and exclusive judge of the issue concerning its contempt where the alleged contempt has been committed by an outsider and has taken place outside the precincts of the House, bristles with fierce arguments and counter-arguments. The Supreme Court has said in its advisory opinion that unlike the House of Commons, the legislature in India cannot be regarded as Superior Court of Record and therefore do not possess the conclusive power to commit a citizen for contempt by a general warrant.[14] The U.P. Legislative Assembly conflict with the Allahabad High Court in 1964 had been referred to the Supreme Court for advisory opinion. The Privileges Committee of the U.P. Assembly concluded that the majority opinion was wrong in law. It recommended that in view of the harmonious functioning of the Legislature and the Judiciary, the ends of justice would be met and the dignity of the House vindicated if the House only expressed its displeasure. The year 1984 and 1991 witnessed similar conflict between the judiciary and Andhra Pradesh Legislative Council and Tamil Nadu Legislature respectively.

It needs to be appreciated that like the Courts which need the protective power to punish for contempt,[15] parliamentary privileges and power of commitment are essential for the Parliament too for its efficient and free functioning without obstruction. The power of the Parliament to commit for contempt is a necessary concomitant of parliamentary privilege. The underlying objective of the power is not to shield the members but to protect the parliamentary system from highly irresponsible acts or conduct of any person. As such, the maintenance of the power is to be the concern of every citizen. Indeed, as recommended by a Select Committee of the House of Commons in 1978, the power should be exercised sparingly and only to provide reasonable protection to the House, its members or others, from such improper obstruction as might cause substantial interference with their respective functions.

A solution can only lie in an attitude of accommodation, which, as Austin has rightly remarked, has been one of India's original contribution to constitution-making.[16]

One may avoid the extensive latitude in the British system but the power can only be denied at great peril to parliamentary democracy. The

power to commit a person for contempt may be hedged with such limited remedy as would not impair free and efficient working of the Parliament which has been the unfortunate experience of the U.S.A. The legal remedy is restricted circumstances may lie in appeal to a joint Bench drawn from the Parliament, the legislature and the judiciary, or to the President who may act after consulting the Chief Justice. Here is a case for a well-deserved amendment in the Constitution. However, a complete codification of privileges is no solution, for the law would be subject to Fundamental Rights guaranteed by the Constitution.[17] The judicial review of codified privileges may generate greater tensions. South Australia tried to experiment and had to retrace her steps within fourteen years.[18]

Anti-Defection Laws

Anti-defection laws have proved to be yet another source of tension in parliament-judiciary relationship. Article 102 of the Constitution was amended in 1985 to insert clause (2) to provide for a Tenth Schedule containing provisions for disqualification of a member of a House on ground of defection. It is provided that the decision of the Speaker or Chairman of the House, as the case may be, shall be final. It bars the jurisdiction of Courts. This embroils the high office of the Speaker in avoidable controversies. There is little justification for departure from the procedure contained in article 103 which lays down that all questions as to disqualification under article 102 (1) shall be referred to the President who shall then obtain the opinion of the Election Commission and decide accordingly. It would be advisable to correct the aberration and revert to this established procedure.

To conclude, one may well remember that democracy calls for harmonious working of all the constituent units of the system. Edmund Burke says: "To make a government requires no great prudence. Settle the seat of power, teach obedience, and the work is done... But to form a free government, that is, to temper together these opposite elements of liberty and restraint in one consistent work, requires much thought and deep reflection." Political development is a process marked by careful assessment of policy alternatives with their relative costs and benefits and leads to increasing levels of 'Political Solvency.'

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10

PARLIAMENT OF INDIA

Dalchand Jain

India got independence in 1947 under the leadership of Mahatma Gandhi. Even before India attained Independence a Constituent Assembly was constituted under the Presidentship of Dr. Rajendra Prasad to frame a Constitution for the country so that smooth functioning of democracy could be ensured. The Constitution of Indian was drafted under the guidance of Dr. Ambedkar. The Draft Constitution was adopted by the Constituent Assembly after a comprehensive discussion by the then political leaders and the members of the Constituent Assembly. The Constitution came into force on 20 January, 1950 and since then the Indian democracy is being governed by that. In the present age, the administration of a country can be carried on only by a Parliament constituted of elected representatives of the people in accordance with the provisions of the Constitution and there is no other alternative to it. It is a good fortune for our country that its administration is being carried on uninterruptedly in accordance with the provisions of our Constitution. Though at times, it was felt that the democracy in our country was not running smoothly and it was feared that as in the case of several other countries, dictatorship or military rule might be imposed in our country, yet all such apprehensions have proved false.

In a democracy, it is the responsibility of the voters to send the right kind of respresentatives to the Lok Sabha and the State Assemblies. Our voters should be fearless and wise enough to withstand any kind of pressure in the matter of electing their representatives and should elect their representatives without being influenced by any power or pressure.

But today, we see that voters are sought to be influenced in so many ways. There should be some effective check on it. Distortions are increasing in our electoral process which is a matter of grave concern for any democracy.

Our Parliament is a supreme body under our Constitution and it has been discharging its duty very well. Now new blood and youths are being inducted in to the Parliament by all the political parties of the country. In this situation, at times unpleasant incidents do occur in the Parliament in course of heated discussions. Any such unparliamentary remarks are expunged by the Speaker from the proceedings of the House. Members should be serious enough to listen to each other view points and then only express their own views. Telecast of the Question Hour of both the Houses of Parliament on Doordarshan is indeed a good beginning. However, there is need to telecast the entire proceedings of the Parliament as is done in some other countries. It does not seem to be possible now in view of thin attendance and the unpleasant incidents which often take place in the House which in turn may create a bad impression in the public about the functioning of our Parliament. We wish that our Parliament lives up to the glory of the country.

11

Constructive Vote of No-confidence

Ram Janma Ojha

In his statement on 15 July, 1991, before the Parliament, Prime Minister, Shri Narasimha Rao had said, "the days of massive majorities are over" and assured the House "my style of functioning is to be one of consensus". He further explained the real sovereign's (People's) mandate to the legal sovereign (House of the People) "to run a Government and solve problems of the people which are crying for solution" and informed the House how a sense of confidence was being generated on economic front in the hope of stability of a Government at the Centre. Shri Rao went on record to assure the nation, "I would not lead to another national disaster", and assured the House, "If there is a view which is better than the Government's view in some respects, I am prepared to take your view and see that what I have started with is modified accordingly. I have no difficulty. I have no inhibition in doing that. That will be the approach. So this is the approach with which I am entreating this House". The Prime Minister's assurances call for stability of the Government and the Lok Sabha so that the policies conceived and planned may have a chance to be worked out. The developments during the last two years leading to a fresh election within eighteen months proved horrible. Stability, if not adequately cared for, still remains threatened.

Dr. Ambedkar as Chairman of the Drafting Committee of the Constitution of India stressed the importance and desirability of evolving a system whereunder stability could be guaranteed alongside responsibility in a democratic system but the British system with more responsi-

bility (then) appeared to be more suitable to India as an alternative to the American system of Presidential form of Government with more stability and the idea of reconciliation of the two (stability with responsibility) was then not in sight.

Referring to the two systems in the Constituent Assembly, Dr. Ambedkar said :

> "Both systems of Governments are of course democratic and the choice between the two is not very easy. A democratic executive should satisfy two conditions :
>
> (a) It must be a stable executive, and
>
> (b) It must be a responsible executive. Unfortunately it has not been possible *so far* to devise a system which can assure both in equal degree".

The goal, the purpose and the intention of the Constitution makers and uneasy hunt in their minds and hearts to devise a system to guarantee stability is unequivocally reflected in Dr. Ambedkar's statement in Constituent Assembly and stability has to be read as a part of the scheme of the Constitution.

The Basic Law of the Federal Republic of Germany enacted after the Constitution of India, however, could devise a provision even in parliamentary system to assure stability or continuity of a political administration, so emphatically intended by Dr. Ambedkar and the Constituent Assembly. The negative attitude even of the majority of the members of the Bundestag, the counterpart of our House of the People, to annihilate a Government, was controlled and discarded in the German Constitution (Basic Law).

There can be no dichotomy of stability from responsibility if democracy has to have its unimpaired flow. Responsibility of government to the elected representatives vanishes as a corollary to the extinction of a democratic government in office, without a substitute being placed simultaneously. India has had two spells of a non-responsible government since the Constitution came into force, on account of wrong reading of implications of the Constitution in regard to its stability content. To whom were the Charan Singh government for six months, and Chandra

Shekhar government for five months, responsible? Where was the House of the People and how did article 75 (3) slip out of the Constitution during the two periods ?

In Introduction, the Basic Law of F.R.G. (Federal Republic of Germany) says, "A majority votes in the Bundestag (House of the People) is not, however, sufficient to remove the Chancellor *(counterpart of our Prime Minister)* from office. There has to be agreement by a majority in the Bundestag on a new Chancellor before the former one may be deposed. The principle of a constructive vote of no confidence prevents the formation of parliamentary majority against government without the simultaneous assembling of a majority for a new viable government." This objective has been incorporated in article 67 of the Basic Law of FRG.

Needless to emphasize, bringing down a government without providing an alternative one amounts to dissolving the house of the people itself, for there can be no assembly of the members of the House without a treasury bench.

Our Constitution is nearer to the German version of Parliamentary system on various counts. First, both India and F.R.G. have written Constitutions unlike the unwritten British Constitution. Secondly, both Indian Union and F.R.G. are federal in character and division of power amongst different organs of the State is more distinctly defined. Thirdly, both India and F.R.G. have elected Presidents in contradiction to constitutional monarchy in Britain. Fourthly, the Bundestag and the House of the People do not enjoy absolute and unlimited powers like the House of Commons which, proverbially speaking, 'can do everything except making a man a woman and a woman a man'. The British traditions can provide no key to act for the House of the People in India.

Traditionally parliamentary system in Britain whirls round a two-party system whereas India and F.R.G. have developed a multi-party polity and uncertainty in regard to their combination causes havoc to the life of a government and, also, to the duration of Parliament despite the Constitution. Stipulating periodical elections at a set frequency which can be disturbed in very exceptional circumstances at the discretion of the President, absence of norms to bring down a government in office has led to holiday for democracy in India like the plan holiday at times.

Democracy is a continuous process and contemplates alternative governments but in no case it permits of a no government situation or an unbriddled government working in office.

'Responsible to the House of People' in article 75(3) means that the executive is answerable to and under the control of the House of the People in matters of information, budgetary provisions, enactment of laws and general policy decisions. It does not include ousting of a government by any action or inaction of the members of the House without providing alternative government to run the country, or without providing an opportunity to the Government in office to amend its stand. The provision of article 75(3) does not encourage wanton results for *quid pro quo* or for untimely dragging of the country to the polls. And, all these objectives can be achieved only if a government is amenable to fall or change by substitution through a constructive vote of no confidence and not otherwise. What is explicit in the German Constitution is also implicit in our Constitution. What is embodied in article 67 of the Basic Law of F.R.G. is also embedded in the scheme of the Constitution of India.

Part IV
The Presidential System — An Alternative

12

Parliamentary Vs. Presidential System

Harcharan Singh Ajnala

On the eve of the Independence of India, a Constituent Assembly was formed to frame the Constitution and Babasaheb, Dr. Bhim Rao Ambedkar, was the Chairman of the Drafting Committee. The vital issue at that time was as to what form of Government India should adopt? The Assembly had three alternatives before it namely: the Presidential System like that of the U.S.A., the Swiss Plural Executive System and the British Parliamentary Democracy. The Reports of the Union Constitution Committee and the Provincial Constitution Committee whose Chairmen were Pandit Jawahar Lal Nehru and Sardar Vallabhbhai Patel, respectively, favoured the retention of the British Model of Parliamentary Democracy. They wanted the real executive to be responsible to the Legislature, both collectively and individually. The reports of the aforesaid Committees were presented before the Constituent Assembly on 24 July, 1947. During the discussion in the Assembly about the suitability of the form of Government — Parliamentary or Presidential System in India — a few members emphasised on the adoption of the American System. But the majority in the Assembly preferred the Parliamentary form of Government because of our long experience with the Parliamentary institutions and continuity of the principle of responsibility. Dr. Ambedkar, who argued emphatically in support of the Parliamentary form of Government, said, "What the Draft Constitution proposes is the Parliamentary System... The President of the Indian Union will generally be bound by the advice of his Ministers and the Ministers are the Members of Parliament. The daily assessment of responsibility which is not available under the American System, is, it

is felt, far more effective than the periodic assessment, and far more necessary in a country like India." Dr. Ambedkar, however, in a mild note of warning said "However good a Constitution may be, it may turn out to be bad if those who are called upon to work it happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called upon to work it happen to be a good lot. The working of a Constitution does not depend upon wholly in the nature of the Constitution". Article 75 (3) of the Indian Constitution makes it mandatory that "Council of Ministers shall be collectively responsible to the House of People." Thus the founding fathers of the Constitution in their wisdom gave priority to accountability despite the unstable conditions created by the partition of the country. They expected that the emergence of an appropriate electoral system would be able to tide over the problems of instability under Parliamentary Democracy.

Parliamentary System worked well till 1967. But 1967 onwards, a number of regional political parties came into power in many States and they raised the slogan of more powers for the States. This created tension between the Centre and the States. The issues like defections, personalised leadership, lack of organisational discipline and morale in political parties and their leaders, the role of money in the election process and increasing deterioration in our Parliamentary System, etc. became big questions in public life. With the result, factors like supremacy of Parliament, multi-party system, ministerial responsibility etc. lost their effectiveness. Furthermore, the centralisation of power in a single hand has not been relished by the people at large and they reflect their resentment at the time of election as was done in 1977 general elections. During 1977—80, Government at the Centre demonstrated lack of proper co-ordination among Ministers and erosion of collective cabinet responsibility. It produced greater governmental instability following the coming into office of a coalition Government. After the General Elections of 1980, the demand for a constitutional restructuring with a view to adopting the Presidential form of Government was frequently raised in the country. Several political thinkers, intellectuals, party leaders and other stalwarts have felt that the existing system has collapsed, and have consistently compaigned for the change in system, particularly in favour of the Presidential System. They are of the view that Presidential System will cope with the changing needs and difficult situations the country is facing today. Presidential system will also be

able to solve the problem of hung Parliament which the country has faced thrice in recent past.

In the general elections of November, 1989, no political party could secure even simple majority in the Lok Sabha and the President of the country had to invite Shri V.P. Singh, the leader of single largest party - Janata Dal, who had with him only 144 Lok Sabha members and three other political parties, namely, Bhartiya Janata Party and both the Communist Parties extended their support to him to form the Government. Since these parties had different political ideologies, the B.J.P. after about (eleven months) withdrew its support and the Government fell. Then, in a bid to avoid the unavoidable elections, the President, after the Congress Party declined to form the Government, invited Shri Chandra Shekhar who had with him barely one tenth of the total members of the Lower House, to form the Government. This time the Congress Party extended its support to him in forming the Government. Again the same thing happened and Shri Chandra Shekhar's Government also collapsed after remaining in power for a few months. Now there was no alternative left and the country was pushed towards another election within the period of one and a half year. In this way people had to bear the unbearable burden of huge election expenditures. Even the elections could not solve the problem and no party could muster simple majority of its own. The President then invited the leader of the single largest party, i.e. the Indian National Congress to form the Government.

The Anti-defection Law which was passed with the sole aim of providing the much needed stability to the Government also could not stop the nefarious designs of the over-ambitious politicians. Some members have made mockery of this Law and the very purpose with which our late Prime Minister, Shri Rajiv Gandhi had got this law enacted. This Law provides for the disqualification of defecting members if their number is less than one-third of the total strength of the party, in the concerned Legislature. This has encouraged prospective defectors to engineer adequate defections to avoid disqualification ultimately leading to a change in the Government. All this is invariably done through manipulative politics offering various allurements to the defectors. Thus, a new Government formed through such mechanism is again unstable because its supporters are vulnerable to further defections.

The champions of Presidential form of Government also claim that today our Parliamentary Government is extremely vulnerable because it can be thrown out of power by the adoption of a no-confidence motion, acceptance of a cut motion in the Budgetary voting process and failure to get the Motion of Thanks on President's Address passed by both Houses of Parliament. The latest example of a Government falling on this account is that of Shri Chandra Shekhar which could not get the Motion of Thanks on President's Address passed by the Parliament. Besides, it also becomes the moral responsibility of a government that fails to prevent adoption of an adjournment motion in the Lok Sabha to bow out of office. In the Presidential form of Government, these difficulties do not arise as the Head of the State who is directly elected is not accountable to Parliament.

The advocates of the Presidential System take the examples of America and France where the Presidential System is doing extremely well. The executive power in America is vested in the President. The Executive, being not a part of the Legislature is not dependent for its existence upon a majority of the Congress and the latter cannot dismiss the Executive, except by impeachment in certain contingencies. But no President has so far been removed in this way. The onerous and expanding nature of responsibilities of American President has alarmed some political scientists who now plead for inducting a plural element in national leadership. They plead that the burdens are necessarily so multifarious that to avoid a fatal collapse of efficiency and responsibility, there should be plural Executive instead of a solitary one. A solitary President is a gamble, which a nation cannot afford.

France has been, with great propriety, called the laboratory of constitutional experiments. During the period between 1789 and 1875, it adopted and then scrapped a dozen Constitutions. The then prevailing conditions led many French thinkers to evolve schemes of reform with a view to remedy the situation. One of the most important Study Committees formed for this purpose suggested that the stability of the Government could be ensured by the adoption of the Presidential System. Accordingly, under the Constitution of 1958, the President of France acquired vast executive powers and was elected for seven years. Unlike the United States, France does not have purely a Presidential regime for alongside the President of the Republic, there is also a Prime Minister

and a Cabinet who are responsible to the National Assembly. The National Assembly can overthrow the government but not the President. The President of France is the real leader of the Nation and cannot be removed during his seven-year term of office. Many political commentators depict the President as an enlightened despot wielding supreme control over all aspects of French life. Never in history, they say, have so much power been concentrated in the hands of a single individual.

The executive power in Germany is shared by President, Chancellor and Ministers. But in contrast to the French President, it is the Chancellor and not the President of Germany who enjoys the real power in the State. The President of Germany is the nominal head.

The problem of switching over to Presidential System is formidable. There is no provision in our Constitution for changing its basic structure or creating a new Constituent Assembly. There may be legal hindrances in changing the system and the judgement of the Supreme Court in the celebrated *Kesavananda Bharati Case* may come in the way of such change. The Judgement, unless it is overruled by another full Bench Judgement has made it impossible for any alteration in the basic features of the Constitution.

There is, however, nothing wrong in the reappraisal of our decision regarding the choice of the form of Government in the light of our practical experience, but too frequent changes and hasty experiments in the form of government are likely to lead to a kind of constitutional chaos and weakening of the political and constitutional conventions. Whatever might have been the experience in the United States and France with regard to the Presidential System, the working of that system in several African and Asian countries has not been very successful with hardly any President going out of his office as a result of an election. Only natural death or coup has resulted in his removal from the office. On the other hand, in a Parliamentary System a Prime Minister can be forced to step down from the office and he can be re-elected and returned to that office through a fresh election. Such a precedent is really lacking in many Asian and African countries having Presidential System. All this highlights the need to have some inbuilt safeguards in a Presidential System to prevent ambitious, unscrupulous persons from converting the Presidency into a totalitarian regime intolerant of any opposition or dissent.

There can be no doubt that in a country like India, we need a strong and stable government at the Centre. It would not perhaps, be correct to say that the Presidential System is the only alternative to ensure this. The working of the Parliamentary System in the United Kingdom, Canada, Australia, Sweden and Norway furnishes ample evidence that this system can also give strong and stable Governments. No doubt, some short-comings and defects have come to the surface in our Parliamentary System, but the fault lies not as much in the System as in our own weaknesses and the way we have worked the system. It is not the Constitution that has failed us, it is we who have, by playing foul, failed the Constitution. Moreover, what is the guarantee and certainty that we shall be able to get rid of our weaknesses the moment we change over to the Presidential System. Something, no doubt, would have to be done to find a cure for the maladies which have afflicted the functioning of the existing system. Any move in that direction must receive unstinted support.

The former Speaker, Lok Sabha, Shri Rabi Ray, expressing his opinion on the subject once said that only Parliamentary Democracy can hold the nation together and the Presidential System does not suit the Indian conditions. He observed that the Indian Parliament, considered to be the largest elected institution in the world, has stood the test of the time. Further, the accountability of the Executive to the elected body was more effective in the Parliamentary System. President Shri R. Venkataraman, while inaugurating the 37th Commonwealth Parliamentary Conference in New Delhi had also asserted that there was no better substitute for representative Parliamentary Democracy with all its deficiencies. It is still superior to all other systems that human ingenuity has so far been able to devise. In an obvious reference to stupendous changes brought about in Eastern Europe, the President pointed out that countries which had for decades adopted a monolithic system are now actively adopting multi-party parliamentary processes. There is no other system which can better protect the rights of the individual through the rule of law and which enables, through the mechanism of debate and free discussion, the ventilation of the grievances of the people. Stressing the role of Parliamentary System in India, he said that over ten General Elections to the Indian Parliament, the people have come to acquire something of an expertise in the process of democratic decision-making. It is clear that the deciding

voice is firmly and irrevocably that of the people. Our Prime Minister Shri P.V. Narasimha Rao, while speaking on the above mentioned occasion, also echoed the President's words and stressed that institutions of Parliamentary Democracy are both firm and deep rooted in India. Admitting that things have not been easy for Parliamentary System to function in the country, he however, asserted that the people of India have traversed that path with unswerving faith in democratic ideals and firm adherence to the constitutional process.

There may be some lacunae in the Parliamentary form of Government, yet it is the only system which suits the Indian conditions best. The Indian Constitution is flexible, a living document and it can be changed according to the needs of the country. There is absolutely no need to change our existing system of Government.

13

Presidential Form of Government Versus Parliamentary Democracy — Some thoughts

B.N. Pande

India attained her independence after nearly one century of intense struggle with one of the mightiest imperialist powers. The manner of achieving this fear was something unique in as much as the edifice of the struggle was built by launching a non-violent, non-co-operation movement and there was no rancour, animosity or bitterness against the British. We, the people of India, gave ourselves a Constitution which proclaimed the setting up of a 'Sovereign, Secular, Democratic Republic' based on the philosophy of 'dignity of the individual and unity of the Nation' which will be permeated by 'Justice - social, economic and political', 'freedom of thought, speech, expression, movement, faith and worship.' The Constitution, which is one of the bulkiest and yet the most lucid and powerful document in the world was not drawn up overnight; it is the laborious outcome of one of the longest and punctilious debates in the Constituent Assembly spread over years; enlivened by wit and wisdom and punctuated by brilliant flashes of oratory. It was indeed a marvellous feat of the people of India. The Constitution given to themselves by the people of India, is, however, not a static document, but a living organism. It has lived with the people, grown with them and amidst the vicissitudes of history, the strifes and tensions which afflict mankind, it has risen to new heights and acquired a strength and resilience, which is the characteristic of the people of India. During the long and eventful period of four decades since the Constitution came into being, a sea-change has taken place in the contours of the life of the body politic. The population of India

which was 347 million at the time we attained independence has been more than doubled by 1987 and is likely to cross the 1,000 million mark by the turn of the century. Food production which was of the order of 50 millions in 1950 has more than trebled to 170 million tonnes by 1990-91. The days of PL-480 are gone and we have achieved self-sufficiency in production of foodgrains. The irrigation potential has been raised from about 22 million hectares in 1951-52 to about 80 million hectares in 1989-90. The average expectancy of life has itself registered a dramatic rise from 32 to over 52 years in 1985-86 and the mortality rate per thousand has been reduced from 27.41 to 14.8 per cent. In the field of education, the number of educational institutions during the last three and half decades has increased from 2.3 lakhs to 6.9 lakhs-a three-fold increase. The literacy rate has increased from 16.67 in 1951 to 36.23 per cent in 1981. The country has reached a gross enrolment level of 93.4 per cent at the primary level. While only about 300 out of nearly 5.73 lakhs villages had electricity in 1950-51, over 3.7 lakhs villages have been electrified by 1984-85. While only 21,000 pump sets were available for use in 1950-51 in rural India, the number has gone upto 57.06 millions (fully energised) by 1984-85.

This is the small index of the total range or span of achievements which have overtaken the country. A modern industrial base has been established and taken firm roots by curbing the colonial, feudal and primitive relations of the production system. India today ranks as one among the ten top industrialised countries of the world. A practical, pragmatic and progressive industrial promotion policy characterised by liberal decentralisation and delicensing has contributed in a big way to this achievement. We have long since entered the nuclear phase of the scientific and technological innovation, development and research. The scientists, engineers and technologists produced by our country are the pride of any nation, they have brought laurels in many fields for us. We have given a new thrust in the field of conservation of natural environment, protection of wild life and scientific management of natural resources. In social development, a massive infrastructure has been built which is capable of providing a firm support to the health and nutrition of millions of families. As the leader of the non-aligned nations, India has given a powerful thrust and direction to the young, upcoming and resurgent nations of Asia and Africa. Non-alignment based on peace & non-violence today is not merely a slogan or catch-word but the very

sheet anchor of our survival as an independent, secular and sovereign democratic Republic. The most important and redeeming feature of this philosophy is that we do not stand on the fence, out to catch sides at the opportune moment but are able to judge the relative merit and demerit of each issue affecting the destiny of a nation.

It will, however, be a travesty of truth to say that the above which makes a very impressive reading, tells the full story. Behind the gloss and dazzle of achievements in statistical terms, one can hear many disquieting stories. Although, there has been a progressive decline in the number and precentage of people (in relation to the total population) below the poverty line, poverty stalks millions, who cannot afford a minimum intake of 2,500 calories per day. The gains of high rate of food production have been more than neutralised by the alarmingly high rate of net addition of numbers to the country's population every year.There is a strange relationship between rural poverty and landlessness, assetlessness and indebtedness. Successive rural labour enquiries in the fifties, sixties and seventies have demonstrated beyond doubt that the increased food production had relatively little or no impact on the employment and earnings of millions of landless agricultural labours in the countryside. There are millions of rural poor belonging to the Scheduled Caste and Scheduled Tribe community, who have been victims of social discrimination and economic exploitation for years. Many of them, due to ignorance, illiteracy and backwardness, fail to reap the fruits and benefits of development. As a matter of fact, in the name of industrial development and sining, they are being deprived of their ancestral land and are relegated to the background. This is a strange paradox between the development and destruction of natural environment but this is the sad reality.

Although the Constitution professes faith in the dignity of the individual and unity of the nation, this has been put to its severest test beyond the preception and imagination of the framers. Numerous divisive, destructive and destablising forces based on linguistic chauvinism, provinclialism, paraochialism, religious and communal fanaticism were raising their ugly heads and are out to undo all that we have achieved over the years of hard toil and travail. Today, the human mind is full of fear and agony. Reason and rationality are easily dominated by emotions, fads, taboos, obscurantist beliefs and practices which are outra-

geous and revolting to civilised human existence. Bapujee had once said in the forties, "India is like a house on fire. Her manhood is being daily scorched by the flames of ignorance, illiteracy and appalling poverty." The relevance of this apt statement was felt never before more acutely than today.

A national debate has, therefore, been launched as to whether we should continue with the present system of parliamentary democracy or switch over to alternative forms. The debate is not new. As a matter of fact, nearly three decades ago it was raised by no less a person than Dr. Rajendra Prasad, the first President of our Republic. Dr. Prasad had felt that the American Presidential system was an attractive alternative when he said :

> "It often happens that the Democrats support the President not only by their votes but also by their speeches. Similarly, it also often happens that the Republican members vote and speak against proposal by the President who belongs to their party. It means that the members are elected like the President on party tickets but after election they cease in practice to belong to the party and act in a way which they consider best for the nation. It may therefore be said truly that they have always a national Government and not a party Government in office. We must investigate and find if this analysis is correct. If so we must then consider how far we are right in copying the British party system in all its details."

Few basic issues could be raised from the debate. One is, what are the ailments of the Parliamentary system which would necessitate a cure? Second, what are the factors which cause such ailments? Third, are these ailments incapable of being cured by conceivable parliamentary remedies? Fourth, whether we have prepared ourselves fully to switch over to the Presidential system if such switch over is at all considered necessary? Are we in a position to accept, absorb and assimilate the gains of that system? Fifth, how do we proceed to bring about this change, i.e., whether by amending the Constitution which would amount to changing the basic character of the Constitution or by convening afresh the Constituent Assembly to resolve the debate?

These are ticklish issues but it is possible to analyse them and find answers for them. Let us start with the ills of the Parliamentary system.

They emanate from the infirmities of the process as well as those of the system. The high percentage of illiteracy, ignorance, and socio-economic backwardness of the voters living in rural areas, highly stratified structure of the society based on caste, community, language, religion, concentration of social and economic power in few hands, lack of political education and awareness and prevalence of money and muscle power both before and during the elections, etc., are some of the infirmities of the process of holding election to various representative bodies like Panchayats, Notified Area Councils, Municiplities, Corporations, Panchayat Samitis, Zila Parishads, Assemblies and the Parliament.

These bodies cannot be called fully representative because of the infirmities of the process of election itself. Although the guiding principles behind the process is one man-one vote, in effect one man could mean many votes. The infirmities of the system stem from its defective composition, massive size, interplay of conflicting interests in the decision-making process, both in regard to formulating as well as implementing of the provisions of law. Lack of probity, rectitude and cleanliness in public life and general lack of total dedication to a noble cause are no less responsible for the present unfortunate scenario. Delay in the entire process of consultation itself often defeats the laudable objectives of the Parliamentary system. The process of consultation at times is so protracted and torturous that very often the legislative frame work which is born out of this process is not what was intended in the beginning. The original intention sometimes gets blurred beyond recognition. It becomes at best a compromise of various conflicting interests. The delay coupled with the immobility of the machinery for implementation gives rise to a sense of frustration, restlessness and often recourse to direct action to achieve the desired object which is far from desirable. Poverty of human resources, lack of political will to go in for radical measures to bring relief to indigent and the under-privileged, preference for quick immediate material gains rather than any long term perspective plan to produce positive results, lack of senstivity and commitment to achieve avowed goals and prevalence of too many corrupting forces around are all both causes as well as effects of the present system.

The solution does not, therefore, lie in mere changing over from one system to another. Such a change, if any, would be cosmetic; it would not change the basic nature and character of the system. This does not mean

that we should ignore the infirmities of the system and maintain a status quo. There is always a scope for correction and improvement. What we need, therefore, is a true, substantial and qualitative change in the working of the present system and not of the structure. Such a change is different from occasional tinkering which is far from desirable. With this end in view, I would like to offer few specific suggestions for bringing about a qualitative change in the working of the present system. These are :

(i) The change must begin with electoral reforms. Such a reform must reaffirm and ensure the observance of the principle-one man, one vote in letter and in spirit. Such electoral reforms can be brought about by the Union Covernment in consultation with the constituent units, i.e., the States and the Union Territories by necessary amendment to The Representation of the People Act.

(ii) The Chief Electoral Officers of the respective States and Union Territories and the Returning Officers for the Parliamentary and the Assembly Constituencies must be given enough authority, resources (both human, material and financial) and freedom to ensure conducting of free and fair polls. Their functioning should not be inhibited by administrative, financial and political constraints.

(iii) The Parliamentary system must endeavour to be a truly representative system. In such a system there should preferably be two parties viz., the Ruling Party and the Opposition, which should be strong, compact and viable. Existence of a strong and united Opposition in preference to the existence of a plethora of political parties or splinter groups will strengthen the foundation of political democracy and will ensure its smooth functioning.

(iv) In order to enable the members of the electorate to exercise their right of franchise with sufficient individual freedom and discretion, the political parties must themselves launch a process of education and building up of awareness at different levels on a large scale. Such a process which can be termed as the process of conscientisation of the masses will be different from programmes of formal education and literacy. The traditional system of

education and literacy has not been very conducive to building up of a core of enlightened citizens, aware of their duties and responsibilities and believing in rational and scientific methods in preference to the fads, taboos, make-beliefs, dogmas and prejudices of the contemporary society. Education can be meaningful only if it has succeeded in releasing men and women from the tentacles of die-hard ideas and obscurantist beliefs and practices. True political education must inculcate in the hearts and minds of the people the futility of caste, communiy and religious factors in politics. It must explode the myth of the stratified social order and must be the true exponent and instrument of secular, and rational values and principles.

(v) The Assembly and Parliamentary debates today are often characterised by a spirit of acrimony and bitterness. Such acrimony must be replaced by a spirit of harmony, a refined and cultured behaviour, characterised by courtesy, goodwill, unbiased understanding of issues and individuals, tolerance and decorum. It is true that difference is the core of creation. It is, however, always possible to harmonise the differences, if we cannot eliminate them. If the members are truly educated, intensely aware, enlightened, cultured and dignified in their approach they can convert the working of the Parliamentary system into a model system. The quality of parliamentary debates can also be substantially improved through a system of total information sharing and through proper functioning of consultative committees attached to each Ministry or Department in Governments of India, States and Union Territories.

(vi) As has been mentioned earlier, delay is the principal draw-back of the parliamentary system. Such delay takes place at the stage of formulation of policy both legislative and executive, as also at the stage of implementation. It is, however, possible to minimise delays and make the system more productive and result-oriented provided we have the will to do it. Reasons for delay at different layers of parliamentary democracy must be identified. Date-lines must be fixed for each and every stage of consultation and must be strictly adhered to. Individuals found responsible for wilful delay must be dealt with firmly.

(vii) Yet another bottle-neck of the parliamentary system is that we have developed hitherto a very causal approach in dealing with human problems. Often we fix mechanical and unrealistic target in a routine fashion and work for its fulfilment in an equally routinised fashion. Some of the targets are so unrealistic that they are incapable of being implemented. Even if the targets are fulfilled, they are not found beneficial to the real target groups who are the worst sufferers and victims of the system. The slow, sluggish and routinised approach must be replaced by a more business-like and pragmatic approach which is capable of yielding quick and correct results.

(viii) A true, substantial and qualitative change is possible and can be brought about only by changing the system of education, training and recruitment through which we can create a core of citizens who are aware, intensely alive to their responsibility, sensitive to the plight of suffering of their fellow-beings, who believe in rational and scientific practices. They alone can make the people work.

The above are some of my stray ideas arising partly out of my own perception and partly out of my education and experience. They should not be treated as prescriptive remedies. As a matter of fact, no problem of life and far less human problems could be subjected to such prescriptions. Conditions vary so widely from country to country, state to state, region to region and even within the same region that we can ill-afford to introduce and enforce a rigid and mechanical uniformity. At the same time, certain firm and stringent measures are called for to root out the destructive and subversive elements, to deal with the divisive and destablising forces — prejudicial to unity and integrity of the nation, to restore confidence in certain cherished values of life and to make the system more responsive and ametionative. It is futile to expect radical and revolutionary results overnight but that does not mean that we should stop planning and conceptualising for a better future.

14

ACCOUNTABILITY AND STABILITY

Vasant Sathe

Quite often, there is a misconception that stability in a political system is opposed to accountability of the institutional structures. I would, on the contrary, submit that stability in any system is an essential prerequisite for accountability. There cannot be accountability unless there is stability. Hence, the two are complementary to each other and the contrary therefore is not true.

When we talk of stability, it is essential to be clear as to what we mean by it. The founding fathers of our Constitution, under the guidance of a very eminent Chairman, Dr. Babasaheb Ambedkar, evolved a system which was virtually a merging of the best of most of the democratic Constitutions of the world. Despite the fact that there was a different type of democratic system, successfully working in the United States of America and also in some other countries, such as France, we opted for Parliamentary system because of our close acquaintance with the British system. But the difference was that, whereas in the United Kingdom the parliamentary system evolved over a period of few hundred years and they had an unwritten Constitution, we took advantage of their experience and formulated a written Constitution, embodying more or less the same principles. It is owing to this factor that ours has become today, one of the best written Constitutions of the world. It is true that we have amended it more than 70 times in 12 years. But the basic principles that have been enshrined in the Constitution are valid even today. I consider this to be one of the most outstanding features of our Constitution.

What were the basic goals envisaged by the founding fathers?

During the independence struggle, we desired that this nation of ours called India, should be a united and strong in the years to come. We felt that India should be one nation. Historically speaking, we may talk of our great heritage of 5,000 years, but the fact remains that we have not been a nation in the true sense of the word. The concept of nationhood, in India, was born essentially — in modern political terms — during independence struggle. Even in Europe, it was owing to the industrial revolution and post-industrial revolution period that the concept of nationhood emerged.

Harold Lasky defines a nation as 'a people who feel that they are a nation'. A feeling of belonging to a distinct nation is prerequisite for the formation of a nation. This is what the people in India felt during the freedom struggle that stretches back to 1857, when all the then Princess and Kingdoms united to raise their flag for launching the first struggle for independence. It is throughout this period of history that the feeling of nationhood evolved in the people. Thus, the first concept of independent India's Constitution states that it is for India, that is, *Bharat*. In the Preamble to the Constitution, we declared ourselves to be a 'Sovereign, Democratic Republic'. The words 'secular' and 'socialist' were added to it later in 1976.

When we talk of stability, what is of foremost importance is the concept of nationhood. If anything is done either to dilute or to disintegrate it, the very first premise of our Constitution becomes meaningless. The time has come, after nearly 41-42 years of working of our Constitution, for the nation to take a fresh look at it and find out what needs to be done to maintain the basic characteristic of nationhood. There are changers which can disintegrate the nation itself and if we are not careful, things can go out of hand.

Article 1 of the Constitution designates the Indian nation as a 'Union of States'. Hence, there are States and there is also the Union. Although we call it 'Union', it is not a unitary State. The federal concept is inherent in the term and also in the Republican character of the Constitution. Today, we must endeavour to see whether this basic character is preserved. Firstly, there is a need to ensure that the nationhood gets strengthened at the national level, and at the same time there is a need to take a fresh look on States' reorganisation.

I have a proposition for a federal reorganisation. A reorganisation of States is indispensable if our objective is to remove regional imbalances and ensure a balanced growth of the entire country. Today, we have States which are immensely diverse in terms of size and population. For instance, Uttar Pradesh has a population of over 13 crores. On the other hand, there are States with a population of just 10 lakhs. There is nothing sacrosanct about the number of States the country can have. If America, with less than one-third of India's population, can have 50 States, we too can have as many States, if not more, to enable us to solve our problems. Reorganisation of States after all does not require any constitutional amendment. It can be achieved by a simple process under Article 3. The argument that smaller States are not viable is fallacious. For instance, take the case of Greater Punjab. Now, it is argued that the Khalistan agitation would not have emerged if Punjab had not been divided. Though I am not sure of this, one thing, however, has been proved beyond doubt. Despite fears expressed in almost every quarter about the survival of Haryana and Himachal Pradesh, not only have all the three States survied, but have become the granneries of India. Whereas reorganisation of States is one proposition, I wish to put forth for the sake of stability, there is also a need for reform in another area too to ensure stability at the national level.

As I have often been suggesting, the best way to achieve stability at the national level would be to have the Chief Executive of the country elected directly by the entire electorate. This too would not require a tremendous overhauling of the Constitution. Our President is indirectly elected. All that needs to be done is to bring about some change in the election process. The constitutional experts can show a way in achieving this. To my mind, something closer to the French model of Presidentship would be ideal for ensuring stability. The Parliament should remain to legislate and keep vigilence over the executive.

Today, the fact is, Parliament has become a weak instrument. If no single party gets a clear mandate, policies and programmes cannot be implemented fully, which in turn hampers the growth and improvement of the country. To make the parliamentary system effective my proposal is to convert it into committee systems on the pattern prevailing in the United States and Great Britain. Indepth application is possible in the committees. Even bills can, at first be studied in the committees and then

taken up for final hearing in Parliament. Parliament would be sitting for six months or a lesser period. It would be a place for people to express themselves on general issues, as well as issues affecting the country as a whole.

Apart from issues relating to stability, if we consider the question of accountability, the purpose of a Government first and foremost is to be accountable to the people of India. If we assess whether Parliament and other institutions of the State have been truly functioning to solve the problems of the people, we find that there is something wrong with the system. People often say that there is basically nothing wrong with the system, that the fault lies with the individual. The individual may be corrected but then, a proper system is also required and that is why we framed the Constitution. I personally feel that certain modifications can be brought forth in the system — in the Executive, the Legislature and the Judiciary, so as to ensure the accountability of these institutions to the people of India.

The main objective of the Government should be to create conditions and opportunities for individual citizens of the society to have full scope to develop and achieve excellence in the field of his or her own choice. If we have not succeded in creating these conditions in the country, it is our duty to find out where the fault lies. I would submit that we have not made our system result-oriented. This pertains to the question of accountability. We may have made the administrative system rules-oriented but, we have not bothered about the result. Consequently, what has resulted is imbalanced growth.

The basic trouble with our system is, though we adopted some good principles we have not followed the essence of these principles. Today, it has become fashionable for some to say that Nehru's philosophy has become irrelevant. On the contrary, my humble submission is that this criticism is primarily due to an inadequate understanding of Nehru. In fact, Nehru tried to emphasise on the principles of democratic socialism while giving precedence to individual initiative. He said that the Public sector was required to strengthen the infrastructure and at the same time, industries producing consumer goods were to be under Private sector. Public sector units too were to run on business lines to generate surplus for further growth and investment. This is clearly stated in

para 18 of the Industrial Policy Resolution, a Policy which is being severely criticised today. However, under specific circumstances, profit need not be the motive of the public sector. Units may be required to be set up for achieving specific objectives. Excessive emphasis on aspects such as this in the Industrial Policy Resolution and ignoring its other aspects has resulted in making the Public sector totally inefficient. There is an urgent need to make our industries globally competitive. As I have often been emphasising, there is a need to introduce Authority, Continuity and Accountability for achieving this end. It must be extended to our administrative system too. The Indian Administrative Service can be converted to Indian Development Service.

The only parameter for judging accountability is by results. To build a great India, a big India, a proud India, our approach has to be holistic. The political system, economic system, the entire social system, has to be looked at as a totality and unless we as a nation, irrespective of our party affiliations, apply our mind to this task, we would not be able to overcome our difficulties. We may have excellent growth-oriented economic policies, but if the political system does not provide stability and backing to implement these policies, there is a grave danger of this country succumbing to the same fate as many of the Latin American countries. That is why, I believe that we must go in for stability with accountability.

The article is based on the lecture delivered by the author at the Seminar on "Constitution of India in Precept and Practice at Parliament House Annexe, New Delhi on 25 and 26 April, 1992.

15

THE PRESIDENTIAL SYSTEM : AN ALTERNATIVE

R.K. Jaichandra Singh

In 1950 when India adopted the parliamentary form of Government based on the Westminster model, a number of political thinkers and leaders raised their eyebrows and strongly believed that the system would be shortlived. However, forty-two years have passed and the system has not only stood the test of time but has also been a source of inspiration of other Afro-Asian countries. During this period, our country has experienced three reorganisations of states, the first one in 1956, the second in 1966-67 and the third in 1971. The last reorganisation is significant because it gave full-fledged statehood status to many small states — based more on geo-political factors, though economically less viable.

An oft-repeated question is whether the pace of development has been commensurate with the resources and the potential that the country has. The process of industrialisation started with the Industrial Policy Resolution in 1948 and we have experienced a commendable growth rate in the last two decades except for a few intervening years. However, inspite of these, we are witnessing a disparaging regional imbalance in growth and development. This disparity is clearly visible in all important spheres — be it in agriculture, industry or communication. The East in general and the North-East in particular have been neglected and these areas have received far less attention than they deserve. The question is why ? Is it because of faulty planning? Or is it because of a faulty system? Or, is it because of bad governance? Or is it because of combination of all these factors? A system will be good as long

as it is allowed to function properly.

After having done a good deal of earnest thinking on the subject I feel that we have reached at the cross-roads; whether the country will be more benefitted to continue with the present Parliamentary System or should we opt for a change—like the Presidential System. This question has been addressed from two angles — one from the context of national interest, and the other from the perspective of the smaller states.

The real success of parliamentary democracy depends, to a great extent, upon a comparatively literate and conscious populace and also ideally on its evolutionary growth in a given society. However, the success of this system requires something more and something else. It may sound a bit incredulous but parliamentary democracy will be more successful in comparatively smaller nation-states.

India must be the only giant country which does not have a system whereby the executive head is directly elected nor does it have any constitutional provisions which effectively empower him like a directly elected head of the State.

It is strongly believed that our obeisance to our values and beliefs have at times turned perfunctory, and that partly due to our allowing such perfunctoriness to act as mile-stones, we have impaired ourselves from recognising the fallibilities of a parliamentary form of Government. For some reason or the other, political leaders in general could not meet the expectations of the people. Many of the elected representatives are not able to fulfil the aspirations of the people. There is imbalance in the development within the country and within the states themselves.

What India needs today is a strong executive head and this is possible only if he is directly elected. The system of having a directly elected head of state has certain obvious advantages. He will be more exposed to the people, more susceptible to public opinion, and hence more accountable to the public. We can only benefit from such a system. We must accept the fact that the instability has crept into the body politic of the Indian democratic system. It is a serious matter because this has come to become a recurrent feature of the system. In practice Parliamentary Democracy has turned out to be quite dependent on the number game. This gets further complicated as ideological, regional and social

pressures within the ruling party itself act as powerful lobbies leading to yet another number-game.

The practical fall out is that the Prime Minister becomes preoccupied with his political survival within his own party, and on another plane, the survival of his political party, particularly at the time of elections. This is when the various pressure groups start to really apply their might. All this leads to the situation where the Prime Minister has to depend heavily on the bigger states having large number of seats in the Parliament than the smaller states, for his survival. For example, U.P. has 85 and Bihar 54, whereas the entire north-eastern region comprising of seven states have only 24 members in Lok Sabha.

When this preponderant dependence on the states with the larger number of representatives gets translated into sharing the cake of resources, it becomes imperative that these states enjoy the lion's share. No matter what their potential is, the smaller states face a disadvantage which is a basic characteristic of our system. One practical method of trying to overcome this disadvantage is by increasing the number of seats from the smaller states, particularly the north-eastern states say 8 to 10 seats each from these states. This would form a sizeable block which can effectively address the specific problems of the region in Parliament.

However, in the ultimate analysis, even such a step will prove to be insufficient in the search of a central authority that gives due attention and resources to the small states. It is in this background that the presidential form of Government will be decisively better for the country in general and for the north-eastern states, in particular.

In order to have a better understanding, let us take a hypothetical example. Manipur has two seats in Lok Sabha at present. Suppose both the seats go to the ruling party, it would in the present circumstances, not merit any extra attention. This will be particularly so if the ruling party enjoys a comfortable majority in Parliament at a given point of time. On the other hand in a Presidential System, if the incumbent President had received the support of say 70% of those who voted, his accountability to the voters of Manipur would indeed be of a very high order. The reasoning is that such an accountability would definitely be a factor when it comes to a more equitable distribution of national wealth and resources. This would definitely act as a better redressal of imbalances in growth.

This small essay attempts to act more as a poser than go in for an in-depth discussion on whether we should examine the presidential form of Government as an alternative. The effort has been made to focus on the point that whatever redressals we might effect on Centre-State relations, the parliamentary form of Government, at least in India, suffers from an in-built weakness of political instability. Under these circumstances, the better solution to the regional and social disparities hampering India's growth would be to adopt a presidential form of Government.

A directly elected executive head under the system will, in fact and in effect, help in integrating the nation better. The country should go in for a major reorganisation of states, particularly bifurcation of the bigger ones. Both Houses of Parliament should be directly elected by the people. One of the two houses, preferably the Upper House, should have an equal representation from all the states - like the Senate in the United States to strictly ensure equality to the states irrespective of their size and the population. It may be worthwhile to mention here that representation in the Lower House from the smaller states should be increased to anything between 6 to 10 members. Not only will it ensure equality of states but it will also generate a sense of equality amongst the people of the smaller states.

By the same yardstick the executive heads in the states should also be directly elected by the people with the other structures remaining as they are now. This will be our master stroke to remove instability in these smaller states, which has acted as an impediments to better development.

I wish to make it clear that my opinion is that of a person coming from one of India's smaller states. To this end, it has also been my effort to bring up the poser that a presidential form of Government could be a way out for the perennial problems that plague India's small States, particularly in the north-east. If I have succeeded in creating a degree of interest in the subject among the political leaders, particularly those belonging to the north-east and indeed among the general people of that region, I shall feel rewarded for my effort.

16

The Presidential System is an Alternative

Narsingh Rao Dikshit

The Indian Constitution will complete its fifty years of functioning shortly, and so also a few of my un-quiet thoughts, rather questionings, must be about a quarter century old. During the course of the period a few privileged opportunities fell my way enabling me to discuss them, off and on, with some of the wisest and/or highest in the country, three, perhaps more, ex-Prime Ministers including. Nevertheless, the questionings did not cease; rather went on 'knocking about within to have their passage out,' to the public at large.

Our period of mythology apart, the scriptures, the sacred texts and treatises, books of history, ancient to not very modern and, various other learned works on almost every subject under the sky, even above it, of tens and tens of centuries bygone, have bequeathed to the posterity a treasure store of wisdom as our heritage which has been recognised all over the world. These, one and all, stand a witness to India experiencing throughout nothing but a monarchical type of rule wherein the ultimate authority stands centralised in one single pair of hands. Occasionally, of course, aided and advised, as the exigencies of the situation required, by Ministers, Councillors or such others by whatever terms called, the ruled ones thus became habituated to the type of regime and from father to son began to look to, with fear or hope, the fiat and face of a single-person-authority only.

The pursuit of Truth as an ideal inspired and sustained the rule as a soul of the body politic. The Sages and the Fakirs, the Nakeds or the

Majesties, all alike, swore, sung and sank for this very ideal which Keats was to sing centuries thereafter, that:

> "Beauty is truth, truth beauty,
> that is all ye know on earth,
> and all ye need to know".

Just the other day Mahatma Gandhi in flesh and blood preached the same on our doorsteps; the Buddha gave the same message to the mankind; the Great Ashoka followed on the same lines and Emperor Akbar in his State-Secularism, much to be emulated today, practised and promoted the same ideal of Truth. The 'Jahangiri Insaf' is all too well-known. These are none else but the few facets of one and the same Truth in practice. And this is all modern history without a need to delve into the far-off past.

Our age old ideal of *"Dharma Chakra Pravartanaya"* epitomizes pithily our whole philosophy. Inscribed in luminous characters, it hangs over the Honourable Speaker's chair not only as a succinct reminder of our past cultural values to us but, also as a motto for our actions for fathoming the paths of the future in guiding us safe to the standards of the Glory that India once was. But sadly alas: How the realities stare us aghast? On the very floors, under the very light of the motto, we have to see how the elected honourables, at times behave. The protective provisions of the Constitution so ensconce them that, more often than not, Truth is a recurringly falling casuality. Rare and very rare are the occasions when the scene is pitied on, sympathised with and gets a rescue. This is our working in the 'Temples of Democracy' today.

Our 'Temples of Justice' do not either work differently. Throughout the length and breadth of the country, from the Moffassil to the Supreme level of Courts the accused in thousands every day therein get lawfully forewarned that they are not bound to state the truth, if at all they desire to state anything. Does this all conform to our way of traditional thinking and living? Has it ever had sanction under our laws from Manu downwards till the advent of British notions? Never, never an untruthful behaviour was ever countenanced, much less legally protected. The annals of administrative history do not have a scintilla supporting. None of our workings, Panchayati or Darbari, procedural or substantive,

provides a propping up instance to any of such commissions or omissions. Is it not a high tribute to our sacred heritage that in spite of continual doses of such untruths legally administered to us, generations and generations succeeding, the conscience of the society still revolts against such notions? Nay, even of the persons themselves, who have reaped the advantage out of such a law, in their reflective moments afterwards. What a soul-stirring spectacle indeed! The result is that the *"Dharma Chakra Pravartanaya"* by degrees down, is vanishing away from our national character and failing, and, *"Adharma"* prevailing.

In sum, the question of questions is: Whether our Constitution is at all rooted in the soil of our culture? and, is it indigenously patterned and clothed? Consequently have we opted for the right type of institutions and their forms under the Constitution?

To my thinking the answer should be in plain 'No'. What with natural ease blossoms forth in the soil of its origin can rarely, with equivalent results, be transplanted and grown into another country's soil of culture. It is an impossibility in my view if the two countries happen to stand poles apart in their philosophy of life and mores. J.D.B. Mitchell, Prof. of Constitutional Law, University of Edinburgh, says almost identical that, "the more an institution owes to the conditions of a certain country, the less are the chances of its transplantation... What has to be considered is not merely the plant that is to be moved, but also the soil into which it is to be placed." And yet another authority, Prof. M.J.C. Vile of the University of Kent, writing about constitutionalism opines that, "a political structure then is behaviour... it is patterned behaviour of a peculiar stability and consistency, behaviour which follows certain rules whether explicit or implicit. To emphasize the importance of these rules, and the need for stability in the patterns of behaviour they regulate, is an essential aspect of constitutionalism. This is not to equate constitutionalism with conservative attitudes in politics, it is merely the recognition of the basic requirement of order in a political system".

Of late, at long last, some public thinking has begun on the subject and has come up in open debates in the shape of 'White Hall' versus the 'Presidential' form of democracy. May I without a moment's hitch or hesitation state that, in the context of our nucleus, philosophy of life, and our notions of administration, my considered view is that, *mutatis*

mutandis, the Presidential form of Democracy is superiorly preferable, in fact the only choice. But considering this much part of the bigger issue alone will be doing only a partial justice to the cause. Quite a few other aspects of a basic and over-riding nature cannot be left out of consideration without detriment. An instance may suffice: of the juristic principle, euphemistically termed, "Plea of Innocence", which we have adopted. A living British legal luminary, Lord Shawcross, once Attorney General, gave his views recently, "we cling to a sentimental and sporting attitude to liberty before the promotion of justice. All the time we seem to be adding to the rules which protect the wrongdoer. We should establish a system in which an impartial investigation can examine witnesses and subjects with the sole duty of bringing the truth to light. Society cannot afford to tie one hand behind its back in fighting crime."

It is so much to be lamented that issues like these of such fundamental a character, of time-flouting a nature are being so myopically viewed by almost all concerned in the ephemeral context of political personages, to be or not to be. An explanation from me here be permitted. Aspersion of any nature on the system of British Justice and Democracy has no space for a breath here in my views. In fact I revere their devoted dedication to the high and lofty sense that the people of Great Britain have for the Rule of Law in their country.

For constraint of time and space, I am dissuaded to detail this discussion any further, most relunctantly. The reasonings behind my view should require enough time and space. Hence, briefly I have posed the question only. But in the genuine belief and hope that some concurring expert hand will surely take up the cudgels here-in-after in the interests of the country. Still I am unable to withstand the temptation of quoting in support of F.W.G. Benemy, formerly, tutor in the University of London, and, Head of the Department of Socio-science, William Ellis School, London. Ironical though it may read yet this is what he says:

> "I recall suggesting Indians when I was over there on the Simon's Commission (1927) that perhaps they would find the American Presidential System more suited to their conditions: but they rejected with great emphasis. I had the feeling that they thought that I was offering them margarine instead of butter".

For a generation and more now, we have tasted the fruits of this Constitution of ours. In all humility and without any disparaging sentiments but with the utmost respect due to it, shall be permitted to call it a "synthetic Samvidhan". Lest the degenerating poverty, moral and material, overdrowns us, it is high time to rededicate ourselves seriously to the question in the light of our experience gained. The obtaining situation demands a De Novo consideration, even if the calling up of a fresh Constituent Assembly is to be the ultimate resort.

Part V
The Judiciary

17

Dynamics of Indian Constitution

Santosh Mohan Dev

According to Abraham Lincoln "The American Constitution was conceived in liberty and dedicated to the proposition that all men are created equal". The Indian Constitution, given by the people of free India unto themselves more than 160 years after the American Constitution was framed, put Abraham Lincoln's concept into reality. The Indian Constitution is a piece of beauty as it embodies the best of the American Constitution, the un-written English Constitution as also the Declaration of Human Rights. Gladstone, the great British liberal statesman described the American Constitution "as the most wonderful work". If he were to see the Indian Constitution, he would have stated that it is a "piece deL' art".

The Preamble of the Indian Constitution is a master piece of prose, every word conveys the philosophy of the free nation. The Preamble provides that the India of its dream would be "Sovereign Socialist Secular Democratic Republic". One can write volumes on each of the word used, to describe the political, economic, social status of its citizens in free India. The Preamble emphasizes on the unity and integrity of the Nation as also on the dignity of the individual.

The great American Judge of our own times Justice Black, who is regarded as intellectual heir of Jefferson, in the leading case of *Scales v. United States* observed :

> Belief in the principle of revolution is deep in our traditions.... The right of revolution has been and is part of the fabric of our institutions.

What Justice Black wrote about the American Constitution is equally true of the Indian Constitution which is the child of the Struggle for freedom of India from the British rule and was the first Constitution after the era of decolonization started with the freedom of India in 1947.

One can write volumes on the Indian Constitution and still the writing would be incomplete. If one takes up even one facet of the Constitution, one may not be able to do full justice to the same because of its magnitude, vastness, depth and the underlying philosophy. Though the Indian Constitution has adopted the American system of separation of powers yet it has not adopted its rigidity. Similarly, the Indian Constitution has followed the British Judicial system and Rule of Law but not its rigidity. While the House of Lords cannot reverse its own decision, even if the earlier view is no longer valid, the Indian Supreme Court has the power to review its own judgement and it is this facet of the judicial interpretation which makes the Constitution a living instrument which moves with the times.

The Supreme Court [held] in the first 20 years of its existence held that Public Sector Corporations are not 'State' under article 12[2]. However it took a 'U' turn and in subsequent decisions[3], for almost next 20 years from early 80's till the end of 90's the Supreme Court held that Public Sector Corporations are 'State' under article 12 and are amenable to writ jurisdiction under article 32 if they violate any Fundamental Right. In regard to Private Sector Company in which Financial Institutions have a vital stake in the form of its equity investment, the Supreme Court left the question open in *M.C. Mehta v. Union of India*[4] by making the following observation :

> We do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of article 12.

A trend is again visible wherein the Courts appear to be having a second thought. Recently, Delhi High Court in P.B. *Ghayalod v. Maruti Udyog Limited & others* [5] has held that a Public Sector Enterprise like Maruti Udyog Ltd. is not 'State' within the meaning of article 12. Special leave petition against this judgement has been dismissed by the Supreme Court. With the liberalization of the Government's economic policies announced in the recent past, particularly the dis-investment of

shares of the Public Sector Companies and its partial privatization, the circle might be complete and the Public Sector Corporations might be "freed" from the yoke or 'State' under article 12 so that they could function on industrial and commercial principles and not on the bureaucratic government rules and regulations.

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18

THE JUDICIARY : COURTS IN CRISIS

J.K. Jain

In any discussion of judges and justice, one of the most frequent observations to occur is the statement that justice must not only be done, it must be seen to be done. The processes of law must be transparent, clearly defined, and comprhensible to all, if not in their detail, certainly in their eventual impact. Perceptions of bias, inconsistency, a lack of continuity, even undue delay, diminish the dignity of judicial institutions and judges alike.

In a country like India the role of the judiciary is not restricted to the mechanical interpretation of the law. It is a dynamic institution with a very significant role in bringing about socio-economic and political change as well. For, in civil society, change must be brought through law, and this must be law that is properly implemented and interpreted. The best of legislation has foundered against the shoals of administrative and judicial indifference or insensitivity. It is one of the important functions of the Judiciary to ensure that the benefits of legislation actually reach the people.

The Judiciary, moreover, is the bulwark of the rule of law, restraining the abuse of power, binding the Executive and the Legislature to fulfil the mandate of the Constitiution. It is the last appeal of the common man against the State lawlessness. Clearly, the erosion of the authority and prestige of this institution will have, indeed is having, catastrophic consequences for the nation at large.

As things stand, a sense of despair is inevitable in any individual unfortunate enough to be entangled in litigation. There is little sense in

having a judicial system which finally delivers an uncertain 'justice' after twenty five or thirty years in most cases. A man's hopes and aspirations, often even his life, are involved in a case he litigates. And he must wait and wait, through the trial court where he gets a decision after eight to ten years; that is appealed in the High Court which takes another seven to eight years; and finally, the greatest tragedy of the system is that in the Supreme Court a civil appeal, in the ordinary course, would take fifteen years for final disposal.

The consequence is burgeoning arrears, with lakhs of cases pending at the Supreme Court itself. This is absurd, for it was never the intention of the Indian Constitution that the Supreme Court of India should be some sort of miscellaneous court where every single case would find its eventual and inevitable culmination. The real status and role of an Apex Court in any country does not involve dealing with every single case which comes up before it because counsel choose to file it. The Apex Court is meant to lay down the law for the entire country for the purpose of bringing about uniformity, for deciding Constitutional issues and questions of law of far-reaching importance. But today the Supreme Court is dealing with cases that even the the High Courts would rightly throw out.

'Jurisdiction Hunger' and the Absence of Judicial Restraint

To a great extent, the prevailing chaos in the courts is a self-inflicted wound on the Judiciary. The Higher Judiciary, and particularly the Supreme Court, has not been able to devise any mechanism for screening cases. There is an evident collective inability on the part of this Court to regulate its docket, and to respect the final determinations made by the High Courts. The Supreme Court does not restrict itself to cases the manifestly involve significant constitutional conundrums and important questions of law. Instead, it reopens litigation virtually *ab initio,* going through every detail of each case in hearings stretched over decades to give a final judgement that adds nothing to the existing body of laws and interpretations. and that properly belonged to the High Courts.

In the USA, the Supreme Court consists of a single bench of 9 judges who sit *en banc* (in full strength) on each and every case considered by the Court. The Americans are a very litigious people, constantly running to the Courts over every issue. Yet, the American Supreme Court selects

just 160 to 170 cases out of the 5,000 odd cases filed before it each year. The rest are simply discharged as involving no significant issue of law. The Court is willing to respect the judicial pronouncements of the High Courts, and intercedes only where issues of constitutional significance may be involved. Naturally, then, there is no problem of pendancies.

The runaway situation in India is a consequence of the Supreme Court's failure to discharge its constitutional functions, even as it takes upon itself responsibilities never intended by the Indian Constitution.

At first sight, to lay exclusive blame on the highest court of the land may seem unfair, since the 'litigation explosion' is equally overwhelming in the High Courts and the subordinate judiciary. On closer examination it would, however, be clearer why it is the failure of leadership at the Apex Court that has contributed to the collapse at lower levels as well.

Over the decades, a growing jurisdiction hunger' has characterised the functioning of the highest court of the land, as it has extended the scope of its attention to comprehened virtually everything in the life of the nation. Leading jurists have, consequently, described the Supreme Court as an 'All India Miscellaneous Court', and the justices of this Court have ignored both constitutional guidelines, and guidelines laid down from time to time by the Supreme Court itself, for the admission of cases. While the opening up of 'Public Interest Litigation' in the early Eighties was one of the most momentous developments in Indian jusrisprudential history, creating possibilities for India's justice system to provide relief to voiceless and suffering millions, this genre has today been so abused as to lose all relationship with its original intent. Every guideline laid down by the Supreme Court for admission of matters "in the public interest" *(Vide S.P. Gupta v. Union of India)*[1] has been violated by the Court itself, resulting not only in grotesque anomalies, but in a distinctive loss of prestige for the Court.

A case in point, by no means the only one available, but one that is particularly absurd, was when the Supreme Court decided to intervene, in 1989, in an unseemly fracas between the Cricket Control Board of India and some cricketers on the plea of 'public interest'. This was soon after the very same Court had held, in another case, that an institute funded wholly by the Ministry of Law, and presided over by the Speaker of the Lok Sabha, the Institute of Constitutional and Parliamentary

Studies, is not 'State', and, consequently, no employee of the Institute could go to the Supreme Court in a writ contending that his fundamental rights were being violated. Obviously, the Cricket Control Board is also no part of the State machinery, and therefore, at the very threshold, this particular litigation should never have been allowed more than 5 minutes of the Court's time, unless the Court explicitly went back and overruled its own jurisprudence. But no such attempt was made. And yet the Court spent five days hearing this case, giving it priority over the lakhs of cases, many involving matters of life and death, that had remained neglected for years, even decades, due to 'lack of time'.

The Court has shown a similar propensity to intervening in innumerable matters that are of no concern to it. Moreover, there has been a tendency to extend the 'public interest' label to a variety of matters that properly fall into the sphere of private and corporate litigation, among these the controversies over the *Larsen and Toubro case,* that was heard with great haste on a national holiday on a 'public interest' petition. Examples can be multiplied indefinitely of the manner in which a measure intended to provide relief to the poor and most deprived sections of society has been hijacked by the most privileged elite to circumvent the normal processes and expenses of the legal system.

When the Apex Court of the land sets such precedents, these will be followed, willy-nilly, by its subordinates. Jumping the cue on spurious claims of 'public interest' is more and more the rule than the exception now. Moreover, litigants keep going directly to the Supreme Court in a writ in matters that are yet to be heard by the High Courts, and even by the trial courts. This has resulted in enormous duplication of work as cases shuttle back and forth, often adding to the pendancies of more than one court.

Worse than this rampaging jurisdiction' of the Courts that threatens to encompass everything, is the gradual erosion of Indian jurisprudence into an incoherent mass of utter confusion. With the hundreds of cases passing through the Supreme Court every year, there are precedent being laid and broken every day, with little care for consistency, even as the few examples mentioned may suggest. It would be no exaggeration to suggest that the Supreme Court of India has no jurisprudence today, and decides case after case on a purely *ad hoc* basis. Each bench pronounces judgements according to its own predelictions, and a

conflicting body of case law opens up rapidly multiplying avenues of further litigation at every level. Indeed, with so many benches in the Supreme Court, it has become impossible to predict which way a judge or bench is going to decide. In fact, it would not be incorrect to say that there are as many Supreme Courts as there are divisions or benches thereof.

In reviewing this situation, one must recall the original intent of the creation of a Supreme Court. This was to be a Court of *final* appeal. It was, moreover, to provide a consistent, manageable and living body of law that could furnish a stable, evolving foundation for the judicial system throughout the country. Ambiguity on a single point at the Supreme Court snowballs into hundreds of confused and conflicting judgements both in the High Courts of the country and in the subordinate judiciary. If the Supreme Court keeps overruling its own precedents in every other case, the entire system must necessarily break down. And this is precisely what is happening.

One may, once again, take a comparative look at the US Supreme Court. As stated earlier, that Court only reviews some 160 to 170 cases in a year. Moreover, the Court sits *en banc* on each case. Which means that the collective wisdom of all the judges plays a part, the development of the laws is more consistent, more harmonious, and is embarked upon by a gradual process of evolution.

But here, in India, vast leaps are taken, distinct breaks with the past, unsupported by a coherent logic, changing the whole approach of the High Courts, encouraging lawyers to twist and distort laws beyond recognition, and leaving no possibility of clear expectation for the litigants who begin to perceive the entire legal process not as a machinery for securing justice, but as a gamble for high stakes.

Take, for example, the first-ever privately filed case of alleged corruption against a powerful politician, the *Antulay Case*[2]. This is a case in which the Supreme Court, in 1986, for quite some time, heard arguments on the question of whether certain charges against the accused were properly dropped by the Bombay High Court. Now, the function of framing charges, in our system, properly belongs to the Sessions Judge or the District Judge. It is not the function of the Supreme Court. Moreover, the Supreme Court had decided to transfer the case from a

Special Court under the Prevention of Corruption Act, to the Bombay High Court, in 1984. But in 1986, a Writ Petition challenging the 1984 order was allowed, and two justices raised questions as to whether this was a proper procedure. And then, in 1988, the Supreme Court decided, by a seven-judge bench, that its own orders can be challenged by a Writ Petition. This was momentous indeed, because it meant that no decision of a bench of the Supreme Court can even be final by this reasoning.

The matter, however, does not end here. The issue came up again in the *Indira Gandhi Assassination* case.[3] After a three-judge bench held Kehar Singh guilty, convicted him, and sentenced him to death in decision that has been criticised as based wholly on circumstantial evidence, Kehar Singh filed a Writ Petition against the judgement. *The petition was summarily dismissed.* More was to follow. When the President rejected Kehar Singh's Mercy Petition on the grounds that the Supreme Court, as the highest Court of the land, had given its decision, and that he would not review it, the Court held that this was not a justifiable ground for rejection, and that the President must give his own reasons for rejection. This is certainly surprising. The President would have given his decision in the light of the Antulay judgement, where it was held that in the event of a possible mistake by a bench of the Supreme Court, a higher bench could again take up the issue, and so on. When the Supreme Court decided not to consider Kehar Singh's Writ Petition, the President was, perhaps, justified in concluding that the Court had spoken finally on the question of guilt. But it appears that no conclusion is possible any longer on the basis of the pronouncements of the Supreme Court.

Take, again, the twists and turn that the *Bhopal Gas Leak Cases*[4] has taken. Without entering into details, recall only the 1989 order of the Supreme Court (and this was a mere order, not even a reasoned judgement) where the Court went so far as to quash all past, present and future proceedings against Union Carbide in any Court of the land. Two lawers, the Attorney General of India and the Counsel for Union Carbide, were allowed to reach a settlement, endoresed by the Supreme Court, that effectively placed in suspension, the entire legal system of India. In a kind of judicial emergency that can find no basis in the Constitution, they suspended the power of every agency, including the criminal courts, to

intercede in a matter that had been decided only on the basis of a settlement between two parties in a conflict involving lakhs of victims. Fascinatingly, this decision, along with other aspects of the settlement, was communicated in a summary order barely 350 words in length no logic, no jurisprudential reasoning, no concern for precedents. The order merely stated that the memorandum of settlement is part of the Court's order. And with this, over four decades of the evolution of Indian jurisprudence was relegated to the wastepaper basket. No wonder then that the Supreme Court has now reviewed this decision and has pronounced that the quashing of criminal proceedings against Union Carbide and its Indian subsidiary was *ultra vires*. This cannot, however, repair the harm that has already been done.

The kind of flip-flop jurisprudence that is emerging from the decisions of the Supreme Court passes on wrong signals to High Courts and to the subor-dinate judiciary. In the first instance, the sheer volume of case law emerging from the Supreme Court is impossible to follow. moreover, the manifest conflicts, inconsistencies and constant reversals of decisions encourage the High Courts and the subordinate judiciary to resort to an *ad hoc* case by case decision-making process dictated entirely by the expedients of each individual case, and not by principles rooted in a coherent body of jurisprudential thought. No legal system in the world can hope to provide justice on such an inchoate, erratic basis. Undisciplined jurisdiction is never in the interests of justice or of democracy.

It is imperative, therefore, that the pristine clarity of the original intent of our Constitution be restored to the Supreme Court, indeed, to the entire judicial system. To this end, significant structural changes may be required. The Law Commission's proposal to bifurcate the Bench into a Constitutional and an Appellate division must be examined more closely and urgently in this context. Perhaps if the Supreme Court were to have a constitutional Court that sat *en banc,* the jurisprudence of the Court would grow more coherently. And if the jurisprudence of the Court became more coherent, the flood of litigation would certainly recede.

Court Management

The issue of tackling pendancies, however, is not related to a problematic jurisprudence alone. Indeed, inconsistencies take birth under the excessive pressure of pendancies. The sheer pressure of work forces and decisions. The failure, then, is a failure of management, and better court management would certainly improve the profile and performance of the Supreme Court, as of the High Courts and the subordinate judiciary as well.

Unfortunately, the tools and principles of modern management have simply been ignored in the management of the judicial system in India. There has been a great deal of talk about computerisation in the Supreme Court, but little has come about. The legal systems of the advanced western nations have benefited enormously from cross-indexing systems on which the entire corpus of their case law has been entered, making research and retrieval of material a matter of pressing a few buttons. Such an exercise has not even been initiated in India. Counsel and Judges, alike, are therefore condemned to sift through thousands of printed pages every day to locate the precedents they need, and the cases they wish to consult. The time wasted in this exercise is immense.

Worse, the Judge is alone in his task of studying hundreds of briefs each week to prepare for the cases he is to hear. He must also update on the constantly changing case law emerging from other benches of the same Court. He is, furthermore, single handedly required to reference and write his judgements in the hundreds of cases he hears each year. No wonder, then, that judges have increasingly begun to resort to the practice of reserving judgements.

An interesting experiment, based on the 'Court Clerk' system prevailing in the US Supreme Court and High Courts, was attempted during the eighties. Under this system, eminent law academics assist Judges of the Court by following the arguments, summarizing details, identifying and retrieving the relevant case law, and even writing draft judgements which may then be modified suitably by the Judge and be finally pronounced in Court. While the system in no way undermines the authority of the Judge, it removes from his overburdened shoulders a number of tasks that can well be done for him by others. Unfortunately, for reasons unknown, this system has failed entirely to take off in the Indian Supreme Court. If Judges are to drag themselves out of the bogs

of overwork, and to improve the equality and quantity of judgements they deliver, it is now imperative that they study and embrace the 'Court Clerk' system.

Arguments in Indian Courts tend to be interminable, with the Bar refusing to accept any measure of discipline. The Courts must begin to impose, and the Bar should accept, certain constraints on the time that can possibly be allocated to each case. The US Supreme Court, once again, has an interesting system : Counsel are given exactly an hour to argue their case; at the end of 55 minutes, a warning light flashers, and at the end of the hour, a red light goes on; at this point, the arguments are simply 'guillotined', and counsel must sit down. In India. Cases continue to be argued without interruption for months at end.

There is, thus, enormous scope for the improvement of the functioning of the Courts in India, if modern management practices were adopted.

The Selection of Judges and the Bane of Secrecy

It would be improper here to repeat the allegations of impropriety and bias that are frequently made whenever the issue of selection of judges to the Higher Judiciary comes up. However, it must be noted that the prevailing system has left much to be desired, and the levels of resentment in the legal profession have become dangerous. Allegations of incompetence, bias and even corruption have become commonplace in the corridor gossip of the courts. True or false, these allegations tend to undermine the prestige and the dignity of the judge in question, of the Court, and of the Indian justice system at large.

There has been a steady politicisation of the selection of judges over the time. Statutory 'consulations' with the Chief Justice of the Supreme Court (and with the Chief Justice of the High Court in question for appointments to the High Courts) have been reduced to a formality, with the Executive now playing a pivotal role in appointments. In the Seventies, it was the rule that the Chief Justice would recommend the names of judges who deserved to be elevated to the Supreme Cout, and the government merely opined whether there was anything against the person that should be brought to the notice of the Chief Justice. Now,

however the whole process has been reversed. It is the Executive which selects, and the Chief Justice may or may not object. And ultimately, after the *Judges case*[5] the final word rests with the Executive.

Moreover, most unfortunately, no guidelines whatsoever exist on which judges are selected for the Supreme Court and for the High Courts. In the absence of guidelines, the danger always is that, in many instances, good men, who deserve appointment, will be excluded, while at least some of the undeserving will get a berth.

There is urgent need, therefore, to institute an independent and transparent process for the selection of judges to the Higher Judiciary. A Judicial Services Commission has been suggested, and it is important that this concept be given concrete form. Clear guidelines must be enunciated, and, to the extent possible, the selection of judges should be on the basis of a peer review.

However, even this system is destined to failure, if it is executed under the shroud of secrecy. The entire process of the selection of judges should be brought out into the open, and the merits or otherwise of each appointment must be explicitly evaluated before a decision is taken. Secrecy breeds a multiplicity of ills, and fundamentally militates against the principles of democracy. It has no place whatsoever in any aspect of the entire justice system of a democratic nation.

Much of the preceding discussion has focused on negative aspects of the functioning of the Indian judiciary, and of the Supreme Court in particular. This is, by no means, intended to suggest that the judiciary is an institution that has reached the Nadir at which so many of our democratic institutions today find themselves. Indeed, the judiciary is still the one institution that is relatively free of the plague of corruption, nepotism, incompetence and criminality that have sapped the strength of many of our other institutions. On the road to national reconstruction, in fact, the Judiciary could well be the first institution to recover its original character, and to play the role that was defined for it by the founding fathers of the Indian Constitution. To this end, the erosion of its credibility and prestige must immediately be checked, and urgent measures must be undertaken to begin the process of reform.

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19

JUDICIAL REVIEW

Shabbir Ahmed Salaria

Judiciary is the corner stone of a truly democratic set up. Such Democracies generally have a written Constitution wherein the powers of the Executive, the Legislature and the Judiciary are defined. Judiciary acts as a watch dog and sees to it that the powers are neither abused nor transgressed. This laudable objective can be achieved if the Judiciary is independent. In practice, however, the independence of Judiciary is largely dependent on the self-restrain and will of the Executive. It is for this reason that it is generally provided in democratic constitutions that judges once appointed shall hold office independent of the Executive till they attain the age of superannuation. A judge of a High Court or the Supreme Court cannot be removed except by impeachment by the Legislature and the procedure for impeachment has been deliberately made cumbersome and arduous. For the same reason, it is generally provided that a judge of a High Court or the Supreme Court cannot be re-appointed on any Government post so that there is no temptation on that score.

"Judicial Review" implies the power of the High Court and the Supreme Court to consider the correctness of the orders of the Executive and the laws enacted by the Legislature on the touch-stone of the Constitution and the existing laws of the land. Article 226 of the Indian Constitution confers on every High Court the power to consider the legality and constitutional validity of any order made by the Government or by any authority or officer of the Government. In case the impugned order is found to be against the laws of the land or the provisions of the

Constitution, the High Court has the power to quash the same.

Part III of the Constitution of India enlists the Fundamental Rights which have been guaranteed to the citizens of India. Any Executive action or order emanating from any source, how highsoever, which conflicts with, takes away, abridges, or adversely affects any Fundamental Right of a citizen can be quashed by the High Court on that score also.

Powers of the High Court in this regard have been spelt out in various decisions. Reference may be made here to the celebrated case of *Syed Yakoob*[1].

The following may be deduced therefrom :

That a Writ of *Certiorari* can be issued when a Tribunal, Court or authority has passed order without jurisdiction or in excess of it or fails to exercise its power or have acted illegally or improperly. As, for instance, it decides a question without affording any opportunity of being heard or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice or where it is clear that the conclusion of law recorded by the inferior Court, Tribunal or authority is based on obvious misinterpretation of the relevant statutory provision or in ignorance of statutory provision or is founded on reasons which are wrong in law and the conclusions are so plainly inconsistent that no difficulty is felt by the High Court in finding that the error of law is apparent on the face of record or it is shown that in recording the finding, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influnced the findings or if the finding is based on no evidence. However, the power of Judicial Review will not be exercised by the High Court or the Supreme Court on the ground that findings of facts are wrong on appreciation of evidence or on the ground of error of fact, however, grave it may appear, or where is provision of law is capable of two constructions and the Tribunal or the authority has adopted one of the two constructions. It must also be borne in mind that the High Court's jurisdiction of Judicial Review is supervisory in nature and the High Court is not entitled to act as a Court of appeal.

The power of Judicial Review, however, extends to review the orders of the State or authorities under the State and all legal and other

authorities under the control of the Government. It has, however, been held by the Supreme Court that authorities and Corporations as are controlled by the Government such as the Indian Air Lines, Steel Authority of India, Food Corporation of India etc. are also authorities under the control of the Government. Thus the scope of Judicial Review has been widened and acts and orders of such authorities also come within the purview of power of Judicial Review. Where a Corporation is an instrumentality or an agency of Government it would in exercise of its power or discretion be subject to the same constitutional or public law limitations as the Government is. The rule inhibiting arbitrary action by Government must apply equally where such Corporation is dealing with the public whether by way of giving jobs or entering into contract or otherwise and it cannot act arbitrarily and enter into relationship with any person it likes on its sweet will but its action must be in conformity with some principles and meets the test of reason. In this connection one may refer with advantage to the *International Airport Authority case*[2] and that of *Ajay Hasia*.[3] In one of the decided cases, the Supreme Court has held that Financial Corporations set up by the Government also fall within the term of "Other authorities" occuring in article 12 of the Constitution of India.[4]

In exercise of the power of Judicial Review the High Court and the Supreme Court can issue Writs in the nature of *Certiorari, Mandamus, Prohibition, Habeas Corpus, Quo-Warranto* and pass such other orders or directions as may be required in the interest of justice. A Writ of *Certiorari* is a Writ directed to examine the record of any case and to find the legality, propriety or constitutional validity of such order. A writ of *Mandamus* is a direction to perform a positive action by an authority bound by law to perform such act. A writ of *Prohibition* is in the nature of an interdiction restraining the Government or an authority within the meaning of article 12 of the Constitution of India from acting in any manner which is prohibited by law or by Constitution. For the issuance of such writ the petitioner has to show that he is an aggrieved person and has the *locus-standi* to ask for the relief claimed therein. The Court would be chary of exercising this power of Judicial Review where the petitioner has no *locus-standi*. A writ of *Hebeas Corpus* pertains to the personal liberty of a citizen and if any citizen is held by any authority under the Government or by the Government illegally or under a detention order which is bad in law or violative of the guarantees

contained in article 22 of the Constitution of India, the High Court or the Supreme Court can in exercise of their power of judicial review quash such detention and release the detenue. However, in the case of writ of *Quo-Warranto* it is not necessary for the petitioner who seeks to invoke the jurisdiction of judicial review of the High Court and the Supreme Court with regard to any public office held by any person alleged to be an usurper of such office to show that he has a *locus-standi.*

The exercise of the power of judicial review is guided and circumscribed by the principles evolved by the Apex Court and the High Courts which have hardened into rules. The well known maxim "he who seeks equity must do equity" applies with equal force when the power of judicial review is invoked. The High Court or the Supreme Court would not in their discretion come to the aid of a person who comes to the court with unclean hands and is himself guilty of inequity. Nor would the power be exercised where a party has slept over its rights for long without any reasonable excuse or where the period of limitation for redressal has already expired under the limitation Act. The Court comes to the rescue of vigilant petitioners who have not slept over the oars and allowed the time to drift. While exercising this power of Judicial Review it is thus clear that the High Court and the Supreme Court have adopted rules of self-restrain and self-discipline within the parameter of which they act. Where, for instance, a party has alternative remedy available, it may not be heard by the High Court or the Supreme Court while exercising their extraordinary writ jurisdiction. However, existence of alternative remedy does not constitute an absolute bar in cases where vires of statute are questioned or where violation of fundamental rights is alleged or where there is violation of principles of natural justice.

The Supreme Court has jurisdiction under article 32 of the Constitution of India to entertain petition directly to itself where the infringement of fundamental rights is alleged and in case the Court comes to conclusion that any fundamental right has been violated, it can in exercise of its power of Judicial Review as enshrined in article 32 of the Constitutional of India, set aside or modify such order to the extent of repugnancy. Thus it is clear that the power of Judicial Review of the High Court is much wider than that of the Supreme Court in as much as the High Court can exercise the power not only with regard to such orders of the Government and the authorities which act for and on behalf of the Government which

conflict with the laws of land but also such orders of such authorities as infringe or violate the fundamental rights enshrined in Part III of the Constitution of India. On the other hand, the Supreme Court can entertain petition under article 32 directly only in such cases where violation of fundamental rights alone is alleged.

Although the State of Jammu & Kashmir has a separate Constitution, the provisions of the Constitution of India and the Constitution of the State of Jammu and Kashmir are *pari-materia*. Although the High Court of Jammu and Kashmir is a creation of the Constitution of Jammu & Kashmir, it has the same powers of judicial review under Section 103 of the State Constitution as are enjoyed by the High Courts in the other States of India under article 226 of the Constitution of India.

In view of the pendency of large number of cases in the Supreme Court and the arrears that have accomulated over the years, the Supreme Court generally insists that even petitions in which violation of fundamental rights is alleged should, in the first instance, be filed in the High Court.

In view of the fact that in the High Courts also number of petitions pertaining to service matters have been pending, the Central Administrative Tribunal has been constituted to consider service matters to pass orders there on. The result being that only such matters in which a party feels aggrieved of the judgement of the Central Administrative Tribunal that Writ Petitions are filed in the High Courts that has, to some extent, lessened the burden on High Courts.

It cannot be denied that in the present circumstances and seeing the conditions in which the courts of law today it is not an easy job to get justice. It entails expenses and time. It has been said that delay defeats justice but in actual practice poverty defeats justice all the more. A poor citizen can ill-afford the expenses of present day litigation. Therefore, more often than not, he does not even have the determination to seek redress. Thus many just causes are lost. Moreover when the poor citizen is pitched against a monied and powerful opponent, it becomes all the more difficult to win the battle. The rich and influencial person can get better expert advise and in reality even witnesses, who would like to oblige him. Realising this state of affairs there have been efforts to form Legal Aid Committees which have left much to be desired. Most of the litigation is

in the courts subordinate to the High Court and the Supreme Court and it is only a trickle of initial litigation which goes to the High Court and the Supreme Court. One of the ways to make justice available to the poor citizen would be to have more High Courts in large States and in States which are inaccessible, mountainous or have a forbiding terrain. The Supreme Court should also have its benches at Bombay, Calcutta and Madras. Although that would also not be sufficient to enable the poorer citizen to invoke the power of the judicial review of the High Court and the Supreme Court yet it would make a good beginning. Vacancies in the High Courts and the Supreme Court are not filled for long which also contribute to delay and defeat justice.

The power of judicial review conferred upon the High Judiciary by the Constitution ensures, on the one hand, that the Legislature and the Executive act not only within the respective spheres of powers allotted to them but also that they do not act in defiance of the Constitution, and on the other hand, it protects and enforces the rights guaranteed to the citizens by the Constitution.

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20

Anti-Defection Law and Judicial Review

K.N. Singh

The practice of defection is a natural adjunct of party democracy. In this sense, it is as old as the party system itself. The phenomenon of defection which had started as a process of legitimate and natural polarisation of social and political ideas and interests gradually turned into a method of changing political affiliations for power and at times, perhaps for financial gains. It may be seen that the democratic polity in India was put to severe strain as a result of repeated and unprincipled changes in party loyalties. The practice of such unprincipled defection acquired serious proportions in the country only after the Fourth General Elections held in 1967 which did not provide the requisite majority for any political party to form governments on their own in different States. Such a situation provided a fertile ground for the seed of defection to have a luxuriant growth. Naturally, the dimensions of the politics of unbridled defection and its impact on the party position in different State Legislatures had a destabilising effect on the governments in these States.

Prior to 1967, defections were infrequent and shifting of political affiliation was resorted to only for honest and genuine reasons. Till then, in the history of independent India, less than 500 cases of defection were reported, mostly at the State level. Most of those who left their parties were guided by their conscience and had no lure of office. They did not intend to get any return for their sacrifices made during the freedom struggle. Acharya J.B. Kripalani, Narendra Dev, C. Rajagopalachari, P.D. Tandon, Ashok Mehta, Jayaprakash Narayan and many others were always guided by public morality and value-based political behavi-

our when they decided to leave the Congress Party. It was only on ideological grounds than for extraneous considerations.

But, in the second half of the sixties, the politics of defection came to acquire threatening dimensions. According to one survey for the years 1967—71, out of 3,500 legislators, more than 500 were found to have staged defections at one time or the other. Subsequent to the mid-term poll in 1971, the practice of to and fro defections touched perilous dimensions. In 1979, the Government of Morarji Desai fell due to a substantial number of members of Lok Sabha leaving the Janata Parliamentary Party. During the period following the 1980 poll, defections again became quite pronounced. Governments fell due to unbridled defections in different States. It is interesting to note that between 1967 and 1983, about 2,700 defections were recorded and of these, some 15 members eventually became Chief Ministers, 212 occupied ministerial offices and a sizeable number of them came to head various statutory corporations or other like bodies.

Parliament's concern for the need to curb the malady of defection was reflected for the first time when a resolution seeking to set up a high-level Committee to look into the problem and make recommendations was passed unanimously by the Lok Sabha on 8 December, 1967. Accordingly, the Government constituted a Committee under the Chairmanship of the then Union Home Minister, Shri Y.B. Chavan. The Committee, among others, consisted of Sarvashri Jayaprakash Narayan, H.N. Kunzru, C.K. Daphtary, M.C. Setalvad, M. Kumaramangalam, Madhu Limaye, Bhupesh Gupta and Ram Subhag Singh. The Committee, after going into the problem in detail, placed its report before the two Houses of Parliament on 28 February, 1969. The Committee recommended, *inter alia,* that the political parties themselves should arrive at a common code of conduct for themselves; a member should be bound to stick to the party under whose aegis he won the election; defectors should not be appointed as Prime Minister or Chief Minister; and there should be a ceiling on the size of Ministries. In pursuance of the recommendations of the Committee, a draft legislation on the subject was prepared by the Government. The draft proposal, however, could not be brought before Parliament due to one reason or the other.

Four years later, in order to give effect to the recommendations of the Committee, the Government introduced the Constitution (Thirty-

Second Amendment) Bill, in the Lok Sabha on 16 May, 1973. The Bill was referred to a joint Committee of the two Houses of Parliament. Before the Committee could report back to the House, the Lok Sabha was dissolved in 1977. In 1978, when the Janata Party came to power, yet another attempt was made to bring forward a Bill seeking to ban defection. But the Bill was opposed even at the introduction stage.

Ultimately, it was the Congress Government under the leadership of the Late Shri Rajiv Gandhi which succeeded in getting a law passed in 1985 by Parliament which sought to put an end to the evil of defections. The Government introduced the Constitution (Fifty-Second Amendment) Bill in the Lok Sabha on 24 January, 1985. The Bill was discussed and passed on 30 January, 1985. The Rajya Sabha passed it the next day. The Bill, as passed by both the Houses of Parliament, was assented to by the President of India on 15 February, 1985.

Anti-Defection Law

The Constitution (Fifty-second Amendment) Act, 1985, apart from amending different articles relating to disqualification of members, added the Tenth Schedule to the Constitution which contains conditions of disqualification on grounds of defection. It provides, *inter alia,* that an elected member of Parliament or a State Legislature shall be liable to disqualification on grounds of defection if he decides to voluntarily relinquish membership of his original party or abstains from or votes in the House against the direction of such party. The acts of voting against the whip or abstention, however, will not attract the provisions of anti-defection law if these acts are condoned by the party within 15 days of such happenings.

Anti-defection law provides that the disqualification on the ground of defection shall not apply in the cases of 'splits' in and 'mergers' of the Legislature Parties. For this purpose, a 'split' will be deemed to have occurred when a group of members consisting of not less than 'one-third' of the total membership of a Legislature party either breaks away from their original party or abstains from voting or votes against the whip issued by the party. Similarly, 'merger' will be treated to have taken place if, and only if, not less than 'two-thirds' members of a Legislature Party breaks away from the original party and decides to merge with another party or opts to function as a separate group in the House.

The Tenth Schedule provides some exemption in this regard to certain catagories of members. For example, a nominated member cannot be disqualified on the ground of defection, if he joins any political party within six months of his nomination as a member. Interestingly, an Independent member elected to the House has not been provided any such immunity. He will be liable to be disqualified under this law if he decides to join any political party after his election to the House.

Persons who have been elected to the office of Speaker, Deputy Speaker or the Deputy Chairman shall not be disqualified under this Act, if by reason of their election to such office, they voluntarily give up the membership of the political party to which they belonged immediately before such election and do not, so long as they continue to hold such office thereafter, rejoin that political party; or if they, having given up by reason of their election to such office their membership of the political party to which they belonged immediately before such election, rejoin such political party after they cease to hold such office.

The most important provisions in the anti-defection law are those contained in paragraphs 6 and 7. Paragraph 6 states that all the questions of disqualification under the Act shall be referred to the Speaker/Chairman and their decision shall be final. In case the Speaker/ Chairman himself becomes subject to such disqualification, the matter shall be referred to such member of the House as the House may elect in this behalf and his decision shall be final. Another significant point contained in the Tenth Schedule is that all proceedings in relation to disqualification of a member under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or article 212 as the case may be. Article 122 provides that validity of any proceedings in Parliament shall not be questioned in any court of law on the ground of any alleged irregularity of procedure. Article 212 accords similar immunity in the case of proceedings of the State Legislatures.

Paragraph 7 of the Tenth Schedule contains a provision of far-reaching significance as far as the relation between the Legislature and the Judiciary is concerned. This paragraph bars the jurisdiction of courts in respect of any ruling and order of the Speaker/Chairman issued in connection with the disqualification of a member of the House under this Act.

Ever since the law came into force, doubts were raised as to the success of the law. It was argued that it is not an anti-defection but an 'anti-dissent' Act because it prohibited free and frank expression of opinions in the House by compelling a member to vote in a particular way, even if he individually disagreed with such measures. Therefore, any law which curbed or took away a member's right to take part freely in the proceedings of the House went against the spirit of participatory democracy, it was contended. A member, it was argued further, is an elected representative of the people and not of a party. Logically, a member's loyalty should be first to his constituents rather than to his party. A member while voting in the House, therefore, should be guided more by the interest of his constituents than anything else.

Similarly, the law has been described by some as the "bulk-defection Act" which, while putting a check on defection by individual members, allows defection by members *en masse* because 'splits' and 'mergers' as mentioned above, do not attract the provisions of the anti-defection law. Experience shows that splits have been engineered by a group of members for ulterior motives both at the Union and State levels.

The provision of debarring the jurisdiction of courts from the cases decided by the Speaker/Chairman has proved to be the most controversial one. It was feared that Speakers being political persons cannot be expected to keep themselves aloof from political considerations while deciding the cases under the anti-defection law. In India, Speakers generally do not formally sever their political connection after being elected. Ironically, they have to depend upon a party to get them elected the next time because they are not elected unopposed as is the practice in Britain. It is perhaps natural, therefore, if their decisions get influenced by their political loyalties.

In several cases of defection which have come up in different States from time to time, the decisions of Speakers have generated unseemly controversies. They have given different and sometimes contradictory decisions even in similar cases. In one case, the Speaker himself was involved in the defection Act. In another case, while a Speaker was removed from his office after he disqualified some members, the succeeding Speaker requalified them just after taking over the office. In yet another bizarre case, some members were disqualified only to be requali-

fied by the same Speaker the next day. It has also been seen that Speakers have given different rulings in similar cases of defection in different States. In such cases, the Speakers' decisions have been questioned and motives imputed by the concerned parties that such decisions were not fair. Another area where the Speaker's decisions have given rise to a lot of controversy is the practice of informing the Speaker of expulsion of some members from the party. This tactic has been adopted by party leaders to expel potential dissenters and request the Speaker/Chairman to declare them as 'unattached' in order to render it more difficult for the rest of them to manage a split and claim immunity from the provisions of anti-defection law.

Validity of the Law

The decisions of the Speakers/Chairmen on disqualification had been challenged in different High Courts through different petitions. The Punjab High Court even declared paragraph 7 as invalid in one of its judgements on this law. When the matter of defection involving Janata Dal MPs was brought to the notice of the Court, it was decided to transfer all the petitions pending before various High Courts to the consideration and decision of the Supreme Court. As a result, the Supreme Court constituted a five-member Constitution Bench to consider the bunch of petitions relating to defection.

The Constitution Bench, in its majority judgement, upheld the validity of the Tenth Schedule rejecting all the argument that it was against the basic structure of the Constitution; that it took away members' right to freedom of speech and expression in the House; that it was undemocratic and unconstitutional, etc. It, however, declared para 7 of the Schedule as invalid because it was not ratified by the required number of Legislatures of States as it brought about in terms and effect a change in articles 136, 226 and 227 of the Constitution. It may be noted that while so doing, the majority treated paragraph 7 as a severable part from the rest of the Schedule.

As regards the judgement, two important points can be noticed as far as the relation between the Legislature and judiciary is concerned. First, a part of the 52nd Constitution Amendment was held invalid as the Legislature did not follow the procedure for amending the Constitution

contained in article 368. Secondly, the decision of the Speakers/Chairmen under the Tenth Schedule was amenable to judicial review as they act as a 'tribunal' while deciding the cases on the ground of defection. It may be interesting to note that the Court restricted the scope of judicial review by proclaiming that it would not cover any stage prior to the making of a decision by the Speaker/Chairman. The only exception for making an interim order would be cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequences, the majority of the judges pointed out. Another significant point to be noted in their judgement was that the Court affirmed that the order of Speakers/Chairmen was open to judicial review if it involved allegation of *mala fides,* non-compliance of rules of natural justice and perversity.

The judges rejected the contention that the investiture of adjudicatory functions on the Speakers or Chairmen would by itself vitiate the provisions on the ground of likely political bias. "The Chairmen or Speakers hold a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of parliamentary democracy. Vestiture of power to adjudicate questions under the 10th Schedule in such constitutional functionaries should not be considered exceptionable", the Court said.

The noticeable feature of the majority opinion is that the Court has left open the question whether Parliament's decision to debar the judicial review in anti-defection cases is unconstitutional or not. In other words, the Court, while asserting its right to judicial review, has skirted the issue of judicial review being a part of the basic structure of the Constitution. It appears that having struck down the part affecting the Court's right to judicial scrutiny on the ground of non-ratification, the Court has put off the consideration of the basic structure issue to some future day.

The verdict of the Supreme Court is likely to have the potential for setting the Judiciary and the Legislature on a collision course. A healthy working of any system is ensured by autonomy of all the branches of the Government. No one should encroach upon the powers of the other. While judiciary should not try to impair the prerogatives of Parliament,

Parliament should also respect the Court's right to ensure rule of law and natural justice.

In the light of the recent Supreme Court verdict, therefore, there is a strong case for reviewing the anti-defection law. While the decision may appear to impinge upon the independence of Legislatures, it also underlines the fact that, some of the questionable decisions of the Speakers/Chairmen in certain cases had invited the Court's interference in this regard. The need, therefore, is to devise a method which, while respecting the Legislature's superiority, minimises the scope for arbitrary and motivated decisions in the cases of disqualification on grounds of defection.

The matter was considered by an emergent meeting of the Presiding Officers of both the Houses of Parliament and those of the State Legislatures in New Delhi on 11 February, 1992. The Presiding Officers took a very mature and sound stand on the relation between the legislature and the judiciary while deliberating on the issues. They were unanimous that the Court's decision should be respected. But, at the same time, the authority of Speakers/Chairmen to conduct the business of the House should not be made amenable to judicial scrutiny. They, however, were of the view that there should be provisions for an appeal against the decisions given by the Presiding Officers. For that, an authority should be identified or created which could review the decision given by the Presiding Officers. The authority could be the President or the Governor as the case may be or a body of Speakers and other persons. They further held that the anti-defection law should be amended to remove the infirmities and ambiguities noticed in it.

More recently, in a significant development twenty members of Parliament belonging to Janata Dal led by Shri Ajit Singh, MP, presented themselves on 7 August, 1992 before the Speaker, Lok Sabha and signed a common request in his Chamber seeking seats outside the Janata Dal Parliamentary Party. It may be recalled that Janata Dal initially had 59 members in its parliamentary party in the Lok Sabha. The Speaker, Lok Sabha, Shri Shivraj Patil permitted, by an interim order dated 12 August, 1992, the twenty members to sit separately from other members of the party in the House till the matter was finally disposed of. The order said that it would take some time to decide the matter by following due process of law. It may be pointed out that these twenty members included eight who were expelled from the Janata Dal Parliamentary Party —

four in January 1992, and four in July, 1992, and the Speaker was duly informed about this. Out of the remaining twelve, four members were sought to be disqualified for voting against the party whip on a Motion of No-Confidence in the Council of Ministers headed by Shri P.V. Narasimha Rao.

In his interim order the Speaker raised some specific questions relating to the legal position on expulsion of a member of Parliament from his political party and his status in the Lok Sabha.

The questions raised by the Speaker in the order are — under what provisions of the Tenth Schedule of the Indian Constitution or any other provisions of the same, can a member or members of a party be expelled by a party? Under what rule or rules, made under the Tenth Schedule of the Indian Constitution, a member or members could be expelled by the Party.

Is there any law made by Parliament under which a member or members of a party can be expelled by the party? Under what rules of procedure followed by the House can a member or members be expelled by the party? If a member can be expelled by the party under its constitution, is it necessary to follow a particular procedure for this purpose or not? And if yes, was this kind of procedure followed in expelling four members at one time or the other four members at another time?

What is the implication of expelling a member from his party? Does the expulsion affect his status as a member of the Lok Sabha? Can it in any way make him more liable and less equal with respect to the provisions of the Tenth Schedule of the Indian Constitution?

If members are expelled from the party, is seeing that the group separating from the original parent party does not have one-third of the members of the party legal, fair and envisaged by the law of anti-defection?

The interim order records that the parties concerned were asked to give their views on these specific questions and said they had not clearly explained their views on the said points. "No submissions on the above have yet been made and there appears to be no concrete legal opinion on

them. It would be useful to form concrete legal opinion on the same. Parties can be given opportunities to put forth their points of view on this issue."

The interim ruling given by the Speaker has invited protest from the Leader of Janata Dal Parliamentary Party. Shri V.P. Singh described it as a blatant contravention of all norms and forms of conduct of parliamentary business which runs counter to the letter and spirit of the Anti-defection Law. His objection was mainly against the clubbing of those MPs who had been expelled from the party nearly seven months ago and were given separate seats, with these twenty members to enable a split in the party. He pointed out that the spirit of the law required that one-third members should break away from a party at the same time (not over a period) for purposes of split.

The faction led by Shri Ajit Singh contends that expulsions were done without following the proper procedure and the eight members were expelled earlier only to prevent a genuine split thereby frustrating the very effect of the Anti-defection law.

Once again the application of the Anti-defection Law has given rise to controversy at the Centre in which several important points have come up. There is a need to have these points thoroughly debated by parliamentarians, jurists, journalists and the general public before arriving at a solution which could do away with the drawbacks in the law to the maximum possible extent. It may be borne in mind that no solution is going to be complete in this regard. Sometimes, in such cases, remedy itself becomes worse than the disease. Defection is an ethical problem having political consequences. It would not be easy, therefore, to tackle the problem on the legal plane only.

21

CONSTITUTIONAL ADJUDICATIONS AND THE COURTS

P.M. Bakshi

The role of judiciary in interpreting the Constitution of a country can be examined by taking into account several aspects of the matter. First, one has to examine what is the substantive content of the Constitution, because only that will show the range and nature of the questions that may arise before the courts. Secondly, it becomes desirable to examine what is the court structure in the particular country and the jurisdiction of the courts to deal with constitutional questions. Thirdly, having ascertained the constitutional set up and the jurisdiction vested in the Judiciary in that regard, one can examine the approach of the courts to constitutional questions. Fourthly, it may be desirable to take note of the procedures used by the courts in entertaining and dealing with constitutional adjudication. Fifthly, it may be possible to study the manner in which disputes are brought before the competent courts for constitutional adjudication. All these aspects may be useful for having a full picture of the role of courts in constitutional adjudication.

Constitutional Questions

Broadly speaking, in India, five kinds of constitutional questions come up before the courts. First, there is the part of the Constitution dealing with fundamental rights. These rights operate as a fetter on the legislative and executive powers of the State. A specific provision in the Indian Constitution nullifies all laws inconsistent with fundamental rights. Besides this, there is another specific and positive set of provisions, conferring on the higher judiciary the jurisdiction, *inter alia,* to enforce funda-

mental rights through appropriate writs and directions. It follows, therefore, that disputes in which a person alleges that his fundamental rights have been violated, can reach the appropriate courts. These are constitutional questions par excellence.

Secondly, in the Indian context, one has to take note of the federal structure of the country. There is a clear division of legislative power between the Union and the States; and it is an implication of the Indian Constitution that if a law made either by Parliament (the union law-making body) or by a State Legislature, crosses the limits of the law-making organ (i.e., the Legislature concerned), then the law is ineffective and can be so adjudged at the instance of an aggrieved party. Such a controversy is of a totally different nature from the controversy that is raised when a law or executive action is challenged on the ground of breach of fundamental rights, mentioned above.

Thirdly, there would be questions arising on the text of the Constitution, but not pertaining to fundamental rights or the federal scheme. Many of these questions may be concerned with the working of important constitutional functionaries. For example, is the Governor of a State bound to act on the advice of the State Cabinet when he is discharging functions conferred on him by a statute? This is a constitutional question. A few may be concerned with the inter-relationship of two or more organs. For example, can the courts go into questions of privilege where the privilege is asserted by a legislative body? This is also a constitutional question.

Fourthly, it is also useful to remember that apart from the Constitution, there are Acts of Parliament which supplement the documentary Constitution. Constitutional problems can arise on these Acts. For example a number of Parliamentary enactments provide for the re-organisation of States. Then, there are Acts relating to conditions of service of Judges. Sweden is the classic example of a State having a multi-documentary Constitution. Article 2 of the Instrument of Government of Sweden provides that Instrument and the Act of Succession and the Freedom of Press Act, are the fundamental laws of the realm. Obviously, at least in Sweden, questions arising under the Freedom of Press Act would be questions of constitutional law. The point will be much more fortified if one bears in mind the fact, that the United Kingdom has no

single document which is labelled as the "Constitution". Nevertheless, questions of constitutional law in that country have undoubtedly been discussed for a long time. The sources of the constitutional laws in United Kingdom are statutes, judicial decisions, constitutional conventions (according to some persons) and authoritative opinions of the writers. To a large extent, this may be true of New Zealand also.

Finally, there would be questions of constitutional law, not necessarily arising out of an alleged violation of fundamental rights or alleged transgression of the federal scheme, but still raising issues of a constitutional nature. A question as to the validity of the delegation clause, in an Act which delegates legislative power, would be illustrative of this category. Such questions are not relatable to this or that provision of the Constitution of a particular country. Rather, they are questions of general constitutional law. A written Constitution may contain so many provisions and may be as elaborate as one likes to make it. But there may still remain questions outside the written text of the Constitution. Such questions, when answered, create the "common law of the Constitution" or "constitutional common law". Such questions do not arise on the text of a particular Constitution. Rather, they may arise in any country governed by the rule of law. It is important to bear this in mind, because otherwise, one is likely to make a confusion between constitutional law on the one hand and the "Constitution" (i.e. the documentary Constitution) on the other hand. The first includes the second, but is much wider than the second.

Constitutional law, then, may be said to embrace the body of legal doctrines (and practices) that regulate the myriad institutions, functions and doctrines applicable in law to the working of the State. Or, one can adopt Dicey's concept of constitutional law as the law that deals with the distribution and exercise of the sovereign authority within the State.

Constitutional Adjudication : The Status and the Approach

Woodrow Wilson described a court deciding constitutional questions as a "Constituent Assembly continuously in Session", and it has been rightly said that each generation writes its own constitutional principles (but far from always), through the decisions of the Supreme Court. This is enough to highlight the role of the courts. Besides this, such a court has to go on

dealing with new and unprecedented situations and, to suit such situations, proper rules have to be fashioned. Mr. Justice Holmes pointed out that the words of a Constituent Act "have called into life a being, the development of which could not have been foreseen completely by the most gifted of its begetters."[1]

The famous Economist Keynes, who was also a philosopher of the highest order, described the role of a judge deciding a constitutional issue in the following terms:

> "He must contemplate the particular in terms of the abstract and (the) concrete, in the same flight of thought. He must study the present in the light of the past, for the purposes of the future. No part of man's nature or his institutions must lie entirely outside his regard. He must be purposeful and disinterested in a simultaneous mood; as aloof and incorruptible as an artist, yet sometimes as near the earth as a politician."[2]

Activism and Restraint

There has been going on, for a long time, a debate as to what is the proper method of interpretation of statutes — a debate which, to some extent, is relevant to constitutional interpretation also. Those who take the legalistic view, envisage a narrow role for the judges, while those who take a wider view would grant to the Judiciary the function of policy-making also, while interpreting statutes. If there is a choice between two or more interpretations, then they would insist that the judge should choose that interpretation which furthers the policy laid down by the elected representatives. This difference of approach is as much applicable in the field of constitutional interpretation, as it is applicable to statutes. In fact, the great Australian Judge, Sir Owen Dixon[3] justified the Australian High Court's close adherence to legal reasoning on the ground that was the only way to maintain the confidence of all parties in federal conflicts.

In contrast, those who favour a liberal approach advance the following points in support of their stand:

(a) the language of the law may be ambiguous, and policy can then be one of the sources for resolving the ambiguity;

(b) rules of interpretation may not always yield a clear result so

that one has necessarily to depend on other sources;

(c) the judge must act rationally; and

(d) therefore, the judge should take into account the purposes and broad policies of the law.

The two opposing views have, in due course of time, gathered some epithets also. Thus, the narrow view is stigmatised as "mechanical jurisprudence", while the wider view is eulogised as "judicial statesmanship".

Dissents and Distinctions

The schism between the two approaches may lead to dissents within a court, particularly when the court is dealing with a constitutional controversy. One can take an Australian case to illustrate this aspect.[4] The question at issue was, whether the Commonwealth could regulate the subject of broadcasting by virtue of section 51(v) of the Australian Constitution, which is the entry relating to "postal, telegraphic, telephonic and other like services". The majority of the High Court of Australia held that broadcasting was a "like service". Dixon, J. dissented. This example is chosen to show how the difference between the two approaches may become crucial in a particular case involving the federal aspect.

Fundamental Rights : The Wide Choice

Where the question at issue is one of fundamental rights guaranteed by the Constitution and of judging the validity of a law whose vires are attacked as violating a fundamental right, the conflict of approaches mentioned above might assume still greater importance. In giving a specific content of fundamental rights, the judiciary may appear to travel beyond the traditional techniques of legal interpretation. There are reasons for this. A document like the Constitution is usually expressed in general terms — the more so, in provisions dealing with guarantees of fundamental rights. These guarantees can hardly partake of the precision of an ordinary statute. They represent currents of thought and broad values, rather than nicely drawn mandates of precision. The currents of thought may not be running in well defined channels, and the values

reflected in guarantees would also be having shades of their own. The wide language of constitutional guarantees thus provides a base for elastic interpretation. The courts have a comparatively wide area to roam over, when determining the scope of such guarantees.

This is one reason why, not only are there dissents in the constitutional controversies, but also there are occasions when an earlier decision, apparantly to the contrary, comes to be distinguished with great ingenuity in such controversies. Of course, the process of distinguishing earlier precedents is not unfamiliar in the day to day work of the Judiciary. It is a common phenomenon, witnessed even when the court is deciding a non-constitutional controversy. But the scope for this kind of action appears to be much wider in constitutional law. This is because the area of choice in constitutional adjudication is much wider than in ordinary statutes. It is fairly well understood that the capacity of a judge to contribute to the content of the law depends upon the degree of choice which he has, in the total process of reaching his decision. The existence of such a choice is also the cause of frequent dissents, because the options before the Bench are many. Taking an existing principle as the basis, and purporting to have their roots in the past, both the majority and the dissenting minority may still reach differing conclusions in interpreting a constitutional provision that confers a fundamental right.

This is not to say that the resultant measure of uncertainty in constitutional interpretation is bad in itself. In this region, the existence of a substantial element of choice is neither an accident, nor an evil. It is natural and inevitable and provides the law with the flexibility and adaptability that is necessary, if the law is to endure as an acceptable medium of social adjustment.

Judicial Discretion

One should not rush to the conclusion that the great power that the judge has of moulding the law, is or can be exercised at the sweet will of the judge. Governing the narrow controversy before the particular court, there lies so much of written and unwritten law.

Sometimes, law and science are contrasted. Science can be defined as any organised body of knowledge. The method of science is descriptive.

It investigates facts; it digests natural phenomena; and then, it seeks to present them in the form of a systematic theory. The law, on the other hand, is prescriptive. It seeks to lay down the norms of human conduct. It deals with human conduct as it ought to be, and not with external facts as they are. Nevertheless, the law must also keep before it the scientific method. The jurist has to collect the precedents and the doctrines, analyse them and present them in the form of a systematic theory. His raw material may not consist only of facts. But his approach to the facts and his construction of doctrines on that foundation, must largely partake of the processes of logic and the fundamentals of scientific reasoning, if he is to evolve a doctrinal framework that will find acceptance amongst the intellectuals.

Rather, precisely because the law is a prescriptive discipline it must think before it acts; its approach has to be gradual rather than panther-like; deliberation has to precede action in the field. What it lays down, will govern the conduct of men and women for a long time to come. Its steps have, therefore, to be halting.

There is also another important aspect to the matter. The law is built up largely upon the accepted values of society. Any step that may represent an innovation, can be taken only after the law-maker is satisfied that those values would not be seriously impaired by the proposed step.

Judicial Discretion in Constitutional Questions

In an ordinary litigation, that is to say, litigation not involving a constitutional question, there is considerable scope for a judge to exercise his faculty of discretion. Broadly speaking, the functions of the judge where he has a certain element of discretion can be enumerated as under:

(a) deciding a question of law, not expressly dealt with by codified law;

(b) applying a provision of the codified law or a rule of uncodified law to the particular situation before the judge;

(c) coming to a conclusion on questions of fact (subject to the law of evidence); and

(d) determining the relief to be awarded to the successful parties —for example, the proper quantum of sentence within the permissible limits or the amount of damages or the grant of some discretionary relief, such as specific performance of a contract.

In constitutional litigation, discretion under categories (a) and (b) mentioned above may be regarded as highly relevant. Discretion in category (c) does not normally present itself in such litigation. Finally, category (d), though not always material, may be of some significance, either where a writ is sought, because the relief is regarded as discretionary, or where the litigation is in the nature of public interest litigation.

It may be convenient to give some examples of the first two categories. First, a question which is not expressly dealt with in the documentary Constitution may arise, where the delegation of legislative power by a parent Act is challenged on the ground that there has been an excessive delegation. Such a question would not be regarded as directly relatable to any text of the Constitution, but is to be taken rather as belonging to constitutional common law. By and large, in India, such delegation is regarded as constitutionally permissible, unless it amounts to an uncanalised grant of legislative power to a non-legislature.[5]

As regards category (b) mentioned above, the incorporation of fairly elaborate guarantees of fundamental rights in the Indian Constitution naturally lends great importance to the role of the courts and enhances the element of discretion. The circumstances that lend such importance are numerous; but most of them can be said to be attributable to the general language which must necessarily be employed in drafting such guarantees. The rights conferred by the various provisions of the Constitution of India, are either couched in abstract phraseology, or are subjected to certain fetters whose exact content and application in a concrete case can be determined only by the judges in the light of the facts of the case. Although, what is going to be quoted is commonplace, it is basic to the aspect under discussion. The following observations are quoted from the judgement of Dr. B.K. Mukherjee, one of the most learned and eminent judges, made in the famous *A.K. Gopalan* case.[6]

> "There cannot be any such thing as absolute and uncontrolled liberty, wholly freed from restraint, for, that would lead to anarchy and disorder. The possession and enjoyment of all rights are

> subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. In some cases, restrictions have to be placed upon free exercise of individual rights to safeguard the interest of society; on the other hand, social control which exists for public good has got to be restrained, lest it should be misused to the detriment of individual rights and liberties. Ordinarily, every man has the liberty to render his life as he pleases, to say what he will, to go where he will, to follow any trade and occupation or calling at his pleasure and to do any other thing which he can lawfully do without any hindrance by any other person. On the other hand, for the very protection of these liberties, the society must arm itself with certain powers. What the Constitution therefore attempts to do by declaring the rights of the people is to strike a balance between individual liberty and social control."

Right to Equality

The discretionary function of the courts in the nature of applying an abstract provision of the Constitution comes out at its best, when interpreting article 14 of the Constitution, which provides that "the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India". The most important word in this formulation is the word "equal". It is a commonplace, that such provisions in the Constitution do not prohibit classification of persons or things, so long as the following conditions are fulfilled:

1. the classification must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others left out of the group; and
2. the differentia must have a rational relation to the object sought to be achieved by the Act.

Even these criteria will have to be applied in each individual case by determining what is reasonable. The consequential importance of the judicial role is obvious. Case law on article 14 of the Indian Constitution is by now, so numerous, that the day has come when a book will have to be written only on that article. But it may be proper to mention that the Supreme Court of India has come to a position where almost every act of the Legislature or of the Executive which is arbitrary, or which stands in

serious risk of being arbitrary, is suspected.

Judgement on Pensions

In a judgement of the Supreme Court of India which has now become the source of many other similar rulings by the courts, the Court held that in increasing the rate of pension, the State could not draw an artificial line of demarcation based on the actual date of retirement of a Government employee.[7] Such a line would violate the constitutional guarantee of equality before the law and equal protection of the laws. The very simple and familiar test of reasonable and unreasonable discrimination was the basis for this conclusion, which shows how a test initially appearing to be simple (and rather elementary) can yet be found to possess tremendous potentialities. What the court applied was nothing but the often repeated test to satisfy the requirements of the article. The test was re-stated in these terms:

> "Thus, the fundamental principle is that article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that the differentia must have a rational nexus to the object sought to be achieved by the statute in question."

The Six Freedoms

Mention may next be made of article 19 of the Indian Constitution which (as it stands at the moment) guarantees six fundamental freedoms:

(i) Freedom of speech and expression.

(ii) Freedom of assembly.

(iii) Freedom to form associations.

(iv) Freedom of movement.

(v) Freedom to reside and to settle.

(vi) Freedom of profession, occupation, trade or business.

These freedoms can, under this very article, be restricted, provided the following conditions are fulfilled:

(a) The restriction must be imposed by a law made by the competent legislature, and not by mere executive order.

(b) The restriction must be reasonable.

(c) The restriction must be only for the specified purpose as set out in the (relevant) subsequent clauses of article 19.

The most important ingredient is that of reasonableness. Very soon after the commencement of the Indian Constitution, the Supreme Court laid down that the final judge of what is reasonable for this purpose is the court.[8] The very next year, the Supreme Court laid down that there cannot be any exact standard for the purpose of defining reasonableness. So many factors have to be taken into consideration for the judicial verdict, such as, the nature of the right infringed, the underlying purpose of the restriction imposed, the extent and the urgency of the evil sought to be remedied, the disproportion of the (challenged) imposition and the prevailing conditions at the time.[9] The need for self-restraint on the part of the judges was emphasised in the same year, in the same case,[10] in these words:

> "In evaluating such elusive factors and forming their own conceptions of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their difference with legislative judgement in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their own way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restriction, considered them to be reasonable."

Aspects of Reasonableness

There are so many other aspects of reasonableness. Some of them may be illustrated from concrete cases. Thus, article 19 (1) (a) of the Constitution guarantees freedom of speech and expression to every citizen of India, subject to reasonable restrictions imposed by law for specified purposes.

In a judgement pronounced in 1985,[11] the imposition of import duty and the levy of auxillary duty on newsprint was challenged as unconstitutional by the publishers of certain daily newspapers and periodicals. The court laid down the principle, that while such taxes could be imposed by the competent legislature, the levy should not be so burdensome as to strifle the freedom of expression. The court directed the Government to re-examine the matter from the above angle.

In another judgement,[12] the court was concerned with the freedom of movement guaranteed by article 19 to all citizens. This freedom can be curtailed by reasonable restrictions imposed by law in the interest of the general public or for the protection of the interest of Scheduled Tribes. A rule made by the State Government under the Motor Vehicles Act, which made the wearing of helmets by the drivers of two-wheeled motor vehicles compulsory was challenged as unreasonable. But its validity was upheld and it was held that the rule was made for the good of the people imposing reasonable restriction on the freedom of movement. The rule in question ensured protection and safety in case of an accident.

Waiver of Fundamental Right

One consequence of conferring the status of a fundamental right on any right is that it cannot be waived. It is now well-settled in India, that a fundamental right cannot be waived. These rights have been put into the Constitution on the grounds of public policy and in pursuance of the objective of the Preamble.[13] A fundamental right is in the nature of a prohibition addressed to the State and therefore its waiver is not permissible.[14]

Another reason is that there cannot be any estoppel against the Constitution. And for this reason, there can be no waiver of a fundamental right.[15] It would in fact appear that such a waiver would be against public policy.[16]

Limits of Discretion

It is hoped that the use of the word "discretion" in the preceding exposition, will not be understood as implying unguided discretion. This aspect has been best put by Cardozo:

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains."[17]

The Potency of Precedent

Incidentally, judgements in constitutional cases effectively illustrate the great potency which one judicial pronouncement can possess. It can give rise to a number of similar pronouncements in future, when another situation arises which is reasonably comparable to the situation involved in the first judicial pronouncement. The doctrine of precedent is implicitly regarded as a part of the Indian legal system (though the doctrine may be subject to some ill-defined exceptions). Because of this doctrine, it becomes possible for one ray of interpretation that illumines a dark corner today, to be the source of illumination of many other dark corners tomorrow. The extent to which this process can be carried forward, can never be foretold with certainty. In a common law country that recognises the doctrine of *stare decisis,* the natural tendency to follow that doctrine even in the field of constitutional interpretation, lends a totally new dimension to the role of the courts in the settlement of constitutional controversies. Imagine the position that would have prevailed if India did not follow the doctrine of precedent. Each new situation raising a constitutional question would have left it open for the court to make a choice *ad hoc* on that particular occasion, so that there would be no guiding light available for the future. Every time, the lawyers and the judges would have to do their own thinking as if on a clean slate, with the attendant trouble and uncertainty. Such a *de novo* exercise may have its own romance, but it would also suffer from certain countervailing disadvantages. For people like us who are bred in the common law tradition, it is difficult to envisage any other possible approach. However, one brief mental journey beyond the frontiers of the country would suffice to convince any intelligent person that, for a continental lawyer, it is difficult, at least in theory, to accept the position that a judgement of a

court can be the source of a rule of law *in itself*. By instinct and by training, the civil law judge regards the written law as the exclusive source of legal doctrine. The veneration for codified law gives a totally subordinate position to case law. Thus, in France, the Great Codes have been called "well-balanced pieces of jurisprudential art, utterly systematic and conveniently accessible."[18]

In common law countries, the position is different. If, in a particular sphere, the legislature has given a fabric, judges have still an important part in filling up its interstices. The legislature may give the outline. The judges must fill in the colours and define the contours, and thus increase the content of the law, by adding to it richness and depth. Whether the process is interstitial or incremental, its vitality cannot be denied.

How Questions Reach the Courts

In this connection, it may be worthwhile to mention that constitutional questions may ordinarily come before the Supreme Court of India, either by way of an original proceedings or by way of an appeal from a High Court or other Tribunal, or on a reference made by the President of India. While the last mentioned (advisory) jurisdiction of the Supreme Court of India (important as it is) would not be very frequently invoked, the original jurisdiction of the Supreme Court has been invoked mostly frequently in the constitutional sphere. One development that deserves to be noted in this regard is the increase in the number and variety of public interest litigation or social action litigation. Of course (contrary to the belief of some persons), this is not a peculiarly Indian phenomenon. There has been much literature and judicial activity elsewhere in the sphere of class actions, public interest actions and the like. Public interest lawyers have been familiar in the United States for almost two decades.[19]

At the same time, it is fair to note that quite an increasing number of public interest claims find its way to the Supreme Court of India. The substantive constitutional law that applies to such litigation would not be different from that applicable to other litigation. But need may arise for evolving procedural devices to deal with the same. When one side or the other in a litigation constitutes a numerous persons or persons who are not themselves personally injured by the act or omission complained of, there arises a need to create a suitable procedural device. The point to make is, that access to justice in such cases may take on an aspect

different from that witnessed in litigation filed by an ordinary single party to get redress for his own individual grievance.

Time

Constitutional questions obviously require much more time than the questions of private law. The issues may be grave and complex. The impact of the decision on the future course of public law may be considerable. Sometimes the nature and volume of material needed by the court for arriving at a satisfactory decision may be large and bulky. Much more important is the fact that the court may become immersed in the "Travail of Society".[20]

In other countries, some effort has been made to define the jurisdiction of the highest constitutional court seriatim, in one self-contained article. In these formulations one may come across interesting words and expressions. For example,[21] article 93 of the Constitution of (West) Germany, in clause (1), para 4 (apart from enumerating the heads of jurisdiction) has used the interesting phrase "disputes involving public law" between the Federation and the (States) or between different laender or within a Land (State), unless recourse to another court exists.

"Public Law", in German juristic thought embraces all legal connections directed towards the State or other authorities vested with sovereign power. These are, above all, the spheres in which the State is active on behalf of the public weal. Public law embraces, among other things, constitutional law, administrative law, penal law, the rules on court procedure, international law, canonical law, the law on judges, the law on civil servants, police regulations, the law on education, social law, the law on taxation and the law on industrial administration.[22]

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Part VI
The Federal Structure

22

Constitution of India and National Integration

L.K. Advani

India became independent in August, 1947. It was great moment in the history of the nation. Unfortunately, freedom was accompanied by partition of the country. A matter of even greater regret was the fact that division had been forced on the nation by protagonists of the two nation theory.

India's leadership reluctantly agreed to the formation of Pakistan, but India did not accept the two-nation theory. While framing free India's Constitution, the Constituent Assembly remained steadfastly committed to the credo which had inspired the entire freedom movement, namely, that since times immemorial India has been one country, and that all Indians, irrespective of creed, caste or language are one people.

In this context, a significant discussion took place in the Constituent Assembly when the issue of the country's appellation was being considered. Should India be described as a Union of States or as a Federation of States? The original Draft of the Constitution had referred to it as a Federation of States. Subsequently, this draft was rephrased and the word 'Union' was used.

Spelling out the rationale for the change in the Draft, Dr. Ambedkar, the principal architect of the Constitution, observed:

> "Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is Federation is also called a Union. Thus the description of India as a Union, though its Constitution is federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation and that the federation not being the result of an agreement no state has the right to secede from it. *The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single imperium derived from a single source.* The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute".[1]

Many federal constitutions, as for example, that of the United States, recognise dual citizenship — one of the Federal Union and the other of the States. Often, therefore, there is a diversity in the rights of citizens of different states. This is not unnatural in situations where a federation has emerged from a contract between the federating states. In India, the historical background has been totally different. Even when in ancient times the country was divided into many kingdoms a common culture gave to the country a sense of unity and oneness. The Constituent Assembly was alive to this fact. Besides, immediately before the advent of independence India was a unitary state; its units did not have the status of independent states.

'Unity in diversity' has been the hallmark of Indian nationalism. Introducing the Draft Constitution, Dr. Ambedkar cautioned that when

diversity created by division of authority in a dual polity goes beyond a certain point, it is capable of producing chaos. He added:

> "The Draft Constitution has sought to forge means and methods whereby India will have federation and at the same time will have uniformity in all basic matters which are essential to maintain unity of the country. The means adopted by the draft Constitution are three:
>
> 1. A single Judiciary;
> 2. Uniformity in fundamental laws, civil and criminal; and
> 3. A common All-India Civil Service to man important posts."[2]

I have referred above to the outstanding characteristic of our national life as, unity in diversity. Prior to the attainment of independence all of us made a conscious attempt to underline unity. After the achievement of independence it is diversity which is being emphasised. Sometimes this emphasis goes to very dangerous lengths. A few years back Government set up the Sarkaria Commission to report on Centre-State relations and to make recommendations in that regard. A memorandum submitted to the Commission by one of the State Governments said:

> " ..... with the reorganisation of the States of linguistic basis these are no longer mere administrative sub-divisions of the country with their boundaries for the most part a historical legacy. These are now deliberately reorganised homelands of different linguistic cultural groups. These groups are, in fact, growing into distinct nationalities".

I regard this 'Homeland Thesis' as a very dangerous thesis. If the 'two-nation theory' led to the partition of India, acceptance of this mutli-nation theory can lead to the balkanisation of the country.

I am happy that the Sarkaria Commission categorically rejected this thesis and affirmed that "the whole of India is the homeland of every citizen of the country," an affirmation to which Jammu and Kashmir State would appear to be a regrettable exception. In the Constituent Assembly itself, speaking on behalf of the Government, Shri Gopalaswamy Ayyangar had expressed regrets that, an exception was being made with respect to Jammu and Kashmir. But he went on to assure the House that

this arrangement was temporary, and that before long Jammu & Kashmir would become as fully integrated with the Union as the other States.

The English Schedule of the Indian Constitution deals with the question of legislative powers. The Schedule comprises of 3 lists, the Union List, the State List and the Concurrent List. Parliament has the exclusive power to legislative in respect of matters contained in the Union List. Similarly, exclusive power has been conferred on the State Legislatures with respect to matters in the State List. In so far as subjects mentioned in the Concurrent List are concerned, both Parliament as well as the State Legislatures have powers to make laws in their regard. But if there is a contradiction between laws on the same subject framed by Parliament and a State Legislature, the Parliamentary Law shall prevail. This mind of division of powers is a peculiar feature of all federal constitutions but in most other federal constitutions residuary powers in respect of subjects not mentioned in any list are with the States, whereas in India, residuary powers are with the Union.

In this context, another distinguishing feature of the Indian Constitution which must be borne in mind is the Chapter on Emergency Provisions. Article 352 empowers the Union Government to issue a proclamation of emergency in case of war or an armed rebellion. Article 356 arms the Central Government with the power to dissolve a State Assembly in case of a break-down of constitutional machinery. These are provisions which would not be found in any other federal constitution. Dr. Ambedkar admitted this in the Constituent Assembly when he said:

> "All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances it cannot change its form and shape. It can never be unitary. On the other hand the draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system but in times of war it is so designed as to make it work as though is was a unitary system ... such a power of converting itself into a unitary state no federation possesses.... "

It is obvious thus that our constitution makers, even while opting for

a federal set-up gave it a pronounced unitary bias. Their predominant concern was to ensure that the country's unity should not be imperilled at any time. In fact, when the extraordinary powers conferred on the Centre by the Chapter on Emergency provisions were being considered by the Constituent Assembly many members expressed misgivings that these provisions could be misused. Replying to the debate on Article, 356 Dr. Ambedkar said:

> "I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to over-ride the provisions. In fact I share the sentiments (of Members) that such articles will never be called into operation and that they would remain a dead letter."[3]

It is a matter of immense regret that the expectations of the constitution makers in this regard have been totally belied. Article 356, for instance, far from remaining a dead letter, has been invoked in the last 42 years for as many as 89 times. In most cases the provision has been invoked not to deal with any situation of constitutional break-down, but for purely political reasons, and, very often, for petty partisan ends. Abuse of these emergency powers has contributed to serious Centre-State tensions and indirectly weakened the fabric of national unity.

In the matter of resources also allocation has been made constitutionally to the Union and the States. It is my feeling that at the time the Constitution was being framed the Constitution makers did not envisage clearly the quantum of burden that in course of time would come upon the States with respect to their developmental duties. The resources given to them are extremely meagre, and also inelastic. The resources allocated to the Centre are enormous. The result is that States are all the while dependent upon central subventions even to carry out their primary responsibility of building the State's social and industrial infra-structure which is a pre-requisite for rapid socio-economic development. I think that there is a clear case for devolution of greater financial powers in favour of the States.

The Sarkaria Commission has rightly observed that over the years there has been "a general tendency towards greater centralisation of powers". It adds: "There is considerable truth in the saying that undue centralisation leads to blood pressure at the Centre and anaemia at the

periphery. The inevitable result it morbidity and inefficiency." Worst still, we feel that this over centralisation has contributed to weakening national unity. So our concern for national integrity should make us favour greater decentralisation both of political powers as well as economic power.

Viewing from the perspective of national unity, I hold that India's Constitution has been reasonably well designed. If nevertheless, after four and a half decades of independence, the country finds its unity gravely threatened by separatism and subversion, by terrorism and violence, the fault lies not with the Constitution, but partly with the manner those at the helm of affairs have been operating the Constitution and partly due to factors beyond our control.

On 26 November, 1946 when the Constitution was formally adopted by the Constituent Assembly, Dr. Rajendra Prasad, President of the Assembly, made a moving valedictory speech in the course of which he observed:

> "If the people who are elected are capable, and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution, cannot help the country. After all, the Constitution, like a machine, is a lifeless thing. It acquires life because of the men who control it and operate it and India needs today nothing more than a set of honest men who will have the interest of the country before them."

We may think in terms of making changes and amendments in the Constitution as can make the Constitution more effective in preserving national unity, but we must always remain mindful of the profound wisdom contained in Dr. Rajendra Babu's counsel.

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23

The Federal Structure

Madhavrao Scindia

A Constitution is, in the social contract idiom, a contract between free individuals for orderly, safe and beneficial living. It is ordinarily, the product of compulsions and perceptions determined by historical circumstances. Whether the chosen model, perceived as the most efficient at one time, continues to be such is an issue that requires to be reviewed at decent intervals of time. That moment may be, perhaps, now as the country is on the threshold of the twentieth century and the circumstances and conditions prevailing are different from those that prevailed in 1950.

The beginning of the Constitution of India was the Objectives Resolution drafted by Pandit Jawaharlal Nehru and moved by him in the Constituent Assembly on 13 December, 1946. The Resolution read thus:

1. This Constitution Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
2. Wherein the territories that now comprise British India, the territories that now from the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
3. Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous

units, together with residuary powers, and exercise all powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

4. Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people; and
5. Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status, of opportunity, and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
6. Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
7. Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights of land, sea and air according to justice and the law of civilized nations; and
8. This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and welfare of mankind.

The Resolution was debated on 13 December, 1946 and from 16 to 19 December, 1946 and again from 20 to 22 January, 1947. It was passed on 22 January, 1947.

Then came the partition of India and its tragic aftermath. Then there was accession of Kashmir to India on 26 October, 1947 and Pakistan's invasion of Kashmir a few days later. There is a widely held view that these two events caused the Constituent Assembly to become the victim of an obsessive paranoia. A veteran nationalist, late Shri H.V. Pataskar, asserted in the Constituent Assembly that "at the time of the second reading we developed a fear complex. The result was that the autonomy of the States or their semi-autonomy came to be looked upon as a matter of national danger. It was with the idea of having a Federation that we began by changing the names of Provinces into States. If the present idea had existed through out, we never would have made that change. But while the name of the "State" is there, the power of the State is so curtailed that it is a misnomer to call it a "State" any longer."[1]

There can be nothing wrong if the Constitution of India is unitary by openly declared and approved choice. But the declared position was that the constitutional arrangement must be federal with autonomous provinces. This was the position taken in the Congress-League Pact in 1916, the Motilal Nehru Committee Report in 1928, the Round Table Conference in 1930, the 51st Session of the Indian National Congress in 1939, the Quit India Resolution of 1942, the Congress Election Manifesto for the election to the Central Legislative Assembly in October, 1945 and finally, in the Objective Resolution of 1946-47.

The stand of the Indian National Congress before the Cabinet Mission was that "the future framework of the country's Constitution must be based on a federal structure with a limited number of compulsory central subjects such as defence, communications and foreign affairs; the federation would consist of autonomous provinces in which would vest the residuary powers."

The historical context apart, the fact is that India by reason of its size, population, linguistic, cultural, geographic and environmental differences and diversity presented an eminently federal situation. Yet the Constitution did not, it is said, embody a genuine federal set up but a unitary one dressed thinly in federal garb.

This controversy about the true nature of the Constitution of India has ceased to be merely academic. It has become a high voltage issue in the context of what is being called the quest for identity in some regions. There is a strong section of informed opinion which holds that the threat of balkanisation of India can be contained only by a genuine federal structure substantially in the form envisaged in the Objective Resolution.

The scholars advocate that India should develop its own configuration of a system of governance out of its own heritage and global wisdom. It is argued that when India is so transformed, governance will not be merely distributive, as it had been hitherto, but will actively induce and nourish the desire and determination of the people of India to reach progressively higher levels of social, economic, cultural and political cohesion and well-being. Its content and course will not be the choice of the majority or minorities nor will it be determined exclusively by Indian or western concepts or categories but by a meaningful and relevant configuration of the two and of all interests.

In addition, there are those who remind the country of Gandhiji's unfulfilled vision. Its main ingredient is, they say, social and political communities endowed with faith in absolute values adopting ways of life to realise those values. It is also pointed out that such ways of life, unless geographically and culturally confined to a small area, must necessarily be a confederation of the different ways of life accommodating heterogeniety and linking up its constituents by contextually efficient integrative principles, balancing devices and mechanisms to resolve and reconcile conflict. Gandhiji envisaged that the vitality of such a confederation will depend upon its capacity —

(a) to develop and maintain effective modalities for consensus, mutuality and co-operation between sections and classes of the peoples of India,

(b) to evolve a system wherein each village as a complete independent, self-reliant republic is the centre of a "series of ever widening circles, not one on top of the other, but all on the same plane, so that there is none higher or lower than the other",[2]

(c) to reconcile, if not remove, the conflict of interest between capital and labour by ensuring that both the sections hold their respective possessions in trust for common good,

(d) to envolve a socialism "which is as pure as crystal" by crystal-like means, as impure means result in impure ends. Gandhiji described such socialism as one in which "the prince and the peasant, the wealthy and the poor, the employer and the employee are all on the same level. In terms of religion there is no duality. It is all unity"[3],

(e) to ensure that economic activity does not result in unconscious benefit to some and unconscious harm, detriment to or impoverisation of the many.

Those who insist that there are other reasons which compel a review and restructuring of the existing constitutional arrangement give the following arguments in support :

First, the Constitution was framed by a Constituent Assembly which was somewhat unrepresentative. The delegates from the then British India were elected by an electorate which was just about 11% of

the total population. The delegates from Princely India were mostly nominees of the Rulers who were themselves under enormous pressure. But now the franchise has become truly universal. The people of India have lived out the trauma of partition and the paranoia of those days. The country and its population is now vastly different. It is but proper that an opportunity should be provided for a second look at the constitutional set up.

Second, there is hardly any dispute that the main framework of the 1950 Constitution is the same as in the Government of India Act, 1935 and that the majority of the provisions of the former are lifted, word for word, from the latter.

Third, the Constitution was framed in the aftermath of the Second World War when the virtues of a monolith centralised Authority appeared effective to a highly exaggerated degree. But now even in monolith USSR, Prestroika is operating. Whereas in India the tendency towards centralisation has gathered pace.

Fourth, the States are becoming increasingly restive. The restiveness is becoming more ascerbic as more and more States are opting out of one party rule.

Fifth, after *Kesavananda Bharati* case, grave uncertainty surrounds the amending power of Parliament. The Supreme Court conceded, by a wafer thin majority of one, extensive amending power to Parliament. But that power does not extend, the Court said, to alter the basic structure of the Constitution. What the "basic structure" is, however, left to be decided by the Courts as and when a controversy arises.

Sixth, the Constitution does not contain an appropriate package of checks and balances in relation to the powers granted to the Centre. The 1935 Act cast an equally binding obligation both on the Centre and Provinces to govern according to the provisions of the Act. Remissness in that respect could provoke the sanction of dismissal. The Constitution obliges the States, but not the Centre, to govern according to the Constitution. There is no presumption, in law or in fact, that the Centre will unfailingly govern according to the Constitution.

All these ideas and perceptions require to be tested, rigorously, for validity. If these are found to be valid, a serious and in-depth study,

analysis and wide debate is necessary for ascertaining the changes, if any, required to be made in the Constitution of India so as to achieve the ultimate objective of free, self-reliant and vibrant India.

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24

A Fresh Look at the Federal Structure

C. Subramaniam

Political scientists and constitutional pundits have viewed India's Constitution as *sui generis,* neither fitting into the classical mould of a genuine federation nor conforming to the criteria of a unitary system. They have been at pains to find the right lable for it — some calling it quasifederal, and some others holding it to be federal in intention and unitary in practice. As one observer has put it, "The Indian Constitution vests in the Union Government such formidable powers that not only in times of war or during an emergency, but even in times of peace, it can, if it so wishes, superintendent, direct and control the activities of State Governments." The possibility is cited how, for instance, even in ordinary times, Parliament can legislate on any subject in the State List, if the Rajya Sabha, by a resolution passed by a two-thirds majority of the members present and voting, empowers it to do so.

To insist that regardless of attendant factors, a Constitution should stick to some classical prescription or other would be to make it a still-born instrument. India's founding fathers, many of whom were themselves no mean jurists, were no strangers to time-honoured theories of constitutional structures. They were aware that in a polyglot polity, a balanced division of powers and responsibilities between the apex and the Constituent units was crucial to their functioning, each within its allotted sphere, in a smooth and effective manner. As one who was privileged to be a member of the Constituent Assembly, I can vouch for their recognition of the fact that the States were closest to the people, and true to the Gandhian philosophy of decentralisation and devolution of

powers, they should have sufficient autonomy and authority to reinforce self-government with good government. The distinct preference of Constitution-makers, throughout the early stages of negotiations for transfer of power and until their ardently cherished objective of a united India was thwarted, was to entrust to the Union only such powers as were essential to discharge its obligations of over-riding national importance, for example, in defence, foreign affairs, currency and customs, and transport and communications.

Unfortunately, circumstances as they developed after the vivisection of the country became unavoidable, dictated the course of proceedings in the Constituent Assembly. The stalwarts of the freedom struggle, who had given their all for ridding the country of the foreign yoke, found themselves framing the Constitution while face to face with the trauma of partition. To have a correct appreciation of the context, it is necessary to recapture the nature of the ordeal the country was passing through. The whole of the North was engulfed in a holocaust of a kind never before witnessed in the history of birth of nations. The demons of religious chauvinism had devoured the apostle of peace and non-violence. The presumptive sister nation of Pakistan had unleashed hordes of raiders into Kashmir in a bid to present a *fait accompli* by grabbing the Valley by force. Internally and externally, the perils confronting the nascent nation seemed almost insurmountable. Dark and ominous shadows of a country being shattered into fragments at the very moment of its tryst with destiny encircled the process of Constitution-making.

Being liberal democrats and civil libertarians, India's founding fathers were torn between their innate urges impelling them towards a true federation and the onerous responsibility they bore for strengthening the fragile edifice of a nation whose very survival, with its unity and integrity intact, was hanging in the balance. A strong Centre, in these circumstances, was, in their judgement, the only surest guarantee against the malevolent forces seeking to wreck all that they held precious from within and without. Much against their will, as the debates in the Constituent Assembly bear out, they opted for the primacy of the Centre, arming it with powers to deal with centrifugal and fissiparous tendencies, threats to the country's unity and sovereignty, and emergencies affecting national security and financial solvency. This explains the provisos qualifying the fundamental rights, the provision permitting

preventive detention, and the articles relating to the imposition of President's Rule in States and the declaration of emergency.

At the same time, the Constitution-makers were imbued with the firm conviction that occasions requiring the use of such extra-ordinary powers would seldom arise, and they would be invoked with due regard to canons of propriety and fairplay. Further, the inviolable and independent judiciary that the Constitution had visualised was, in their view, a strong enough bulwark against trespasses resulting from political whims and caprices.

Forcefully rebutting the charge that the Constitution had merely borrowed the wording from the Government of India Act, 1935, Shri T.T. Krishnamachari explained how the members of the Drafting Committee had "bestowed great thought and care to see that the Government has adequate powers to face an emergency, which may very well threaten this Constitution, which may practically make this country come under a rule which is entirely unconstitutional. They have at the same time provided enough safeguards to see that the popular voice will be heard, that the popular will dominate, whatever might be the conditions under which we will have to function under these emergency provisions."

On another plane, Alladi Krishnaswami Iyer justified them by referring to the situation in U.S.A. whose Constitution had a provision to the effect that it was the duty of the federal government to see that the State was protected both against domestic violence and external aggression. In putting in similar provisions, he said, "we are merely following the example of the classical or model federation of America."

Coming to the apportionment of powers between the Centre and the States in the form of the Union, Concurrent and State Lists contained in the Seventh Schedule to the Constitution, here again, on the surface, the Union List comprising 97 items and covering a substantive decision-making domain, is conspicuously long compared to the 47 items of the Concurrent List (over which the Union has over-riding powers of legislation) and the 61 entries of the State List. If we look closer, we will find that most of the important nation-building items — such as agriculture; education, health and industry (barring the scheduled ones) — and most development-oriented activities fall within the purview of the State. They are also masters in their own jurisdictions in respect of law and

order. True, the Centre's financial catchment areas are more extensive and lucrative, but the mandatory provision for establishing a Finance Commission once in five years was meant to ensure a fair and equitable sharing of revenues between the Centre and States.

All in all, in the perspective of what obtained at the time the Constitution was framed, Dr. Ambedkar had no difficulty in asserting that it did ample justice to the coordinate, coequal status of the States in relation to the Centre, and struck the right balance between the authority of the Centre and the autonomy of the States, and that the criticism that it did the States down was baseless. The arguments with which he prevailed upon the Constituent Assembly to approve the distribution of powers are worth quoting. The Constitution, he said:

> "establishes a dual policy with the Union at the Centre and the States at the periphery, each endowed with sovereign power to be exercised in the field assigned to them respectively by the Constitution. The Union is not a League of States, united in a loose relationship, nor are the States, the agencies of the Union, deriving powers from it. Both the Union and the States are created by the Constitution; both derive their respective authority from the Constitution. The one is not subordinated to the other in its own field; the authority of one is coordinate with that of the other."

Again,

> "A serious complaint is made on the ground that there is too much centralisation and that the States have been reduced to municipalities. It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the Constitution contrives to do. The chief mark of federalism lies in the partition of the legislative and executive authority between the centre and the units by the Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. The Centre cannot by its own will alter the boundary of this partition. Nor can the judiciary."

How is it that on every one of the above counts, the situation is widely perceived to be the reverse of what the members of the Constituent Assembly were so eloquently persuaded by Dr. Ambedkar to accept? The States — even where the party in power is the same as at the Centre — find it in their daily experience that they are treated like lowly subor-

dinates. In their perception, the Centre, in its dealings, looks upon them as worse than municipalities. The boundaries of the demarcation between their respective legislative and executive authorities have been transgressed many times and lost their sanctity. The States fell weighed down by the thraldom to the Centre. The most vocal exponent of these views in recent months has been Shri Biju Patnaik. It is significant that not one among the Chief Ministers or members of Parliament who never fail to rush to the defence of the Central Government to show themselves more loyal than the King, has taken exception to his vehement denunciation of the present dispensation.

It is not merely that this feeling is confined to political or administrative levels; it has percolated to the grass-roots also. Some years ago, a friend of mine was narrating a story of his visiting the house of a friend of his in Kerala for lunch. While both were chatting, my friend happened to notice a servant boy of barely 10 or 11 years reading a newspaper intently and now and again underscoring certain words with a pencil. My friend could not contain his curiosity and asked the boy what it was that he was so assiduously marking in a news report. He found on being shown the paper that the boy was underlining the word "Centre" wherever it occurred so as to know the number of times it was mentioned in proportion to the total number of words in the report!

It is obvious that the fouling up of relations has not been brought about all of a sudden. It can be traced to a member of factors inherent in the evolution of our polity, but I would like to highlight three that I consider to be of some consequence.

First, the general erosion of values in public life and the crisis of character. In their nobility derived from Gandhian upbringing, India's Constitution-makers assumed that those coming after them would also be in their image, adhering to healthy conventions and minimum decencies, founded on goodwill and good faith on all sides. Dr. Rajendra Prasad, in his valedictory address to the Constituent Assembly as its President, pinned his faith on the good sense and uprightness of those who would be working the Constitution in the future. Extra-ordinary powers were conceded to the Centre for dismissing State Governments and State Assemblies, or for imposing emergency, or for resorting to preventive detention only on the strength of similar sentiments. In this,

it is now clear, our founding fathers had the defect of their virtue. They made little allowance for the emergence of men smaller than themselves. They could not also have reckoned with narrow compulsions of religion, language and caste, and skullduggery of crass politics dissociated from any sense of public service, playing havoc with the constitutional framework.

Apart from this, the fact of one-party dominance of Central and State Governments in the decades following Independence was responsible for introducing distortions in the working of the Constitutional system. For, a centralised party, which for the most part did not practise internal democracy, was an anachronism in a federal set-up. The party High Command superseded mechanisms and safeguards set up under the Constitution. Constitutional functionaries like Chief Ministers had to take the orders of the High Command even on matters like Cabinet making, and since they themselves were often not democratically elected by the party aspiring to power but imposed by Centralised party headquarters, were inhibited in taking bold initiatives. Lacking correctives against an absolutist approach to State Governments during the long periods they were under their thumb, the centralised party High Command, if it was also ruling at the centre, developed an aversion to letting other parties come to power. This is what is at the root of its proneness to going to any lengths to dismiss the duly installed Governments of those parties. Things have not been helped by some Governors construing their role to be the agents of the political party (or combination of parties) in power at the Centre, instead of being the friends, philosophers and guides, and spokespersons, of State Government, and bridge-builders between them and the Centre, looking to the interest of the nation as a whole.

The suspicion that the Centre had little regard for the susceptibilities of the States was also the outgrowth of several commissions and omissions of the parties in power at the Centre in the years since Independence. Egregious misuse, often by a pliant Governor at the behest of the political executive at the Centre, of the power to impose President's Rule is only a part of the problem. The abuses during the Emergency have inflicted wounds on the psyche of the people which are yet to heal. The non-Hindi speaking States are in constant jitters over the propensity of the Centre to thrust Hindi down their throats. The assump-

tion of powers by the Centre to despatch the armed forces of the Union to States without prior intimation or consultation is yet another irritant.

The mechanisms ostensibly set up to improve the relations and help in facilitating consultations and better coordination have ended up doing the opposite. There is hardly a single State—and this is regardless of the ruling parties' complexion — which is happy with the functioning of the Planning Commission, National Development Council, National Integration Council or the Finance Commission. It will not be untrue to say that the States neither have a sense of participation in their decision-making nor are able to relate themselves to them as an integral part of consultative and collaborative effort. Even the documents for their meetings reach the States a couple of days before the meetings, leaving them no time to prepare themselves. The formula for the sharing of resources are changed without any attempt at carrying the States along. They are kept on tenterhooks for inordinate lengths of time—sometime for years — in the matter of according sanction to projects they consider vital and making allocations for them. The Centre has reserved to itself the exclusive prerogative of negotiations with foreign governments and funding agencies, while the financing institutions within the country, which are increasingly seen to be subservient to the centre's prescriptions, bypass the States in formulating their credit policies. In saying all this, I should not be understood as giving my own conclusions, but only as reflecting the opinion held by most States.

It took forty years for setting up the Inter-State Council, which was to have been the supporting arch envisaged under the Constitution to help keep the relations between the Centre and the States on an even keel. Had it been in position in all the years the Constitution has been in force, it could have laid the groundwork for good and solid partnership and built sound traditions and approaches to the various issues that have bedevilled relations. It could have evolved into a facility enabling the Centre and the States to function in unison, and served as a storm signal forewarning about possibilities of troubles and tensions and as a safety valve for pent up frustrations. This omission is once again due to the same one-party syndrome I referred to a little while ago. Since disputes were expected to be solved in party forums, even though they might pertain to the functioning of governments, setting up the Council was not seen as a compelling necessity.

The aberrations resulting from the commissions and omissions could have been guarded against if at least the institutions and functionaries under the Constitution were left to discharge their duties without fear or favour. Sadly, all institutions starting from the presidency and including the Judiciary are in disarray. The functioning of the presidency has exposed the deficiencies in the Constitutional provisions concerning presidential power and discretion. Even a Constitutional monarch who is not elected has the right to advise, to encourage and to warn. In this century itself, the British monarch has intervened unobtrusively at least on five occasions to take a hand in solving political issues.

The President under the Indian Constitution is an elected functionary—on a broadbased franchise representing the nation's will—and he takes the oath to preserve, protect and defend the Constitution. How can he preserve, protect and defend the Constitution if he were merely to be a silent witness to the undermining of the Constitution? Should the President be bound by the advice of a Prime Minister who manifestly does not command a majority in Parliament? Should he blindly accede to the wishes of caretaker governments which have lost their majority in Parliament without regard to justifiability or propriety? Even when the government does enjoy a majority, one can understand the President being bound by its advice on matters falling within the Union List; should he not have some discretion in regard to those mentioned in the Concurrent and State Lists? Should he not apply his mind independently to proposals of imposing his Rule in States or for declaring emergency or over questions intimately concerned with defence and security? These questions which, to my mind, are vital to the health of our democracy can no longer be felt in limbo but have to be squarely faced and answered.

I have already touched on some Governors allowing themselves to be manipulated by the political executive at the Centre. Public misgiving on this score can be allayed only if, as recommended by the Sarkaria Commission, really eminent persons with outstanding public record and not in active politics are appointed to the post. How do we ensure this?

There are other institutions which previously enjoyed a high reputation for their independence and integrity which are also sought to be converted into playthings of politicians such as the Judiciary and the Public Service Commission. Selections to the High Courts and the

Supreme Court need to be taken out of the hands of the political executive, or if the latter has to be in the picture, the President should be given the final say in judicial appointments on the basis of his independent satisfaction regarding the credentials of the persons recommended.

Recent months have witnessed an ugly development affecting the credibility of the fount of the electoral process through which the entire democratic edifice comes into being. The institution of the Chief Election Commission had so far been beyond reproach, but that also has got embroiled in controversy to the extent of inviting threat of impeachment.

The civil servants and the bureaucracy in India, at one time, were held in high esteem not only within the country but also abroad for their professionalism, objectivity and impartiality. It is indeed a tragic pass to which this institution has come if the Chief Election Commissioner is constrained to point an accusing finger at some district level officials for favouritism and partisanship, and indulgence in malpractices during elections. Members of the bureaucracy are the first to be pushed around, if not victimised, with every change of government. They have so long and so often been victims of political vagaries that much of their lean is lost, along with accountability and efficiency. Appointment to leadership positions in the bureaucracy should not be based on political likes and dislikes, but on the recommendations of a committee of serving or retired civil servants of high standing.

Of all the existing Constitutional devices for ensuring healthy Centre-States relations, the recently set up Inter-State Council holds the greatest promise. It should not degenerate into a mere appendage or ritual. Its present charter of duties, namely,

(a) inquiring into and advising upon disputes which may have arisen between States,

(b) investigating and discussing subjects in which some or all of the States or the Union and one or more of the States, have a common interest,

(c) making recommendations upon any subject and, in particular, recommendations for the better coordination of policy and action with respect to the subject,

no doubt are good as far as they go, but it all depends upon how concretely and sharply it is made to focus on specific, burning questions of the day, and bring its collective wisdom to bear on issues likely to turn controversial and result in confrontation. For instance, the Council's prior advice could prove invaluable in regard to proposals for the amendment of the Constitution; issue of Presidential order dismissing State Governments and Assemblies; proclamation of emergency on security or financial grounds; conferring of statehoods and reorganisation of States; finalisation of the terms of reference of the Finance Commission; approval to what are called mega-projects to guard against regional imbalances; national credit, import and export, and currency stabilisation policies, privatisation and its repurcussions; and electoral reforms. Indeed, even national security and defence-related issues, questions relating to India's relations with limitrophe countries, broad lines of negotiations with foreign governments in or outside the United Nations which are of vital concern to the security and economy of the nation at large are also, in my view, proper subjects for the Council.

The more I survey the domestic and global scene with a degree of detachment that comes with age, the more I am convinced that political, economic and security management of multi-centric, multi-ethnic and multi-lingual polities is intimately bound up with the capacity of the rulers of whatever hue to acquire ethical and moral grandeur, and to bring into play a full measure of empathy and identification with the concerns of different sections of the people. In other words, the psychological dimension is as important as, and often more important than, simply following the principle "Sufficient unto the day the evil thereof" in running a nation's affairs. And this is the dimension that is sadly lacking today.

The road to improved Centre-State relations in our country is paved with all good intentions exemplified in the reports of a number of excellent Committees and Commissions, the more notable of them being the Administrative Reforms Commission, the P.V. Rajamannar Committee and the Sarkaria Commission. There is no need, in view of the limited time, to traverse the ground already covered by them. The common thread running through all of them is the proposition that the existing constitutional scheme and the mechanisms created by it (or grafted on to

it, for example, by giving constitutional status to the National Development Council and the Planning Commission should be given a trial by breathing new life into them before thinking of any radical revision of the Constitution itself. They have been mostly content with fine-tuning certain provisions and adding to the safeguards against excesses and abuses, rather than coming up with approaches breaking new ground. One cannot blame them for not wishing to rock the boat and create fresh controversies. But a time comes, as when it came in our freedom struggle with the advent of Mahatma Gandhi, when more harm may be done by being cautious and conservative then by being frontal and forthright — and I think this is such a time.

We are at a watershed in world history. It is not just that the relations between the Centre and the States is the issue; the dichotomy inherent in the roles and rights of the individual in relation to the State has also become nettlesome. Undreamt of changes sweeping over Eastern Europe and the breaking up of Soviet Union have been the direct result of insensitivity of the State, forcing people to stand up to the State and bring its functionaries to their senses. If those in temporary possession of State apparatus refuse to learn the lessons of recent history and look for ever newer ways of hoodwinking and hounding the people, not all the armed might of the state will be able to withstand the mass upsurge of the kind witnessed elsewhere. The Union should not hug the constituent States too tightly even out of love, and make it painful like a bear-hug ! The States must be given much greater scope to shape their own destinies and much larger share in national decision making.

On the method and content of the exercise to harmonise the interest of the States and the Centre, each may have his own views. But, in my considered judgement, the immediate and imperative need is for new directions to thinking based on the working of the Constitution for over forty years. We all need to be jolted out of the rut into which we have fallen. To my mind, the entire Constitution needs to be reviewed in the light of past experience by establishing a Constitution Review Commission or a new Constituent Assembly. I notice from a recent communication sent to me by him, the elder statesman Shri K. Brahmananda Reddy, has also arrived at the same conclusion independently.

And he has couched it in apt phrases which bear being quoted;

> "The task is of finding the remedy today, and the remedy needs to be a fundamental. A process, such as a re-look at the Constitution, may not only help remove some of the structural defects and imbalances, but it may give the present generation the sense of participation and the thrill of democracy in the making which the original freedom fighters and Constitution makers had and which was lost in the cynical exercise of power subsequently... this may revive the constructive, creative impulses of our people by providing them an opportunity to active political participation in the remaking of the system by which they wish to be governed."

I could not have argued the case better.

I am sure there are many others in the country in all walks of life who hold the same opinion. They must have their voice heard so that a concerted action becomes possible to emerge out of a bonded India into a genuinely united India.

25

CENTRE - STATE RELATIONS : SOME ASPECTS, SOME VIEWS

Madhukar Rao Chaudhari

Edmund Burke, a great political thinker of 19th centuary England, spoke of making government thus: "To make a government requires no great prudence. Settle the seat of power, teach obedience, and the work is done. To give freedom is still more easy. It is not necessary to guide, it only requires to let go the rein. But to form a free government, that is to temper together those opposite elements of liberty and restraint in one consistent work, requires much thought and deep reflection".

There is no doubt that the founding fathers of the Indian Constitution were quite aware of the above dicta of Burke and tried to produce a Constitution, making a harmonious blend of liberty and restraint. The exercise required a little greater effort, because the Constitution is federal in nature, comprising the various States and the Union.

However laudable the objects, in practice, all federal governments have tended to become more centralised, as the examples of U.S.A., Australia and Canada would show. In U.S.A., the federal role, by 1980, had become bigger, broader and deeper, covering a wide range of governmental functions in new fields which had hitherto been the exclusive or predominent preserve of the States or their local sub-divisions. The regulatory role of the Federal government directly covered big business, labour, agriculture, communications, transportation, banking, securities, environment, health and safety, Consumer Protection and social equality areas. It also indirectly expanded through the use of grant

conditions as means of furthering national, social, environmental, egalitarian and other goals. In Australia, liberal interpretation of its Constitution by their High Court has helped to increase the powers of the federal government. Its financial resources enabled it to expand its role through the instrument of financial grants to the States. Many other factors — social, political and economic—have also contributed to the growth of the federal power in Australia. In West Germany and Switzerland also, the trend has been broadly similar.

In Canada, however, the centralising tendency in the Constitution was tempered by judicial pronouncements of the Privy Council. However, the experience of the working of the system soon led to the realisation that most problems required joint action by the federal and provincial governments. In recent years, a fairly large field of defacto concurrency has emerged. Thus, here the system has assumed, on the basis of practical arrangements, a de facto form of cooperative federalism transcending the boundaries, formally designed in its Constitution.

In India too, we have the same story of centralisation but in a much more pronounced way, and we have failed to develop, like in Canada, cooperative federalism which the founding fathers had hoped for. This is clear from the statements made to the Sarkaria Commission (a Commission appointed to probe into the Centre-States relations) by the various State Governments, political parties, and the evidence given by many eminent persons before it. It is pointed out that the actions of the Union have led to a very large degree of over-centralisation in all aspects, reducing the States to mere administrative agencies of the Union. Such over-centralisation, in legislative, administrative and financial spheres, it is contended, has been effected by the Union to the detriment of the States. It is alleged that the Union has occupied most of the concurrent field, leaving little for the States, and indiscriminately making declarations of public interest or national importance, taken over excessive areas of the linked entries in the State field at the expense of the State Legislative power. There are many other factors like the insitution of Governor, Planning Commission, etc., which have contributed greatly to this phenomenon. It is these features which have been responsible for the emergence of the problems in Punjab, Assam and Tamil Nadu notably. Other States also have been clamouring for greater autonomy. If timely action is not taken to remedy this situation, there is a real threat to the

unity and integrity of the nation and it may fall apart. The danger was noticed quite early, when a State like Tamil Nadu started talking of cessation, more than two decades ago. It resulted in the appointment of what is known as "Rajamannar Commission" by the Tamil Nadu Government to go into this question. That report was characterised as one sided, in as much as it tried to give much greater autonomy to the States, making the Centre weak and ineffective. Though, it was never acted upon, it pin-pointed the reality of the problems affecting the States. The warning given by it not being heeded, we have landed in a situation which threatens to pull the nation apart. So another Commission, know as "Sarkaria Commission", was appointed a few years ago, to go into the question and the Commission has duly made its report quite some time ago. But even to this date no decisive action has been taken to implement it. By all tokens, it is a mild report which remains unimplemented for reasons best known to the Government of India.

An attempt is made here in the context of the foregoing background, to consider the question dispassionately and see how best the problem can be solved to the satisfaction of all concerned and save the country from the threat of disintegration.

The problem may be considered from the point of view of the following:

(a) Administrative relations;

(b) Institution of Governor;

(c) All India Services;

(d) Financial relations; and

(e) Legislative areas.

On all these matters, the Sarkaria Commission has made its recommendations which are good only in parts like the proverbial curate's egg.

Administrative Relations

Articles, 256, 257 and 365, in a nutshell, empower the Union Government to issue directions to the State Governments for ensuring compliance of their laws and for declaring that the Government of any State is

not being carried on in accordance with the Constitution, in the event of non-compliance. These are very radical measures and have led to much abuse in their operation. The Commission has only sounded a note of warning against their misuse. This is not going to help, as their operation so far has shown. Some effective safe-guards are necessary against their misuse. Likewise, the Commission's exhortation to make liberal use of article 258, which provides for conferring powers and functions of the Union Government on the State Governments in certain cases, and which has the potential of bringing about cooperative federalism in working, is not likely to succeed unless some effective provisions are made in that behalf. So far it has ramined a dead letter.

So far as the institution of Governor and the question of All India Services are concerned the Commission's recommendations appear to be wholesome and may be accepted. The Governor occupies a position in the State, which a British Monarch has in England. If his functions and duties are regulated strictly, as they obtain in England, no difficulty is likely to arise. The difficulty has arisen from a mistaken view of his position as an agent of the Central Government, for which there is no warrant. This is the correct legal position according to law Courts. Some Governors have acted openly in furtherance of the interests of their political parties. Much of this abuse is likely to be remedied if the recommendations regarding their recruitment etc., are accepted. Likewise, if the services which are supposed to be neutral in their work, are made 'All India', and as many as possible—it will only have good results. The recommendation is therefore unexceptionable.

In financial relations, there is much to be desired. The resources of the States are woefully low and restricted. They have to be augmented without depending upon the pleasure of the Union Government. The recommendations, in this area, are half-hearted and halling. Today, the bulk of monies transferred from the Central Government to the States (nearly 60%), are on account of plan and other transfers and are outside the purview of the Finance Commission. The taxes and duties and grants which are required to be shared with and made to States under articles 270, 272, 275 are only 40% the total money. The remaining money is transferred as discretionary grants under article 282 mainly on the recommendations of the Planning Commission. Article 282 says that the Union or the State Governments may make a grant for a purpose which

may not be connected with the affairs of the Union or the State Government as the case may be. This article enables the Government to make a grant for any unforeseen or unexpected purpose. This has often led to abuse of power. The article has become an instrument to discipline some States and favour some others. The Commission does not find fault with this position despite stringent criticism against it. The proper course would be to transfer all transferable amounts through the Finance Commission which is a statutory body. It should be headed by a judge of the Supreme Court or a High Court, so that it can take a judicious view of the matter in conformity with fair play and justice. The Constitution makes no provision for discretionary grants. Article 282 is not meant for this purpose. The Planning Commission which plays such a vital role in the economic field of the country, is the product of executive orders of the Union Government. It should be governed by an Act of Parliament which can effectively deal with its composition, powers and functions. The Sarkaria Commission says nothing about this.

Lastly, in the Legislative field, recommendations are mainly in the nature of advice and exhortation and they hardly suggest any radical departure from the existing position. The Concurrent List should be so operated as not to impunge on the rights of the States. It is here that a lot of misuse has taken place in the name of public interest and national importance.

The best way to secure coordination and harmony between the Union and the States and the States inter-se, is through an inter-State Council under article 263 which has been constituted recently. Till then, the article was a dead letter. For the smooth and harmonious working of the Constitution, the Inter-State Council should be activated and made use of, in all matters affecting the Union and the States.

26

THE FEDERAL STRUCTURE - UNION-STATE RELATIONS

H.A. Halim

The Constitution of India has been under work for more then four decades now. All this time the Government of India has continuously expanded its field of legislative and administrative action and encroached upon the State sphere. Thus, the federal features of the Constitution have been seriously eroded and the autonomy guaranteed to the States under the Constitution has been undermined. It would be noted that this is something altogether different from the tendency towards centralisation inherent in a federal set up. There has been unconstitutional usurpation of power by the Union. This has very seriously affected and distorted Centre-State relations, giving rise to many tensions and disputes between the Union and States and has resulted in disturbing signs of alienation in many parts of the Country.

Although it was decided by the Framers of the Constitution that India should be a federal polity and legislative and executive authority was partitioned between the Union and the States by the Constitution itself, yet a fearful Constituent Assembly having witnessed the partition of the Country opted to have a strong Centre. In their anxiety to ensure a strong Centre many provisions were enacted in the Constitution which gave the Union Government over-riding powers in many cases.

In the legislative and administrative spheres, as time and experience has shown, the Centre wields powers far beyond what is necessary even in the interests of a strong Union. The Constitution assigns to the Centre too large a field for the operation of its legislative and executive

authority. There are, besides, many provisions whereby the Centre has been given powers to override the States and legislate in the domain assigned to the States. The residuary powers have been given to the Centre and not to the States. And then there is the concurrent list where the laws passed by the Parliament will have primacy over the laws, if any, passed by the States. Thus the field of legislation of the States is very closely circumscribed. The State Legislature have to give shape to the needs and wishes of the people whom they represent and even in the limited field assigned to them, they are subjected to further restraints in article 200 and 201 of the Constitution. That the Governor or the President must assent even when a Bill on state subject has been passed by a State Legislature is not only an archaic ritual but a mischievous one and has been proved to be a major irritant in Union-State relations.

As to the reservation of bills by Governors for the consideration of the President, the states have had reasons to complain of gross delays in the Union's consideration of the Bills passed by State Assemblies. Such delays not only stand in the way of effective functioning of State Legislature but also thwart the very purpose of these legislations.

It has been found that Governors have sent to the Centre Bills on matters which are in the State List and this they have done on their own discretion. This is contrary to the constitutional position. A reading of article 200, 201 and 254 makes it absolutely clear that a Bill Passed by the State Assembly on matter in the State List cannot and need not be submitted to the Union for the President's assent and that a bill passed by the State Assembly with respect to a matter Concurrent List can be and should be sent to the President only on the advice of the State Council of Ministers and never in his individual discretion. Whether it is the Governor in the state or the President at the Centre, the duties as a constitutional Head of a State are the same. As Dr. Ambedkar said in the Constituent Assembly the position of the Governor is exactly the same as the position of the President."[1] The Government of India has however ignored the letter of the Constitution and the clear intent of the Framers of the Constitution.

(i) Financial Relations

In the sphere of financial relations between the Union and the States also, the provisions of the Constitution which have not been too liberal in

the matter of allocation of resources to the States, have been circumvented by the Union through executive action and Legislative dexterity to the detriment of effective and autonomous functioning of the States. For instance, the Planning Commission which has been set up by a mere executive order of the Government of India has been able to by-pass and undermine the authority of the Finance Commission set up under article 280 of the Constitution. The total transfer of resources from Centre to the States by way of grants both under article 275 (1) and article 282 during the year 1987-88, for instance, is Rs. 8509 crores. Of this amount only Rs. 681.59 crores is to be transferred under article 275 (1) on the recommendations of the Finance Commission and the balance which is about ten times more than this amount will be given to the States on the recommendations of the Planning Commission and in the discretion of the Union Government under article 282 of the Constitution. It is true that the recommendation of the Finance Commission are not binding on the Union Government and these may not be acted upon by the Union as has actually been the case on some occasions. Still it is a constitutional body of a quasi-Judicial character whereas the Planning Commission is a quasi-political body and open to the pulls and pressures of politics.

In the distribution of taxing powers between the Union and the States, all the major and elastic sources of tax have been placed under the authority of the Union and the States have been made to depend on the transfer of revenues from the Centre. The position has come to such that Centre is now the giver and the States are donees, not-co-sharers in the national fund. The Union manages by various means to deprive the States of their legitimate share of the revenue resources of the nation. The Union Government has by a legislation placed the Corporation Tax outside the divisible pool which was intially in the divisible pool. Then, the Union Government imposes surcharges on various taxes which do not come in the divisible pool. Then again, during the last several years, the Union Government making huge collection by increasing the administered prices of several commodities subject to excise duty and thus depriving the States of their legitimate shares. It is no use multiplying instances. The position today has become such that the States are to act under severe financial constraints and are hardly able to make adequate provisions for the economic and social welfare of the people to whom they are responsible. Thus the very object of popular governments which are set up in the States under the parliamentary system of our Country is

thwarted and disparties and imbalances in regional development have been on the increase. This is striking at the very root of integrity and unity of the Country.

(ii) Role of Governor

The greatest single source of distortion of Centre-State relations is the abuse of the office of the Governor. The Constitution has been misconstrued to require the Governor to act as an agent of the Union. How the office of the Governor has been abused to interfere in the affairs of the States to suit the partisan ends of the ruling party at the Centre is too well known to be recounted.

Regarding the Office of the Governor, in *Dr. Raghukul Tilak case,* the Supreme Court had observed :

> "It is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India but that is only a mode of appointment and it does not make the Governor an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. So also, it is not material that the Governor holds office during the pleasure of the President. It is a constitutional provision for determination of the terms of office of the Governor and it does not make the Government of India an employer of the Governor.... His office is not subordinate or subservant to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carried out his functions and duties. He is an independent constitutional office which is not subject to the control of the Government of India. He is constitutionally the Head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State."

But all along Governor has been required by the Centre to act in a partisan manner as its agent.

(iii) President's Rule in the States

Then, there is the dismal record of increasing abuse of article 356 of the Constitution which empowers the Government of India to impose its own

rule directly on States and oust duly elected State Governments from power. This provision of the Constitution has been abused by the Union to perpetrate some of the gravest outrages against the autonomy of the States. The framers of the Constitution expected that the extra-ordinary provisions for suspending the administration of the States would be called into operation, in extreme case as a last resort when all alternative correctives fail. Despite the hopes and expectations so emphatically expected by the framers of the Constitution, article 356 has been brought into action no less than eighty times.

(iv) Demand for more autonomy to State

The discontent and resentment of the people in some of the States against the unconstitutional usurpation of powers and the constraints on the autonomy of the States embodied in the Constitution have been voiced strongly in recent years. In view of the growing resentment of the people, a Commission on Centre-State Relations headed by Justice R.S. Sarkaria, a former Judge of the Supreme Court, was set up in 1983. The Commission was at work from 1983 till 1987 and has since submitted its report. The conclusion and recommendations of the Commission although of a halting nature and not very satisfactory on some important issues, will nonetheless go some way in improving the present state of affairs. It is in the national interest that these recommendations are implemented speedily as these will bring about some significant reform in Centre-State relations and work towards better cohesion and unity of the nation. That is the paramount need of the hour.

It should be realised that the integrity and sovereignty of India must emerge from the harmonization of the distinct linguistic, ethnic and cultural entities which constitute our great nation. Only a balanced economic progress of all the regions can strengthen the forces of national unity and the process of national integration. This can be achieve only through cooperative federalism and not authoritarian centralism.

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27

State Autonomy : Past, Present and Future

Murasoli Maran

"The federalist revolution is among the most widespread — if one of the unnoticed — of the various revolutions that are changing the face of the globe in our time", says Daniel J. Elazer.[1] Nearly 40 percent of the world's population now lives within polities that are formally federal; another third live in polities that apply federal arrangements in some way.

The federal principle offers more than one way of application and federalism can be considered a genus of political organization of which there are many species. In every case the developments have emerged as practical responses to real situations.

To whatever species our Government may belong to, if any one feels inclined to classify it as a federal type then one should search for the single-most distinct characteristic of classification, because "what makes a government federal is the autonomy of States."[2] In fact federalism and state autonomy are the two facets of the same coin.

The first and most influential approach to the study of federalism is the institutional one of K.C. Wheare, who interprets federal principle as,

> "the method of dividing powers so that the general and regional Governments are each, within a sphere, co-ordinate and independent"[3]; "Neither general nor regional Government is subordinate to the other"[4]; and " . . . each government should be limited to its own sphere and, within that sphere, should be independent of the other."[5]

The litmus test of federalism or no federalism is whether there is a sufficient *area of autonomy* to be worth considering and whether the *guarantee* of autonomy is sufficiently effective.

What, then, should be the area of autonomy and how effective the guarantee should be?

According to Freeman the answer is that :

> "the name of Federal Government may, in this wider sense, be applied to any union of component members, where the degree of union between the members surpasses that of mere alliance, however intimate, and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of merely municipal freedom."[6]

What, then, should be the degree of independence? According of M.J.C. Vile:

> "... the 'independence' of State and Federal Governments seems to retain a considerable importance for the idea of federalism, for if this independence, both constitutional and practical, were to disappear altogether, it is difficult to see what meaning federalism could have."[7]

In specifying the principle K. C. Wheare is explicit :

> "If there is to be federalism, one condition must be fulfilled. There must be some matter, even if only one matter, which comes under the exclusive control, actual or potential, of the general government and something likewise under the regional governments. If there were not, that would be the end of federalism."[8]

Therefore, in contrast with devolution or decentralization, the said 'freedom' or 'independence' is not left to chance but properly institutionalized in the written Constitution, because the very purpose of federalism is the need of people and polities to unite for common purposes yet remain separate to preserve their respective integrities. "As a matter of history, federalism has provided a device through which differing nationalities could unite, and, while retaining their own distinct national existence, attempt to create in addition a new sense of common nationality. Nationalism in a federation can be expressed on at least two levels; it is not an exclusive, homogeneous passion."[9]

> In this context, autonomy in a polity territorially grouped with great significant diversities may roughly be defined as the division of irreducible powers guaranteed in the Constitution so that each member may conduct its affairs as it thinks best, without interference from anyone but its own electors.

Decentralization and Autonomy

The word decentralization clearly indicates the center as given and primary which then delegates to other sub-centers or governmental agencies some power and authority for *"purely pragmatic and heuristic reasons"* to meet the administrative conveniences.

The sharing of governmental power between various authorities is as ancient as history. Empires have done it by decentralization, by delegating the authority to subordinate officials, more so in provinces far from the imperial capital. But the crucial fact is that any act of decentralization by the central authority or the central government can be recentralized according to its will and pleasure. "In decentralized systems, the diffusion of power is actually a matter of grace, not right; in the long run, it is usually treated as such."[10]

It is even possible to give more powers to local units than to the States in a Federation and "a unitary Government may be decentralized, as it is in England and was in Prussia."[11] In decentralized unitary states if there is decentralization to the local authorities it is always subject to supervision, restriction and even withdrawal.

In sum, state autonomy is the life and soul of the principle of organization upon which the Federal Government is based and understood and, therefore, in a federal state, as A.V. Dicey writes:

> "every power, executive, legislative or judicial, whether it belongs to the nation or to the individual state is subordinate to and controlled by the constitution."[12]

As Carl J. Friedrich has clarified :

> "It can be said that decentralization is indicated where functional considerations are of primary importance, whereas communal pre-occupation demands a federal system. There is no object in laboring the distinction, which is clear enough when Switzerland and England are juxtaposed."[13]

The Failure of the British in Decentralization

Until 1773 there was no such thing as a central government so far as the British empire was concerned and when they established one through the Regulating Act of 1773 they soon burnt their fingers with the fire of centralization vis-a-vis the vast and varied country.

Shortly after the transfer of power from the East India Company to the British Crown, John Bright made a far-reaching suggestion for the abolition of the Central Government of India under the Governor — General and the formation a separate and almost independent government of its own for each province, directly subject to the British Crown — "a sort of Federation of States, invested with equal authority, and subordinate only to the Secretary of State in England." He favoured five independent states in the territory of India. Such proposals were mooted so often to prompt the Government of India to issue a Dispatch on 8 June, 1880 to the Home Government condemning the schemes as unworkable. John Bright declared :

> "What you want is to decentralise your government.... You will not make a single step towards improvement of India unless you change your whole system of government, unless you give to each presidency more independent powers than are now possessed."[14]

The thought-provoking criticism of Sir. A. Mackenzie, Lt. Governor of Bengal, about the financial allocations in the course of his address to the Imperial Legislative Council, is worth quoting:

> "I deprecate the way in which the quinquenniel revisions have so frequently been carried out. The provincial sheep is summarily thrown on its back, close-clipped and shorn of its wool and turned out to shiver till the fleece grows again... The normal history is this: Two years of renewed energy on the normal scale, and one year of dissipation of balances in the fear that, if not spent, they will be annexed by the Supreme Government at the time of revision."[15]

Sir Mackenzie would be turning over his grave if he knows that still many Finance Ministers and Chief Ministers of States of independent India feel the same way.

The most significant fact that stands out in our history is that the geographic dimensions of the country and its diversity repelled any bid

for centralization and very soon the British, as well as enlightened Indian public opinion, naturally veered towards the opposite direction with regard to constitutional reforms.

Federalism Via Decentralization

In the words of W.H. Morris - Jones :

> " . . . in the sphere of government, concessions had to be made to decentralization, devolution and eventually provincial autonomy,"[16] and "The reforms of 1919" introduced "federalism in embryo."[17]

The Montford Report (1918) spoke of :

> "a congeries of self-governing Indian provinces associated for certain purposes under a responsible government of India . . . *For such an organization the English language has no world but 'federal',"* [18] (Emphasis added.)

The Simon Commission (1930) also opined that :

> "The ultimate Constitution of India must be federal."[19]

On all hands Dyarchy had also failed and as the Report of the Reforms Enquiry (Muddiman) Committee (1924) admitted :

> "The only remedy I can think of for the above defects is complete Provinciai Autonomy."[20]

But one thing has become clear :

> "The small dose of provincial autonomy injected into the Indian Political system by the Montford Reforms created a strong appetite in the country for a substantial expansion of the area of provincial self - Government." [21]

Why this onward march towards federalism?

The British Parliament's Joint Committee on Indian Constitutional Reform (1933-34) has given the answer:

> "Every student of Indian problems, whatever his prepossessions, from the joint Committee of 1919 to the Statutory Commmission, and from the Statutory Commission onwards, has been driven in

> the direction of Provincial Autonomy not by any abstract love of decentralization, but by the inexorable force of facts."[22]

The 'inexorable facts' are the result of the continental size of India, various nationalities living here with their distinct languages, cultures history and habits, and each state at different stages of economic development.

Because of these reasons not only the British but also our great national patriots were gravitating naturally towards the giant magnet of federalism.

In his famous Political Testament (1914) Gopal Krishan Gokhale stated :

> "The provincial government should have complete charge of the internal administration of the province and it should have mutually independent financial powers."

He further added :

> "Such a scheme of Provincial Autonomy will be incomplete unless it is accompanied by
>
> (a) liberalising of the present form of District Administration and
>
> (b) a great extension of Local Self-Government."

The famous 'Memorandum of Nineteen', signed by Pandit Madan Mohan Malaviya, Sapru, Jinnah and others in 1916 demanded that 'The Provincial Governments should be made autonomous.' The Nehru Committee Report (1928) listed in detail the subjects assigned to the Provinces.

To cut the account short:

> "The act of 1935 was an attempt towards the fulfillment of this purpose and was a mere second instalment in the development of this process, the first being that of 1919 and perhaps the last that of 1950, the Constitution of India."[23]

The manifesto with which the Congress Party got the mandate of the electorate in the election held in 1945, to enter the Constituent Assembly to frame the Constitution, affirmed :

> "The federation of India must be a willing Union of its various parts. In order to give the maximum of freedom to the constituent units, there may be a minimum list of common and essential federal subjects which will apply to all units, and a further optional list of common subjects which may be accepted by such units as desire to do so."[24]

The Constituent Assembly began its historic three - year task on 9 December, 1946 and Jawaharlal Nehru, working within the framework of Cabinet Mission Plan, moved on the fifth day of the first session i.e. on 13th December, the Objectives Resolution, as a "declaration", "firm resolve" and as a "pledge and an undertaking", giving the units full autonomy with residuary powers. Defence, Foreign Affairs, Communications and "the powers necessary to raise the finances required for the Union subjects" were assigned to the Union.

The first report of the Union Powers Committee was presented to the Assembly on 17 April, 1947. Taking its cue from the reference made in the Objectives Resolution to powers 'implied or inherent in the Union', the Committee drew up a list of no fewer than fourteen subjects which, in its view, must 'in any case' come within this category.

Sudden Turnabout

Partition was in the air at the end of April when the Assembly met for the third time. For this reason it postponed debate on preliminary federal provisions and was 'marking time.'

On 3 June, 1947: the day of decision, the decision to split India into two independent States on the sub-continent, India and Pakistan, was announced and Granville Austin has observed :

> "The Union Powers Committee Report became outdated and was consigned to the dust of library shelves. The prologue had ended."[25]

The second report of the Union Powers Committee presented to the Assembly on 4 July, 1947 stated:

> "The constitution should be a federal structure with a strong centre" and there should be three "exhaustive" legislative lists and the residuary powers should vest in the Union.[26]

Jawaharlal Nehru referred to the "momentous changes" and supported the recommendation of the Committee by saying that :

> "The soundest frame-work for our constitution is a federation with a strong centre."[27]

Thus the Partition destroyed at one stroke the attempt to create "a complete, unadulterated federation"[28] and ended in creating a, "new kind of federalism."[29]

According to H.V. Pataskar, what happened was that :

> "At the time of the second reading, we developed a fear complex. .... The result was that the autonomy of the states, or their semi-autonomy came to be looked upon as a matter of national danger. We kept the form of the federation, but changed the substance or contents of that federation. It was with the idea of having a federation that we began changing the names of the provinces in to States. If the present idea had existed throughout, we never would have to make that change. But while the name of 'State is there, the power of the State is so curtailed that it is a misnomer to call it a 'State' any longer."[30]

The remarks of K. Santhanam confirm our worst fear :

> "One of the most curious features of the Indian Constitution of 1950 is the extent of its borrowing from the Government of India Act of 1935 . . . The new provisions were those which were consequential to the change of status of India from that of a controlled Dominion of the British Commonwealth to an independent Republic, like the election of the President and the parts relating to Fundamental Rights, Directive Principles of State Policy, Elections and Amendment of the Constitution."[31]

Diagnoses of Federal 'Doctors'

As we have made a "palimpsest" of the 1935 Act, political taxonomists find it difficult to call our system federal or not, for it defies all definitions and precedents.

K.C. Wheare refuses "to discuss it as an example of a federal constitution" and concludes that the Constitution of India is "quasi-federal".[32]

C.H. Alexandrowicz explains the word quasi-federal :

> "The word 'quasi' hints at a deviation from the federal principle without indicating what kind of special position a particular quasi-federation occupies between a Unitary State and a federation proper."[33]

S.P. Aiyar is not willing to concede even quasi - federal status. He writes:

> "The Indian Constitution which is like that of South Africa, may be described as a 'Union Constitution' if necessary, but it never should be called quasi-federal."[34]

The Constituent Assembly, no doubt, was sovereign enough to change the frame-work of the Constitution, after getting free from the Cabinet Mission's Plan. But the change was so violent and substantial that it changed the very edifice without recognition.

Daniel J. Elazar's comparison of the American experience will be relevant. He writes :

> "With respect to the United States, for example, the principal difference between the Constitution of 1787 and the Articles of Confederation was one of means rather than ends. In this respect, the Preamble to the 1787 Constitution specified that what is proposed is the establishment of "a more perfect union", not a new one. What was changed were the means for effectuating the union, which required the expansion of the powers granted to the federal government even to attain already agreed-upon ends."[35]

Here in India, at the end of the long journey, a virtual turnabout was taken to adopt "seventy five percent"[36] of the Government of India Act, 1935 and the pattern of administrative relations between the Centre and Provinces, as laid down in the Act, was "transplanted, virtually unaltered,"[37] totally forgetting the historic fact that the natural imperatives of federalism remained operative in India despite Partition.

As K. Santhanam has observed :

> "This extraordinary fact of Indian leaders, who had fought strenously against the British Government adopting almost slavishly the Constitution which was intended to perpetuate the British rule in India is not easy to explain."[38]

The anguish of the Gandhian school was summed up by K. Hanumanthaiya who said :

> "We were, during the days of freedom struggle, wedded to certain principles and ideologies as taught to us and as propounded to us by Mahatma Gandhi. The first and foremost advice which he gave in his picturesque language was that the constitutional structure of this country ought to be broad-based and pyramid-like. It should be built from the bottom and should taper right up to the top. What has been done is just the reverse. The initiative from the Provinces and the States and from the people has been taken away and all power has been concentrated in the Centre. This is exactly the kind of constitution Mahatma Gandhi did not want and did not envisage."[39]

Back to Centralization

Four decades have passed since the enactment of our Constitution and even a cursory assessment would indicate that the system of forcing the States and citizens into the procrustean bed of over-centralization continues unabated, at times wearing the masks of 'development', 'poverty-eradication programmes', decentralization', 'grass roots participation', 'ushering in twenty-first century', etc. It may be remembered that starting in December, 1987 the then-Prime Minister addressed district magistrates and collectors in different regions without the involvement of the Chief Ministers of the States, followed by the 'Panchayat Raj and Nagarpalika Bill' to deal with them directly from New Delhi eliminating the States from the picture, reminding the days of ancient kings establishing contacts with their subjects without any interme-diaries.

As the writ of a single Party does not any longer run in the Centre and all the States, and as this is likely to continue in the near future also, conflicts continue, the unity of the country is subjected to considerable strain and the State injustice and over-bearing from New Delhi, enchaining their hands to develop their States.

Even in the matter supplying food-grains and essential commodities through the public distribution system opposition-ruled States are discriminated against. For example, when the D.M.K. government came to

power in 1989, allotments to Tamil Nadu were sharply reduced. The rulers in New Delhi thought that they were punishing the D.M.K., forgetting the fact that it was the people of Tamil Nadu who were punished. Perhaps it was both. Such is the dispensation of justice, democracy and state autonomy in India.

Federalism and Justice

Federalism in its most limited and simplified form is usually a problem of distribution and sharing of power like "who gets what, when and how?" On the other hand federalism in its broadest sense is as a form of justice and equity to the Units and the citizens.

But the Constitutional bodies created to function as the arbiters of justice between the Union and the States and between States — more importantly the Finance Commission and the Planning Commission — have faulted themselves in the eyes of the States in being impartial and failed to obtain a trans-national credibility like the Australian Loan Council.

Even for normal survival, leave alone development needs, our Planning process has made every State "a petitioner at the doorstep of the Central Government"[40] and reduced them to the position of "dole-getting corporations."[41] Inspite of nine Finance Commissions the outcome is still expected as a 'quinquennial gamble' "of the personal views of five persons, or a majority of them."[42] "The States and the general public are still left altogether in the dark with respect to any such judgement on overall sharing of budgetary resources between the Centre and the States, given their constitutional obligations, so that it is difficult to deduce what either Commission considered to be the right division of the totality of resources between the Centre and the States at different points of time and why."[43]

During the four decades the following five documents have been produced, besides other significant ones in the conclaves of the non-Congress (I) parties, seeking better federal arrangements :

(i) The Report of the Administrative Reforms Commission on Centre-State Relationships (1969),

(ii) The Report of the Rajamannar Committee (1971) on Centre-State Relations, (This is the first comprehensive Report obtained by a State on this subject during the D.M.K. Government headed by Karunanidhi.)

(iii) The White Paper and the Resolution passed by the Tamil Nadu Legislative Assembly (1974),

(iv) The Memorandum on Centre - State Relations (1977), prepared by the Left Front Government of West Bengal headed by Jyoti Basu with a view to "enshrine in full the majesty of the federal principle", and

(v) The Report of the Sarkaria Commission on Centre-State Relations (1988).

Sarkaria Commission Report

Evaluated by the sweeping terms of its reference to "examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities *in all spheres*" (emphasis added) the Sarkaria Commission Report should get the pride of place as the first comprehensive official review on the working of the Constitution since its inception made at the behest of the Union Government. But it turned out to be a sad disappointment as it produced nothing substantial.

According to the Report, the Constitution "cannot be called federal in the classical sense. It cannot be called 'unitary' either . . . Some authorities have classified it as 'quasi-federal' Constitution. However, these labels hardly matter."[44] But, *nomen est numen,* to name is to know, is an ancient maxim and the Report has failed to make any significant contribution to the most important and far-reaching of its terms of reference.

The Macdonald Commission (1985) of Canada, just preceeding the Sarkaria Commission by three years, represents an important landmark not only because of the insights which its Report and seventy-two volumes of research studies give us into the nature of Canadian federalism, but also because of its constitutional reforms and of its relevance to the theme of 'Canadian Federalism : Past, Present and Future.' On the

other hand, Sarkaria Commission is an ardent advocate of *status quoism* and a monument of missed opportunity to advance federalism in India. It rejects out of hand any re-opening of constitutional issues. In fact some of its recommendations are to further strengthen the overlordship of the Union (e.g., creation of more All-India services). Mercifully, the major amendment suggested is to make the Corporation Tax shareable with the States.

A particularly disappointing feature of the Sarkaria Commission is that it has closed its eyes to the burning issues of the day and failed to treat the canker afflicting Indian federalism.

On Governors and Article 356

For example a whirl-pool of controversy is centred around the office and role of the Governor and the much misused article 356 (which has been textually transplanted from the 1935 Act). Such powers of invasion to dismiss a duly elected Ministry in a State and extinguish a duly elected State Legislature has no parallel in any other Constitution in the world, which calls itself federal and democratic.

Pressures for greater federalism in India have led to the demand that the office of Governor be abolished. The Left Front Government of West Bengal in its Memorandum suggests deletion of articles 356 and 357. In the case of a Constitutional breakdown in a State it suggests a provision for the democratic step of holding election and installing a new government as in the case of the Centre.

The D.M.K. Government in its Resolution on State Autonomy asks for doing away with the office of Governor and, instead, suggests the West German system of "Constructive Vote of Non-confidence" to elect the Chief Minister. Under this provision the executive cannot be dismissed by a no-confidence motion unless it is accompanied by his selection of the successor at the same time, while there are other suggestions for an alternative to the office of the Governor.

But on these crucial issues the Report is very naive :

> " . . . it would be neither feasible or desirable to formulate a comprehensive set of guidelines for the exercise by him (a Gover-

> nor) of his discretionary powers. He should be free to deal with a situation, as it arises, according to his best judgement, keeping in view the Constitution and the law and conventions of the parliamentary system . . ."[45]

Thus wherever possible, the Sarkaria Commission has put roadblocks for the advancement of federalism, chanting the 'mantra' of the convention and tradition of Parliamentary system which are elusive and tricky. Very often those conventions et al turn-out to be, to use the words of the common-man in this context, 'cheating' and 'fraud', ultimately leading the people to despair, as they start losing faith in democracy and its institutions.

With regard to article 356 the Report traverses the beaten track of an apologia for its retention and betrays its contempt or ignorance of the people's outrage against this provision. It has failed to take cognizance of the fact that the alienation of the people of Kashmir and Punjab from the rest of India is in a way largely due to the frequent abuse of article 356 and its continuance in the Constitution will be a Frankenstein's monster threatening India's unity and integrity, because whoever comes to power in Delhi, it would be very hard to resist the temptation of pressing this 'nuclear button' to destroy their 'enemy states.' As the Commission was the result of the immediate reaction of the then- Central Government to pre-empt a similar initiative by the State Governments ruled by the opposition parties, one cannot expect a different conclusion, with the result Sarkaria Commission Report of 1988 is not far from the Administrative Reforms Commission Report on Centre - State Relationships of 1969.

Co-Operative Federalism and Autonomy

The Report contains homilies on 'co-operative federalism' and ends with the pious hope that "co-operative federalism and consensus in all areas of common interest" would be the panacea for all ills and completes its sermon causing profound disappointment to all who believe in true federalism to strengthen the base of our unity and integrity. Thus the Report succumbs to the criticism that its understanding and appreciation of co-operative federalism is incorrect.

In the U.S.A. where the modern idea of federal government has been first determined, the co-ordinate (or dual) federalism' was the "initial intention and predominant practice."

Bryce's often quoted expression of it in 1888 remains as good as any; he has described the system like :

> "a great factory wherein two sets of machinery are at work, their revolving wheels apparently intermixed, their hands crossing one another, yet each doing its own work without touching or hampering the other."[46]

Co-operative federalism, according to A.H. Birch, is distinguished by :

> ". . . the practice of administrative co-operation between general and regional governments, the partial dependence of the regional governments upon payments from the general governments, and the fact that the general governments, by use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions."[47]

The term 'co-operative federalism' comes from an emphasis upon the new common programmes of Federal and State Governments, more particularly by President Roosevelt's New Deal programme in the field of social legislation during the Great Depression. Even here most of what Roosevelt initiated followed nationwide demands often expressed by or through the States themselves.

In his speech on 'Federalism' President Reagan has said :

> "The founding fathers saw the federalist system as constructed something like a masonry wall. The states are the bricks, the national government is the mortar. For the structure to stand plumb with the Constitution, there must be a mix of that brick and mortar. Unfortunately, over the years many people have increasingly come to believe that Washington is the whole wall — a wall that, incidentally, leans, sags, and bulges under its own weight ... The traumatic experience of the Great Depression provided the impetus and rationale for a Government more centralized than America previously had known . . . Too many in Government in recent years have invoked his name to justify what they were doing."[48]

But the reverse — process that is taking place in the U.S.A. should be taken note of. President Reagan resorted to 'block grants' to the state 'as a federal tool for transferring power back to the state and local level', with the 'ultimate objective' of restoring 'responsibility for programmes that properly belong at the state level' and said that "you will have the tax resources now usurped by Washington-ending that round trip of the people's money to Washington and back minus a carrying charge."

He has further stated :

> "We are strengthening federalism by cutting back on the activities of the Federal Government itself... As state legislators, I know you are tired of Federal Government telling you what to do, when and how to do it but with no thought to the ways or wherefores of it all . . .
>
> "A major aspect of our federalism plan is the eventual consolidation of categorical grants into blocks.
>
> "Today there are too many programs with too many strings offering too small a return. In 1960 approximately 132 intergovernmental grant programs were in existence, costing slightly more than 7,000 million dollars. By 1980, 20 years latter, the number had grown to 500 programs costing 91,500 million dollars. Take just one area — by 1978 there were 35 programs for pollution alone.
>
> "The real costs of all this are beginning to sink in. The state of Wyoming turned down a juvenile justice grant because it would have cost the state 500,000 dollars in compliance to get a 200,000 dollars grant. Remember the old gag — "have you got two tens for a five? . . .
>
> "There is a joke that's almost too true to get a laugh — the city that decided to raise its traffic signs from five feet to seven feet — the Federal Government offered to help and lowered the pavement two feet. . . . If the Federal Government is more responsive to the states, the states will be more responsive to the people."[49]

'Co-operative federalism' is only a phase and as M.J.C. Vile puts it :

> "it (co-operative federalism) is to some extent a misleading term, because it emphasized one new aspect of federalism and ignores

> the still important areas of American government which are not co-operative in this way."[50]

He quotes the extreme example of foreign affairs which is pre-eminently 'Federal' in character, yet the States have, from time to time throughout American history—including the modern period of Theodore Roosevelt, Wilson and Eisenhower — exerted considerable influence. Therefore, asserts William Anderson :

> "If not sovereign the states are at least autonomous."[51]

In the words of Rufus Davis : "It is important to note that any one or all of the differing diagnoses among the "doctors" of twentieth - century American federalism . . . may explain the differential diagnoses. But there are, as it were, the epiphenomena."[52]

What is necessary to the idea of federalism is the basic content of division and the minimum of exclusive powers that Wheare insists. Co-operation and mutual good-will we certainly need; but no amount of them can dispense with autonomy, if federalism is to survive.

As Rufus Davis comments :

> ". . . the idea of co-operation and sharing between territorially based governing units, implies units with power to cooperate and share. One can hardly speak of cooperation between master and slave, except in the voice of poetry."[53]

On the other hand, there is another aspect of co-operative federalism in the U.S.A. not often found in other systems. This is the wide extent of *horizontal* co-operation between States, not involving the Centre at all, which is called *"federalism without Washington."*

No useful purpose would be served by seeking comparisons from U.S.A. or Australia, because as Ivor Jennings puts it :

> "Federalism is justified only where a minority has to be protected by giving it exclusive powers over its culture, as in French Canada. There is no longer justification for it in such a country as the United States or Australia."[54]

The adoption of federalism or otherwise is clearly a pragmatic response to necessity and desirability rather than adoption of a political

theory and there is more than one way to apply the federal principle. In this respect, the sociological approach of Livingston emphasizes the decisive part played by social forces in moulding and maintaining federalism.

As Livingston has put it :

> "The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces — economic, social, political, cultural — that have made the outward forms of federalism necessary. The essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and proceed."[55]

India chose a kind of federalism and seeks to perfect it dominantly on the basis of 'federal qualities of society' and thus :

> "Component states exist because of some great significant diversity of such importance that is felt that only a federal organization can offer it sufficient protection."[56]

The Sarkaria Commission Report at one place (Para 1.4.24) takes on 'sub-nationalism' as the cause of number of problems in India; but at another place (1.4.26 & 27) talks about three kinds of 'sub - nationalist groupings' — 'legitimate', 'pernicious' and 'more pernicious' and thus with one brush it tries to darken all legitimate aspirations of the people and their region. Such a verbal carpet-bombing by champions of pseudo — nationalism due to needless paranoia has been set at rest as far back as on 1955 as baseless by the Report of the States Reorganisation Commission :

> "The National movement which achieved India's independence was built up by harnessing the forces of regionalism. It is only when the Congress was reorganised on the basis of language units that it was able to develop into a national movement. The Congress under Mahatma Gandhi realised that the same forces which worked for our national unity had also helped to develop the regional languages, which led to the integration of language areas. It is this alliance between regional integration and national feeling that helped us to recover our freedom.

> "With the achievement of freedom, a tendency has developed to overlook the claims of different regions by denying to them the right to internal integration, on the plea that this will weaken the unity of the nation. This, however is a false cry, for true development will be possible, only if we are able to utilise genuine loyalities which have grown up around historic areas united by a common language."

The Canadian Way

If at all the federal qualities and government structure of India are to be compared with that of any country the best possible comparison could be with Canada. Neither Canada in 1867 nor India in 1950 embarked on federal systems on the classical American model. They adopted the federal principle in only one important respect : the division of powers between the general and regional governments was enshrined in the Constitution and both followed Westminster parliamentary tradition. Yet both the countries are searching for ways to perfect their unions because of societal needs.

The 1935 Act gave legal status to the Provinces which were nothing but arbitary divisions of the country drawn up for the purposes of British administration. When the States were re-organized on the principle of language they further acquired the character of 'federating units.' Now every State is a distinct society with its own culture, language, tradition and history.

But it is an irony that many people at New Delhi recognize our cultural diversity only during Tourism Weeks. Therefore increasing number of students of federalism have come to the inevitable conclusion that if Canada has one Quebec, India has about twenty five Quebecs — active, dormant or in the making — and it is but natural that India is bound to go the Canada way.

It is pertinent to note that Quebec's provincial motto is *'Je me souviens' ('I remember')* — "It reflects not only a long-standing belief in the need to protect the distinctive culture and heritage of the province but it also asserts that the sense of identity and uniqueness in North America has always existed and continue to evolve."[57]

- Likewise in India also people remember their distinctiveness.

Who are the people?

> "A people—ethnos in Greek, hence ethnic group—may be defined as a multigenerational collectivity based upon kinship, consent, or some combination of the two, whose existence has acquired a cultural character and which retains its identity and character whether or not it possesses the means for civic life and political expression."[58]

"They seek to construct a nation from diversity while simultaneously acknowledging the intrinsic value of cultural, linguistic and ethnic diversity" — liberal democrats would term it 'pluralism'.

Thinking Federal

Daniel Elazar says that the maintenance of federalism involves *"thinking federal"*, that is, being oriented towards the ideals and norms of republicanism, constitutionalism and power sharing that are essential to the federal way. He cites the Swiss as the most clear-cut example of a people with a federal political culture.

What is our political culture ?

> "India's political culture looks toward a kind of decentralized imperialism as the classic pattern of the Indian polity, going back well over twenty-five hundred years. The great empires of Indian history were all of this character, possessing strong power centers but recognized peripheries exercising power legitimately and fully responsible for carrying out imperial decisions in ways adapted to local conditions. That no Indian imperial power before the British sought to improve internal communications within the country, even to build suitable roads, reflects this acceptance of institutionalized decentralization. The same political culture remains pronounced in contemporary India. The Indian constitution refers to India as a union and the government in New Delhi as "the centre," when, in fact, the constitutional system provides for the same kind of decentralized imperial rule on a republican basis that was familiar in prerepublican days of the subcontinent."[59]

As an Indian scholar puts it :

> "It would be rash to assume that the federal system in India has definitely settled down to the acceptance of central dominance. The growth of regional consciousness has only just begun and new problems based on it are coming to the surface despite the weight of law, custom and habit on the side of the Centre."[60]

The remedy is to redefine and recast the federal equation with genuine, wholesome federalism and with autonomy for the States.

Sarkaria Commission and many others in New Delhi may resist a more through going federalism; but as Douglas V. Verney concludes :

> ". . . if Canada's experience is any guide, such resistance may well lead to the escalation of the dissatisfaction with majority rule. It may be unrealistic to expect any real movement on the part of the Centre unless there is the persistent demand for constitutional change which occurred first in Quebec, and later in the western provinces. But to wait for this to happen may be the more dangerous course. After the 1970 Emergency, the Government of Canada had to decide whether it was really feasible to establish its authority by the use of force. In 1980 it took the gamble of permitting a referendum on separation to take place in Quebec— and won in every constituency."[61]

Is it not that "it is the particular weakness of the Constitution that will create constant friction between the Centre and the States and that this constant friction will weaken the solidarity of the country much more than a real federation with greater provincial autonomy could have done."[62]

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28

To What Extent Autonomy ?

Subramanian Swamy

Our constitutional structure is not really 'federal'. In fact the word "Federation" occurs nowhere in the Constitution. Instead article 1 states that "Bharat shall be a Union of States". Strictly speaking, the form of our Government is unitary, with subsidiary federal principles, rather than a federation with subsidiary unitary principles. The residuary powers of States guaranteed in the American Constitution are entirely missing in our Constitution. Further, in a federation, the national and State Governments exist on a basis of equality. But in our Constitution the theme of subordination of the State Governments is present throughout. Articles 356 and 365 permit the Central Government to subordinate any State Government.

Again, in administrative matters, under articles 256 and 257, the Union Executive is empowered to issue directions to the States, which in turn are obliged to execute them. These two articles have no precedent in US, Swiss, Canadian, Australian or any other federal Constitutions. The crux of the matter is that if the Union issues directions which the States do not implement, then that creates a situation by virtue of which articles 356 and 365 become applicable. Thereafter, the Centre could take-over the running of the State. So sweeping are the powers of article 365 that eminent lawyers had put up a stiff fight in 1947-48 against its inclusion. In the earlier drafts of the Constitution, this article was not to be found. But just eleven days before the adoption of the Constitution, article 365 was quiety slipped in. In the administrative sphere, therefore, articles 256, 257 and 365 make the Centre all powerful. Hence all talk of re-

defining of State boundaries weakening the Centre is totally irrelevant.

Similarly, in matters, of Law and Order, by article 247, Parliament may provide by law for establishment of any additional courts. By this article, the Parliament may empower the Union to appoint magistrates whose orders would override those of the senior most magistrate of the State Government. By this single act, the Union can directly exercise authority in matters of law and orders in the States.

In all these cases, the only condition to be satisfied, before the Centre can legitimately interfere in the States, is the unilateral satisfaction of the Government of India itself. In other words, in matters of Administration, Law and Order, the Centre is the judge, jury and prosecutor, all rolled into one.

These articles of the Constitution clearly establish the hegemony of the Centre in Centre-State relations regarding political matters. All that we need for a "strong Centre" now is strong leadership in Delhi.

In the context of the fissiparious tendencies, politically we need centralisation. And our Constitution has guaranteed that. There, however, exists a sound case for decentralized economic power. The need of the hour is to centralise politically and decentralize economically. When there is so much Union political power under the Constitution, there is no need to duplicate this power in the economic field. Economic power must be decentralised, otherwise there will be absolute corruption even absolute tyranny.

Several steps can immediately be taken to decentralise economic power. A possible first step would be to abolish the Planning Commission and merge its desirable functions with those of the Finance Commission. The Planning Commission is a body without constitutional or statutory support. It has acted as a super-constitutional body. Further, it is economically absurd to separate Plan expenditure (and vest the power with one agency) and non-Plan expenditure (and vest it with another agency). Resources are resources, and their optimization in use has to be viewed in aggregate. Today 75% of the total grants to States are from the Planning Commission, and 25% are from the Finance Commission. The latter is well regulated; it draws its powers from article 275. Its composition is laid down in article 280 (2), and its functions defined in article

280 (3). Its decisions carry a large element of consensus, and, as a consequence, all States are happy with it.

The Planning Commission, on the other hand, is totally unregulated. It can do precisely what it wants. The Planning Commission is also not responsible to anyone for the composition of its members which is decided by the Executive arbitrarily.

The Planning Commission, thus, is a law unto itself. Nothing in the Constitution regulates its composition, functions or tenure. Yet it disburses 75% of the Centre's resources on a discretionary basis.

Under articles 275 and 280, nothing prohibits the Finance Commission from making recommendations for Plan grants as well. Hence there is no need to establish a separate Planning Commission. As a first step towards economic decentralisation, I would urge the abolition of the Planning Commission, the setting up of State Planning Boards, and authorisation to the Finance Commission to review the whole gamut of resources, and evolve, by consensus, a total plan to optimize the use of all the resources. The recommendations of the Finance Commission should be treated as an award-binding on the Government. Where the Centre feels a special urge to deal with unforeseen contingencies, article 282 is always there, giving it residuary powers.

A second step for economic decentralisation would be to delink the loan policies of the Union from Centre-State politics. To insulate loan policies from party politics, Parliament should set up a Trust Commission which would handle all matters arising out of lending and repayment of Central loans to States.

Third, as a corollary to the abolition of the Planning Commission, economic decentralisation requires a radical change in the licensing powers of the Centre. Currently, under the Industries Act of 1951, the power of the State to license industries within the State are severely curbed. The 1951 Act draws its power from entry 52 in the Union List. This entry vests with the Centre the control of all industries "expedient in the public interest." The list of such industries is long and somewhat out-dated. In keeping with the change of times, it is now necessary that the Union restrict itself to industries of national importance and those that require foreign exchange. The power to license all other industries

should be transferred to the States. This will require repeal of the 1951 Act and enactment of a new one.

Fourth, the practice of handing out doles to States in the event of natural calamaties such as drought, should be abolished. Because of these doles, the States are becoming increasingly irresponsible. They do not take adequate steps to combat drought, floods, etc. before the event, because of the mental cushion of central assistance. Sometimes they even exaggerate the real situation to get more funds. Each State, should, therefore, be asked to look after itself in such natural emergencies. The Famine Relief Fund of the Centre should be replaced by State Welfare Funds.

Fifth, and finally, it is implicit from the above discussion that the Centre-State sharing principles of financial resources have to be revised. Constitutional amendments should be passed to incorporate into the divisible pool, revenues from corporation tax, customs and export duties, surcharge on income tax and wealth tax revenues which today accrue entirely to the Centre. A comprehensive examination of all taxes noted in article 269 of the Constitution should be undertaken, on the basis of the recommendation of the Finance Commission. Such of these taxes as are found feasible, should be imposed by the Union, but their proceeds assigned entirely to the States.

These five steps are necessary, in my view, for a more integrated and balanced economic development, for a flowering of local initiative and a more nationally-minded State leadership. The present scramble to New Delhi for resources creates a psychology of subservience and helplessness in the State leadership and provides incentive for inter-State petty disputes and bickering. We cannot have this if India is to go ahead. India must become a super-power. That is our destiny. For this, politically we must have strong Centre, and that, our Constitution guarantees. For rapid economic development, we must decentralize. This the Constitution does not provide. If the above suggestions are implemented, we can march towards a strong and prosperous India.

29

Distribution of Powers in Federal Structure

Surjit Singh Minhas

The success of a federal system of Government depends upon the balance maintained between the Centre and the States. Whenever there is imbalance, the system cracks under its own weight. Therefore, a balanced distribution of administrative, legislative and financial powers makes the federal structure a great success.

Strictly speaking ours is not a true federal set up in the real sense of the term. Indian Constitution is quasi-federal in nature. The guiding principles of division of powers in Indian federalism are the same which have been rightly described by Prof. Dicey in his book "An Introduction to the Study of the Constitution." In his opinion whatever concerns the nation as a whole should be placed under the control of the national government. All matters which are not primarily of common interest should remain in the hands of several layers.

Part XI, chapter I of the Constitution of India relates to the distribution of legislative powers. Chapter II relates to administrative relations whereas Part XII relates to financial powers. Article 245 empowers the Parliament to legislate for the whole or any part of the territory of India, and the State Legislatures may make laws for the whole or any part of their respective States. Article 246 demarcates the fields of legislation of the Union and the State Legislatures. The Seventh Schedule of the Constitution specifies the subjects on which the Union and the State can make laws, categorising these into three Lists viz., the Union List, the State List and the Concurrent List. While the first two lists give exclusive power to the Union and the State to make laws in their

respective spheres, the third list i.e. the Concurrent List, enumerates matters with respect to which both the Parliament and the State Legislatures have powers to make laws. A clear distinction is drawn by the Constitution between the matters involving common concern of the whole country for matters of national importance and the matters which have only local significance. Like in U.S.A., Australia and Switzerland, these powers have been elaborately specified in our Constitution too. The powers concerning the nation as a whole have been vested with the Union Government, powers concerning State matters are vested with the States and concurrent powers represent a common territory where both the national and the State Governments can operate. The Government of India Act, 1935, too provided a unique feature regarding the distribution of powers. The Joint Committee on the Indian Constitutional Reforms (1934) aptly pointed out the general principles behind the concurrent powers. There are certain matters which cannot be allotted exclusively either to the centre or provincial legislatures. Sometimes it becomes necessary that the central legislature should also have a legislative jurisdiction alongwith the provincial legislature. In several fields of the governmental activities, the strict division of powers between the Union and the states is inconvenient, because the efficiency demands a combination of local administration with national planning and coordination. The Concurrent List is just like a shock absorber which enables both the Union and the States to go beyond their legislative spheres, as and when necessity arises, to meet the exigencies without transgressing the boundaries of each other.

However, there are certain situations when the Union Government can initiate legislation over the subjects included in the State list. Article 249 provides that if the Council of States has declared by a resolution supported by not less than two-thirds of its members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for whole or any part of the territory of India with respect to that matter for a period not exceeding one year as may be specified therein. The Rajya Sabha, however, can extend the period for a further period of one year from the date on which it would otherwise have ceased to be in force.

Article 250 empowers the Parliament to make laws on any item included in the State list in the whole or any part of the territory of India while the proclamation of emergency is in operation. Any law under this article can remain in force during the proclamation and six months beyond that period.

Article 252 provides that if two or more States agree by their consent to request the Union Government to legislate on any of the matters with respect to which the Parliament has no power to make laws for the States except as provided in articles 249 and 250 and if resolutions to that effect are passed by the Houses of the concerned State Legislatures, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly. Similarly, article 253 empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This provision entitles the Parliament to legislate even in respect of those subjects that are included in the State list.

Further, articles 356 and 357 give emergency powers to the Union and establish predominance of Parliament. If the President is satisfied that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he may dissolve the State Legislature or put it under suspended animation and the administration of the State comes under the Central rule and powers of the Legislature of that State are exercised by or under the authority of Parliament.

The administrative powers of the Union and States have been demarcated in chapter II of Part XI of the Constitution. The Union has been given a superior position in order to coordinate and supervise throughout the country. Article 256 provides that the executive powers of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any other existing laws which apply in that State, and the executive powers of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Similarly article 257 spells out the situations where the Union has control over the States. For example the Union is empowered to direct a State to construct and maintain the means of communications declared to be of national and military

importance or to take measures for the protection of Railways within the State.

Article 258 empowers the Union to confer powers, either conditionally or unconditionally, on a State Government with its consent or to its officers, functions in relation to any matter to which the executive powers of the Union extends. Article 258-A is vice-versa of the above said provision.

Part XII of the Constitution deals with the financial relations between the Centre and States. In some cases duties are levied by the Union but collected and appropriated by the States (Article 268). In some other cases taxes are collected and levied by the Union, but assigned to the States (Article 269). Again, in some other cases taxes are levied and collected by the Union and distributed between the Union and States. For instance, taxes on income, other than agricultural income, are levied and collected by the Government of India and distributed between the Union and the States in the prescribed proportion. Article 275 provides for grant from the Union to States which are in need of assistance. The article reads that such sums as Parliament may by law provide shall be charged on the consolidated fund of India in each year as grants in aid of the revenues of such States, as Parliament may determine to be in need of assistance, and different sums may be fixed for different States. This means that the States have to depend upon the Union and face frustration in case the assistance is not forthcoming.

Keeping in view the distribution of legislative, administrative and financial powers, a number of States like Punjab, West Bengal, Tamil Nadu and Karnataka have been demanding more powers for the States in order to attain financial autonomy and political non-interference by the Union in the affairs of the State Government. The popularly known Rajamannar Committee, appointed by the Tamil Nadu Government in 1969, examined the question of relationship that should subsist between the Centre and the States in a federal set up and recommended major amendments in the Constitution including omission of articles 356 and 357, giving residuary powers to the State and making the States less dependent on the Centre. Likewise, a resolution passed by the West Bengal Government on 1 December, 1977 also recommended that the residuary powers should be entrusted to the States. The word "Federal"

should be inserted in the Preamble to the Constitution and certain provisions weakening the federal base of the Constitution should be omitted. In Punjab, the Shiromani Akali Dal also passed a resolution in its Eighteenth All-India Conference, held at Ludhiana in October, 1978 seeking more political, economic and fiscal powers for the States in the light of the Anandpur Sahib Resolution.

Since there was a strong demand from the States, the Union Government had set up a Commission in 1983 to go into the Centre-State relations and suggest remedial measures. The Commission headed by Justice R.S. Sarkaria submitted its report in October, 1987. The Governments of Karnataka and West Bengal in their memoranda submitted to the Commission had demanded abolition of or amendment to articles 249 to 252 and 254 so that no State could be deprived of any of its legislative power without its prior consent. Some States complained that the scheme of distribution of powers was not fair as it was much too biased in favour of the Union and therefore, requires revision. The Shiromani Akali Dal, through a memorandum, demanded that in order to save the fundamental rights of the religious and linguistic minorities, to fulfil the demands of democratic traditions and to pave the way for economic progress, it has become imperative that the constitutional infra-structure be given a real federal shape by redefining the Centre-State relationship on the aforesaid objective.

Some State Governments suggested that residuary powers should be vested in the States. Suggestions were also made to omit the Concurrent List from the Constitution and transfer all the items listed in it to the State List. The Commission did not agree with the suggestion and recommended:

> "that ordinarily the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and the details for State action within a broad framework of the policy laid down in the Union Law. Further, whenever the Union proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the Government individually, but also collectively, with the Inter-Governmental Council, which, as we have recommended should be established under article 263."

The Shiromani Akali Dal in its memorandum submitted to the Sarkaria Commission on Centre-State relations had pointed out that the Congress Party, right from its inception and throughout the struggle for national independence, had been pleading for a federal set up for free India. The National leaders including Mahatma Gandhi, Pt. Moti Lal Nehru, Pt. Jawahar Lal Nehru, Maulana Abul Kalam Azad on different occasions had interpreted 'Swaraj' as connoting powers for the people at grass-root level with greater authority vesting in the States. On the very basis of these views, the Shiromani Akali Dal in Anandpur Sahib Resolution demanded decentralisation of powers, with the Union retaining the federal functions in respect of Defence, Foreign Affairs, Communications, Currency and Railways. It is in consonance with what Pt. Jawahar Lal Nehru, Mahatma Gandhi and other national leaders had been urging for before independence. The Shiromani Akali Dal suggested a number of measures on the Centre-State relations, the important being as under:

1. The preamble to the Constitution should be amended so as to incorporate the expression 'federal' to characterize the republic of India as such. This is essential to underline that the Indian System is basically of federal nature; this would halt the gradual drift towards unitarian set up;
2. There should be re-distribution of subjects among the Union List, the Concurrent List and the State List on the basis of federal principles;
3. The residual powers should vest with the States;
4. The Centre should not have the power or competence to destroy or dilute the ethnic, culture and linguistic self-identity of a federating constituent unit;
5. The members of the Rajya Sabha should be elected on the principle of equality of the States as autonomous units with equal representation. In other words the Rajya Sabha should become representative of the States. The diversity of nationalities and religious, linguistic, cultural and ethnic minorities should be adequately reflected in the composition of Rajya Sabha;

6. While restricting the imposition of emergency only in the event of exceptional circumstances (foreign aggression) it should be constitutionally ensured that during the proclamation of Emergency the federal set-up remains intact;
7. The Legislature of a State should have exclusive power and competance to legislate over matters given in the re-drawn State List;
8. Executive power in respect of matters included in the Concurrent List, irrespective of the fact as to whether Legislation is by the Centre or by the State, should vest with the States;
9. The institution of Governor, his powers, functions and duties should be brought in line with a federal polity so that the Governor does not remain an executive agent of the Centre but becomes a truly constitutional Head of the State; and
10. Constitutional provisions which empower the Centre to dissolve a State Government and/or its Assembly should have no place in the federal framework. In the event of constitutional break down in a State, there should be a provision for immediate holding of elections and installation of new democratic Government. When there is no provision of the President to take over the Central Government in the event of failure of constitutional process, then there is no justification for the Presidential powers when a similar contingency arises in a State.

The terms of reference of the Ninth Finance Commission set up by the Union Government made a significant departure from those of all previous Finance Commissions and were heavily tilted in favour of the Union Government and against the rights and claims of the States in respect of their financial relations with the Centre. The Union Government has been assuming the right and the prerogative of control and inspection which do not belong to it in the scheme of the Constitution. Under the constitutional provisions, the Finance Commission is a statutory body to judge the question of devolution of finances from the Union to the States. The Union is one of the parties to it and it cannot issue directives to the Commission. Therefore, the Chief Minister of West Bengal has rightly taken the initiative in questioning the terms of reference of the Ninth Finance Commission.

Recently the Chief Minister of Orissa, Shri Biju Patnaik, has also come in support of more fiscal autonomy to the States and empowering the States to directly establish commercial ties with other countries. He has warned the Union Government that if the Centre fails to understand the feelings of the States and grasp the meaning of the winds of change sweeping across the globe, the results may be disastrous. He has suggested that the Centre-State relations should be redrawn on the following lines:

1. Defence and currency should remain within the exclusive domain of the Union.
2. Framing of foreign policy should not remain the exclusive right of the Union Government. The Union and the States should collectively decide on foreign relations and policies leading to war and peace.
3. Entering into treaties with foreign countries should involve the collective efforts of the Centre and the States.
4. The Union and the States should have joint control over issuance of passports. The citizenship will be Indian but the power to issue passports should vest in the States.
5. The States must have the power to have trade and commerce with other countries, to attract foreign investments and to directly deal with the money centres of the world.
6. The States should have the right to develop ports and infrastructure like railways.
7. Industrial development, regulation and development of mines and exploitation of mineral resources should be left to the States.
8. Broadcasting should no longer be the exclusive privilege of the Centre. The control of the second TV channel should be given to the States.

From the deliberations of the Sub-Committee of the Inter-State Council held on 26 September, 1991, it appears that the Union Government is reflecting a spirit of accommodation which was missing in the past. The Union Home Minister, Shri S.B. Chavan, who is also the convener of the Sub-Committee of the Inter-State Council, had agreed with the Chief Ministers' suggestions to make Centre-State relations

more balanced at the earliest through mutual consultation and cooperation between the Centre and the States. The Sub-Committee decided that detailed consultations with the States individually and collectively should precede before initiating legislation on Concurrent List. The Sub-Committee has resolved that all the 247 odd recommendations of the Sarkaria Commission should be considered in the shortest possible time and the new culture of forging mutual consultation and cooperation between the Centre and the States strengthened. The Home Minister has also conceded to the request of the Chief Ministers that a paper reviewing the Concurrent List be prepared and taken up in the Sub-Committee in due course. It is yet to be seen as to what extent the Sub-Committee of Inter-State Council succeeds in creating a proper balance in the relationship between the Union and the States. Moreover, in an interview to the New York based 'India Abroad', Shri Madhavrao Scindia, the Minister for Civil Aviation and Tourism, has said that he finds no harm in having a second look at the Constitution to see "whether our federal system is federal enough. There are aspirations which need to be satisfied within the Union."

Before I conclude, I would like to quote Deshbandhu Chittaranjan Das, a great freedom fighter who, long back in 1924, had perceived free India as a Federation of the Provinces. Expressing his views on the subject, he once said:

> "The future Constitution of India must be a Federation of the provinces with a Central Government having residuary powers. Any settlement between England and India must proceed towards this first step, must be autonomy in all provinces with some control in Central Government which at present might consist of a British Viceroy and a mixed British and Indian Council".[1]

It is not only in India that restlessness prevails in the States for getting more powers and autonomy but it is a universal phenomenon. Wherever the unitary system exists, the States struggle to turn it into a federal and liberal structure. It is the result of this trend that a number of States of erstwhile Soviet Union have declared themselves as independent and sovereign States. Similar is the case with Yugoslovia where Croatia has declared independence. It is high time that the people at the helm of affairs realise the grave danger from the present trend and should confer more fiscal and economic powers on the States so that India

may be able to keep its unity and integrity intact. Ours being a pluralistic society, it needs a balanced federal structure so that ethno-political development of the minorities may be ensured. To be strong, prosperous and united, India needs to have a proper democratic set-up right from the grass-root level.

REFERENCE

1. The Indian Review, September, 1924 quoted by S.R. Bakshi in his book *C.R. Das — Congress and Swaraj.*

30

THE INDIAN CONSTITUTION

B.B. Lyngdoh

According to the Constitution, India is supposed to be a Democratic Republic. Let us see how democratic our country is today. Out of 844 million citizens, only 542 persons have the right to decide as to who should be the Prime Minister of the country. On this subject, I had discussed with many leaders and have also written articles. I reiterate my proposal that the Chief Executive in the Centre and in the States be directly elected by all the adult citizens. That will be more democratic as the people will have the right as well as the responsibility to choose or elect their chief administrator.

Apex Bodies

In theory, we have three organs of governance in India — the Legislature, the Executive and the Judiciary. In practice, however, we have only two — the Executive and the Judiciary. Our Legislatures are only the handmaids of the Executive. Whosoever the Chief Executive may be, whether President or Prime Minister, Governor or Chief Minister, his partymen in the legislature are bound to support him. Otherwise, they are liable to be disqualified under the Anti-Defection Law or expelled from the party. I propose that the Chief Executive be checked by the legislature as in United States.

Articles 142 and 144 of the Constitution provide that the Supreme Court may pass such decree or make such order as is necessary for doing complete justice and any decree so passed or order so made be enforceable

throughout the territory of India. All authorities — administrative, executive or judicial, in the territory of India shall act in aid of the Supreme Court. These are the most necessary provisions for any civilised society. Without the rule of law, any country will be a wild savage land. During the recent past there have been talks of 'Sovereignty', 'Privileges' and 'Dignity' of the Assembly by the MLAs in some states. These talks are wrong. We are elected to serve the people as their servants. There is no question of sovereignty, privilege or diginity. These words were used only during the struggle between the 'King' and the 'Parliament' in England.

Federal India

The opening words of the Indian Constitution are that "India shall be a Union of States." In practice, however, there are virtually no States in India today. The present so called states are just administrative centres of the central government. All administrative, developmental, educational, industrial policies and programmes for any part of India are decided by the Central Government. The Central Government has big ministries in all the subjects mentioned in the Seventh Schedule to the Constitution, whether Union List, State List or Concurrent List.

The people in this ancient country do not lack wisdom. We have just become indifferent and weak. Without knowledge, there can be no wisdom. Persons born, brought up and living in far away places will not have the knowledge, the wisdom, the interest as the local persons to manage the affairs of that locality. India became independent in 1947, but the people of India are not yet free to decide and manage their own affairs. My suggestion is that our vast country of 844 million people should be re-organised into autonomous states, each not exceeding 20 million in population.

Central Subjects

For the common subjects at the Centre, the officers from the State services may be deputed to serve at the Centre for a term of 5 or 10 years at a time. The Central Government will be dealing with the major subjects of the judiciary, foreign affairs, defence, currency, posts, tele-

graphs and Communications. Appointed or nominated Governors are to be done away with.

I believe that these proposals, if implemented, will help improve the administration and enhance the grassroot development in all spheres of life in the country. They will also, to a great extent, minimise the separatist insurgencies in several parts of the country.

Part VII
Electoral Reforms

31

Elections and Electoral Reforms

S. Mallikarjunaiah

Indroduction

Our founding fathers envisaged for India a rightful and honoured place in the comity of nations and this they sought to achieve, *inter alia,* by enshrining in our Constitution the lofty principles of socialism, secularism and democracy. The system of parliamentary democracy was adopted because it was thought to be most suited to our genius, traditions and temperament. The supermacy and authority of Parliament in our polity and various other cherishing values like universal adult franchise, free, fair and periodic elections, accountability of political leadership to the real masters — the people — have all been enshrined in our Constitution in meticulous detail.

Our Parliament is the supreme representative institution of the people. Its primary function is to keep in closest touch with the emerging needs and aspirations of the people and to voice their urges, hopes and even day-to-day grievances and problems. In this system *praja* is the *Raja.* It is the people who are the real masters. Therefore, the people have the privilege of being ruled by themselves — by the rulers of their own choice. For this purpose, they choose their representatives through elections held periodically, which are the normal features of all democracies, the world over. It is through the instrument of elections that the notions of consent and representation are translated into reality by conversion of votes cast into seats won in the legislatures. In other words,

elections are the barometers of the state of the nation's mind. They not only sustain democracy but enliven it as well. Holding of free and fair elections is, therefore, a *sine quo non* in any democracy.

Magnitude of Electoral Process

Ours is the largest democracy in the world. We can legitimately take pride in the fact that although democracy as a system of governance has failed in a number of neighbouring countries and elsewhere, in India it continues to grow and flourish. Credit for this goes also to our ability to conduct free and fair general elections, each of which can perhaps be described as the largest election exercise ever conducted in the history of mankind. The Electoral machinery has to plan for an electorate of over 500 million people spread over 25 States and 7 Union Territories. It requires about 5.5 lakhs of polling booths and an army of about three million persons. Holding of elections of such a magnitude requires deployment of man-power and investment in sky high and snow clad mountains in the North, scattered tiny islands in the South, thick forests in the East and vast tracks of marshy and desert lands in the West. It is indeed a marathon exercise conducted remarkably well all these years.

Mechanics of Elections

India has witnessed 10 general elections after attaining independence. Every general election — the last held in 1991 with an electorate of 521 million adults — has been hailed as a unique democratic exercise. The Constitution itself guarantees to all the citizens of the country, the right to elect and to be elected. The mechanics of fair elections in India are embodied in the Part XV of the Constitution of India and in the Representation of People Acts of 1950 and 1951. Various provisions made in the Constitution and in the aforesaid Acts show how anxious the Constitution-makers had been to safeguard this political right of the citizens. It is for this reason that the subject of elections has been accorded a constitutional recognition in our country. Statutory provisions for the independence and neutrality of our electoral body at the apex have been made to ensure the free and fair elections in India.

Electoral Reforms : Need for

Today, our electoral process is suffering from a number of serious ailments. Things have come to such a pass that the common man has developed some kind of aversion or lukewarm attitude to this exercise. He has come to think that elections are neither free nor fair; it is the guns and goons which rule the root. During elections, ballot boxes are snatched, booths are captured and bogus voting is resorted to with immunity. Candidates securing only 25 or 30 per cent of the total votes are declared elected to the legislatures. All this has the potential of questioning the credentials of our electoral process and therefore some serious rethinking on this front is called for. The three pillars on which the edifice of a democracy stands are fair and free elections, freedom of thought, expression and press and independence of the Judiciary. In modern democracies, an electoral system provides the institutional workshop for fashioning the instruments of power and constitutes the essence of democratic process. Because it is the electoral system which provides for the periodic selection and orderly replacement of our elected representatives, expression of popular verdict on the record of the Government and institutional isation of the accountability of those in authority to the electorate. Election laws can therefore be called, the *Gangotri* of our political system, because politics and political system have their roots in the election. If we do not clean the *Gangotri* and allow all sorts of evils to creep into it, the political system would also be gradually polluted. Thus, from time to time to ensure that the free and fair elections are held and the electoral machinery and electoral processes function properly in strengthening our parliamentary democracy, numerous reforms and suggestions have been put forward by political parties, lawyers, jurists, academicians and various Committees and Commissions.

Electoral Reforms : Various Perceptions

Since the first General Election in India held on the basis of adult franchise, doubts have been expressed about the soundness or efficacy of our electoral system. During the last 40 years or so, views have been expressed both inside Parliament and outside, highlighting the various inadequacies and shortcomings of the present system and procedure. Suggestions have been made from time to time, including by the Commis-

sions and Committees constituted for the purpose, for the removal of defects and carrying out improvement in the system.

Fot the first time, a Parliamentary Committee to suggest amendments to Election Law was constituted in 1970 to examine the question of electoral reform from all angles. But with the dissolution of Lok Sabha in December 1970, this Committee's life also came to an end. When in 1971, a new Lok Sabha came into being, a 21 member Committee headed by Shri Jagannath Rao was formed in July 1971, to discuss, among others, the question of electoral reforms. It included, among others, the then Law Minister, Shri H.R. Gokhale. After about a year's labour, this Committee submitted to Parliament a report in two volumes making a number of very valuable suggestions. Later, on behalf of Citizens for Democracy, a six-member Committee on Electoral Reforms under the Chairmanship of Justice Tarkunde came into being in August 1974, and after holding discussions with representatives of numerous organisations, it produced a comprehensive set of recommendations dealing with several points including use of money power in elections, misuse of official authority and machinery, alternative system of representation, disposal of election disputes etc.

When the Janata Government was in office, deliberations on the issue at Governmental level had been held, but it was decided that necessary legislation would be initiated only after consultation with the Opposition. After 1980, the Congress (I) Government also set up a Cabinet Sub-Committee to consider all the above recommendations. With the formation of the National Front Government at the Centre, once again there was much talk of electoral reforms. On 9 January, 1990, the National Front Government organised an All-Party Conference at New Delhi to discuss electoral reforms and set up a Committee of Parliamentarians and Experts to review the Electoral system and to give final touches to the poll reforms proposals. The same year, the National Front Government accepted, in a rare gesture, a private member's resolution calling for urgent poll reforms to curb the influence of money and muscle power in elections. This resolution, moved by Shri L.K. Advani in the Lok Sabha, read as follows :

> "This House is of the opinion, that against the background of the ninth general elections, poll reforms should be urgently undertaken, more particularly to curb the influence of money power and

> muscle power, and to ensure that future elections held in this largest democracy of the world are completely free and fair."

The resolution was debated in the House for a record time in which over fifty members and Ministers participated. During the debate, various aspects such as money power used in elections, public funding of elections, issue of identity cards to the people, delimitation of Constituencies, Election Commission to be a multi-member Commission, code of conduct to be observed, etc. were dealt with. A few of these measures are discussed as follows :

Change in the Systems of Election

We have adopted the system of elections which is called 'first past the post' or simple majority system — both for elections to Lok Sabha and Legislative Assemblies of States. However, for elections to the Office of President and Vice President of India, the Rajya Sabha and the Legislative Councils in States, the election system adopted is that of proportional representation. During the last four decades, elections to Lok Sabha and Vidhan Sabhas have been conducted according to the simple majority system and on many occasions elections held under this system have resulted in a peaceful and orderly change of Governments both at the Centre and in the States. However, in view of the disproportion between the votes polled by the parties and the number of seats won by them in the Legislatures, what can perhaps be considered is a switch over from the present simple majority system to some kind of proportional representation, that is, the List System or the mixed system of elections, so as to eliminate the imbalance. This model, in vogue in countries like West Germany and Japan, provides for having half the members returned by majority system and other half through the List System of proportional representation so that seats are divided in proportion to the number of votes obtained by each party.

The List System of proportional representation has its own virtues and merits. But a question may arise whether this system would be suitable to our conditions and would be able to provide us with stable Governments. It is felt that no system in itself is good or bad. Each has its own advantages and disadvantages. Much depends on how the system is applied and where and how it is worked.

Doing away with the use of Money and Muscle Power

The role of money and muscle power has tremendously increased in the electoral process over the last four decades and has assumed an excessive influence on the electoral process. Never has perhaps this money and muscle power been such a deciding factor in an election as it appears to be today. This pumping of huge amount of money in Elections has resulted in the generation of a sort of parallel economy which continues to expand. Unless appropriate and comprehensive remedial action is initiated to limit the operations of the illicit economy, and unless mafia groups of all kinds are curbed, their role will continue to distort the poll process.

Public Funding of Elections

The question of enormous election expenses that a candidate has to incur has been a matter of serious concern in our polity. It has almost rendered the ceiling on expenditure fixed by the Election Commission of little or no consequence. There is no doubt that the candidates and the parties are using huge amounts of money to influence the voters. This has provided an opportunity to black money to creep into electoral process. It is, therefore, inevitable that to curb the election expenditure, simultaneous elections to the Lok Sabha and State Assemblies should be held. This would reduce election expenditure of all kinds and help promote development of a healthy party system in India.

In addition to the above proposal, it is absolutely necessary that some system of State funding of election campaign be introduced under which the candidates of the recognized parties and Independents, who have received 1/10 of the votes polled in the previous elections as laid down by the law, are made entitled to receive a fixed contribution in two instalments equal to 1/3 of the ceiling imposed by the Election Commission on the election expenditure.

Issue of Identity Cards to Voters

In order to prevent bogus voting, impersonation and other malpractices, the leaders of the Opposition parties in 1988 suggested the introdution of multipurpose identity cards. These cards carrying the photographs of

the voters could be used for other purposes also like opening Bank accounts, seeking loans etc. and also as a permanent identity card. In the past, such cards were issued to the voters of some North-Eastern States like Sikkim, Meghalaya and Nagaland and found to be a fairly successful arrangement. However, there are practical difficulties in introducing the scheme in a big country like ours and in view of the huge cost involved in the implementation of the scheme and preparing photo identity cards in duplicate with a regular machinery to bring it up-to-date periodically.

Elimination of Non-Serious Candidates

There has been a proliferation in the number of candidates seeking election from a particular constituency. In some cases, the number of candidates was more than 100, thus rendering the whole electoral process quite amusing. In some cases, the ballot papers were so large that it became very difficult for the voters to locate the desired candidates or their symbols. There have been several complaints in this regard to the Election Commission also. The Election Commission itself has made various recommendations with a view to curb the plethora of frivolous and non-serious candidates. Among them are :

(a) The security deposit should be raised.

(b) Official facilities like telephone, subsidy for printing papers etc. should be denied to independent candidates, and

(c) Contesting candidates who failed to secure specific percentage of votes, should be disqualified to contest the next election. These proposals should be taken into consideration by the political parties to evolve a national consensus before these recommendations are put into action. In this connection, the recent amendment in the Representation of the People Act providing that there shall be no countermanding of election in the event of the death of a candidate not sponsored by any recognised political party, is a step in this direction.

De-limitation of Constituencies

There was a provision in the Constitution that de-limitation will take place after every census but it was later amended. Now, if the Govern-

ment wishes to start de-limitation again, it will have to amend the Constitution first. Last de-limitation had taken place some 20 years ago in 1973-74 and the electoral rolls were prepared on the basis of the census conducted in 1971. The provisions of the Constitution now envisages de-limitation after 2000 A.D. Since 1971, no de-limitation has taken place. Consequently all the constituencies vary greatly in terms of size.

Use of Electronic Machines

There is a need to introduce electronic machines in the voting process. The Election Commission itself has emphasised its use many a time but due to the doubts of their proper operation, the proposal has yet not been implemented, though these machines have been experimented in some selected constituencies in the past. It is, however, admitted that the use of machines for elections would help in reducing the poll-expenditure, but both the personnel and illiterate voters will have to be trained in their operation.

Some other suggestions for Reform

Besides the foregoing, some other reforms that can be suggested for making our electoral process free from various shortcomings can be listed as under :

1. A person with criminal record of conviction should be disqualified from the contest.
2. The candidates who have been held responsible for being involved in electoral corruption and booth-capturing should also be tried, punished and disqualified for a longer period.
3. On the eve of the elections, steps should be taken to make the role of the mass media as impartial as possible.
4. The total election expenses incurred by a candidate should be included in the fixed ceiling, including expenses incurred by a party.
5. Booth-capturing should be made a cognizable offence and the Election Commission should be empowered to take penal action

against poll-officers and others who are found to have abetted the crime.

6. Election Commission's Code of Conduct for political parties/state governments should be given legal sanction to be effective. Misuse of the official machinery should be defined as a 'corrupt practice' attracting legal provisions of the R.P. Act, 1951.
7. The Companies Act should be amended to limit donations to a party upto Rs. one lakh and to a candidate upto Rs. 50,000/- to minimise the role of such money in our politics.

Conclusion

In a parliamentary polity, elections can be described as the festivals of democracy. They should, therefore, be conducted in a free, fair and impartial manner so that the peoples' will is truly reflected in making the choice of their representatives to the institution of Parliament and State Legislatures. There should be no doubt in the minds of the people, whether residing inside the country or outside, about the fairness of the electoral process. Only in this way we can further strengthen and enliven our parliamentary democracy.

32

Changes in Electoral System

D. Manjunath

The actual process by which the representatives to the legislative bodies are chosen is called elections. The Constitution of India has provided for a regular machinery for conducting elections. Articles 324 to 329, the Representation of the People Act, 1950 and the Representation of People Act, 1951 embody the election law. Article 324 has vested in the Election Commission all powers and functions with regard to the superintendence, direction and control of elections to the Parliament and State Legislatures besides elections to the offices of the President and the Vice-President. The Representation of the People Act, 1950 deals with the allocation of seats and delimitation of constituencies, the appointment of election officers and the preparation and maintenance of electoral rolls. The Representation of the People Act, 1951 deals with the qualifications and disqualifications for membership, the definition of corrupt practices and the machinery and procedure for the conduct of elections. The Registration of Electoral Rules and Conduct of Election Rules have been framed under these Acts.

The Country is divided into territorial constituencies. There were single-member and double-member constituencies till 1962. From 1962 onwards there are only single-member constituencies. For the first two general elections (1952 and 1957) there was a ballot box for each candidate. From the third general elections marking system was introduced and it is being continued. The reasons for the change was that ballot papers could easily be transferred from one ballot box to another and these could be smuggled and sold outside.

Elections to Lok Sabha and the State Legislative Assemblies are held on the basis of 'spot' voting also known as the single non-transferable vote, or first -past- the goal-post. This majority vote system allows the candidate with highest number of votes to win irrespective of the actual size of electoral support he has in the constituency. It may so happen that the votes the winning candidate gets may be much less than the votes of the other candidates. It is not easy to find a suitable solution for this unsatisfactory state of affairs. Holding of a second ballot after eliminating the names of the ineffective candidates might seem to be an improvement but there are certain disadvantages also from the practical point of view. Even the introduction of the single transferable vote system is not so easy.

The former Chief Election Commissioner, Shri S.L. Shakdher had suggested in April 1980 that direct election should be held for only half the members of the Parliament and the State Assemblies and the remaining half should be elected on the basis of percentages of total votes polled by each party. He also suggested the creation of an Election Fund of Rs. 100 crores for 5 years, the Centre should give Rs. 20 crores each year and the State Rs. 10 crores; this fund could be used for financing election expenses and the introduction of a mixed system of voting in which 50% seats would be filled by direct voting and the remaining on the basis of percentage of total votes polled by individual parties. This has not been accepted by the Government.

It is found that a large number of candidates stand for election. This multiplicity has led to considerable wastage of manpower and resources not only for the candidates themselves but for the country at large. The really serious and effective candidates are only few and the rest coming within the category of 'also ran' have helped to increase the ballot paper, confused the electorate and swelled the expenses. Some of the indepnedent candidates may stand with to view a strike a bargain with one or the other of the serious candidates and withdrawing from the contest for a consideration or with a view to splitting the votes of a small section of the people on caste or communal grounds. To minimise non-serious independents from contesting the elections, certain proposals are being made, firstly to increase the security deposits and secondly to forfeit the security deposit if he secures less than one-sixth of the votes polled.

The returning officer can reject a nomination paper for certain reasons. The candidates whose nomination paper is rejected cannot challenge except by an election petition after the election is over. There are cases where it has been held that the nomination paper was improperly rejected. For this, provision should be made to challenge the rejection before the election is held.

The Constitution provides that one-third of the members of Rajya Sabha or State Legislative Councils should retire every second year. Due to various reasons elections are not held in time with the result the number of retiring members is not always one-third. In the case of Karnataka, election to Legislative Council by the Local Authorities Constituencies was not held from 1976 till 1988. The election was held in 1988 and with the result, all these would retire only in 1994. There is no cyclical retirement according to the Provisions of the Constitution. It should be made mandatory that election should be held well in advance of the occurring of the vacancy.

The following reforms are necessary for the conduct of free and fair elections.

1. Multiple-Member Election Commission should be constituted.
2. The Chief Election Commissioner and the other Election Commissioners should be appointed after consultation with the Opposition, the Chief Justice of India and the Chairman of Rajya Sabha.
3. Regional Commissioners should be appointed to assist the Election Commission.
4. Independent Election department should be established and an Election Fund should be created.
5. A model Code of conduct, including provisions against abuse of Government machinery and official media should be enacted.
6. Corrupt practices including the abuse of Government machinery should be defined by an enactment.
7. Byelections should be held within six months of the occurrance of a vacancy.

8. Certain items of expenditure during election should be regulated and controlled. Company donations should be made accountable.
9. The accounts of all the political parties should be compulsorily audited and they should be published.
10. Electronic voting machine should be introduced.
11. Law should be made to prevent from contesting the candidates who are not earnest or who entered the contest for extraneous considerations. It may be formulated taking into account the following points :
    (a) Security deposit should be increased;
    (b) Minimum number of votes required for refund of deposits should be increased;
    (c) Disqualification of a candidate if he fails to secure certain percentage of votes; and
    (d) Nomination of a candidate should be subscribed by at least one proposer each from different polling areas subject to a minimum of two proposers.
12. The existing practice of use of official air craft by the Prime Minister for election purposes should be prohibited except for ensuring personal security and also if it did not impose an onerous handicap on other political parties and candidates.
13. The Chief Election Commissioner should not be eligible for any further appointment.
14. Immediately after the issue of the notification the ministry should resign and function as a caretaker Government.
15. There should be a provision of compulsory rotation of the reserved seats. The rotation period should be for each general election.
16. There are large consituencies with large area and population. Constituencies should be readjusted so that the area and population are uniform.
17. Identity cards with photograph should be issued to each and every voter.

18. Publication and use of all kinds of posters by candidates and political parties should be banned.

19. The number of seats a candidate can contest should be limited as the election will be countermanded in all the constituencies in case of his death.

33

Election Reforms

Chimanbhai Mehta

India's present electoral system is largely responsible for strengthening the influence of casteism, communalism and muscle power in its public life. It has also encouraged the nexus between money power and politicians and practices like booth-capturing by caste-based mafia, making a mockery of democracy.

The heart of the problem lies in the system of single member electoral constituencies. Casteism and communalism are at work right from the process of selecting candidates which is done on the basis of caste and community. Therefore, major electoral reforms should emphasise the primacy of political parties — their ideologies, programmes and performance and should involve a switch over from the single-member electoral constituency system. Instead, elections will be on the basis of panels of candidates put up by political parties for a group of constituencies. No particular candidate will be fielded from a specific constituency.

This is best illustrated through an example. Consider the case of Delhi. In the November 1989 Lok Sabha elections, the Bharatiya Janata Party won from four constituencies — New Delhi, Sadar Bazar, Karol Bagh (SC) and South Delhi. The Congress (I) won from two — Chandni Chowk and East Delhi. Each party had specified its candidates for particular constituencies — for example, the BJP Shri L.K. Advani for New Delhi, Shri Madan Lal Khurana from South Delhi, the Congress (I) Shri H.K.L. Bhagat from East Delhi . . . so on.

Under the system being proposed here, each party will put up a list of candidates for all the seven or a smaller number of constituencies. Each party's panel will have the names of the candidates it wants elected in order of preference. Its entire panel—as well as the panels of the other parties — will be put to vote in each of the constituencies. The constituencies from which a party panel wins on the basis of direct election will be awarded to it. If it wins from four constituencies, the first four from its panel, in order of preference, would be declared elected. If a party contests only one seat, its panel of candidates will be declared elected from the constituency where it wins and the candidates at the top of its panel will represent it. The party losing in all the seven constituencies will not be represented from Delhi.

The advantages of the proposed system are obvious. Since a panel of candidates is listed, their castes or religions would not matter much to the electorate. What would matter is the quality of the people on the panels and the policies and records of the contesting parties. On their part, the fact that their panels of candidates will be contesting from all the seven constituencies, would compel the parties to field candidates generally acceptable and also conduct their campaigns on the basis of issues and not along communal or caste lines, which they would perhaps do if they had to field one candidate from each of the seven constituencies.

Mode of Listing

For example, in Calcutta the CPM may have Janata Dal as a partner and may allot a seat in the panel according to their mutual convenience. Apportioning of votes to the parties may be sorted out on the basis of the scores of the panelled candidates because in this proposed system parties have primacy.

Independent candidates, of course, will contest from specific constituencies. They, however, are generally not taken seriously. Besides, with the political parties conducting their campaign on the basis of issues and performance, they will not be able to change things much.

The proposed system will not prevent the electorate in the individual constituences from being represented in the legislature. Only, it will be by a candidate from the winning Party's panel assigned to them.

The party system will be strengthened. An elected representative will have to perform a dual responsibility towards the people as well as his party, particularly its local units. At present, local political units are ignored ; at least, this is the widespread feeling.

Political parties barring few exceptions, act as federations of castes and communities. Political leaders are under constant pressure, which becomes particularly acute at election times, from caste and community leaders, mafia bosses and money-power. The proposed system would considerably curb this phenomenon and orient people towards political parties; caste and religion would become secondary factors.

The people would go by the performances and ideologies and programmes of the parties and would not get confused by the overshadowing personality of any candidate. The merits and demerits of the various issues would get proper attention and the people would get politically educated. A rise in the level of the electorate, the real masters, would be reflected in the legislature, judiciary and the executive. Two specific factors will be at work in regard to the legislatures. Since the entire panel of the party for a group of constituencies would be screened by the electorate, any undesirable candidate in the panel would adversely affect the entire panel. Political parties would thus be forced to opt for candidates with good images. Besides, even outstanding politicians are often defeated in elections and the nation is deprived of the best available talent. The panel system would considerably reduce the chances of this happening.

Politicians elected increasingly on the basis of casteism and not personal qualities have undermined administration, lowered the level of parliamentary discourse, and polluted the country's socio-political life. They are no match for well-framed and seasoned bureaucrats and their orientation is towards perpetuation of power, family rule and amassing wealth. Electoral reforms can substantially curb casteism and communalism, if not eliminate them totally.

Apart from the system of election advocated above there should be state funding of elections and stringent measures against evils like booth-capturing. Finally, a law should be enacted to ensure internal democracy in political parties in which leaders are now often imposed from above and decisions are taken arbitrarily. The manifesto of the

National Front has promised that the 'National Front' will urgently implement observance by political parties of the rules framed by their respective constitutions. Other major parties, while rejecting state interference have reacted positively to the proposals about the observance of rule of regular elections to ensure the observance of democratic norms. All the major institutions of our country — trade unions, companies, societies and so on — are governed by laws. It is strange that we have no laws for political parties shaping the destiny of the country. The affairs of the nation are conducted on the basis of the Constitution, but the leaders who are supposed to fulfil the constitutional obligations are not governed by internal democratic norms or law.

One Person one Vote

The proposed system should not be confused with the Proportional Representation and List System prevalent in some western countries. Proportional Representation, as generally understood, is accumulation of votes of political parties and distribution of seats to the parties in accordance with the proportion of votes polled by them. Proportional Representation is not suitable to India where caste and communities might form exclusive political parties of their castes and communities to benefit from this system. In the system suggested, one voter will caste one vote for a panel and the panel which wins the highest number of votes in a constituency is declared elected.

34

Electoral Reforms — Some-Suggestions

Ram Pujan Patel

The present day atmosphere discourages persons who are sincere, honest, dedicated and having clean image to contest elections because today elections are greatly influenced by money and muscle power. Though according to electiton laws, money should not play an important role in elections and a ceiling on expenditure has also been fixed yet crores of rupees are spent on elections. It should be examined as to how so much money is spent on which the interest itself would be more than the salary of a member of Parliament or State Legislature. Can such persons really work in the interest of the country and the public? A man of integrity who is dedicated, honest and sincere and a public servant and representative of the people cannot spend so much of amount. How can then politics be clean?

I have certain simple suggestions to make on the subject. These suggestions may have the desired impact on the exploiters of the society.

The interval between the beginning of electoral process and the date of elections should be limited to 20 days for the following reasons:

The longer interval between the commencement of the election process and the date of elections provides more opportunity for greater use of money and muscle power. Thus rendering the people's power ineffective and as a result, right type of persons find it difficultt to get elected. Persons who enter politics in this way soon after attaining power try to make as much money as possible by hook or by crook and they do not even hesitate to take the help of anti-social elements for this purpose.

It is certain that persons winning elections by spending huge sums will not be able to work honestly. If this intervening period is curtailed, there will not be any opportunity for use of money and muscle power for winning elections.

Sticking of posters should be totally banned purely in the national interest. Posters do not influence the election results. It is a sheer wastage of money and paper especially owing to the fact that the country has to spend much of its scarce foreign exchange reserve for importing papers to meet the internal demand. The process inturn enhances the price of paper also.

Moreover, as a result of the use of large quantity of paper during election campaigns, books and exercise books tend to become so costly that the common man is unable to meet the demand of their children for these articles in time.

Each candidate should distribute printed material giving only his life sketch so that people come to know as to what has been his contribution towards the country and the societty and with what dedication and sincerity he has served therein.

Banners should be used as sparingly as possible because it is again a national waste, especially when the poor children of this country roam about half-clad or unclad. Large quantity of cloth enough for the poor population for one year are used for banners and flags by various political parties and persons during the month of electioneering leading to steep rise in prices of coarse cloth after elections. It would also help in avoiding untoward and fatal incidents which occur only due to rivalry among various parties in the matter of displaying banners in the constituencies. Elecions should be simultaneously conducted on a single day in whole not in parts but of course with an exception in case of the big states. But election in every district even in big states should be conducted on a single day. The Elections of 1991 were staggered whereas there was no such precedent before that.

If the elections are held on a single day, use of money and muscle power on a large scale can be avoided as the persons indulging in such malpractices would not be able to deploy any anti-social elements for booth capturing etc. in sufficient strength as these elements would

remain scattered and not be able to strike in a planned way. Even if they strike in small numbers, the local people would be able to tackle with them.

On the polling day, no candidate should be allowed to display any banner, flag or poster outside his tent, which is permitted to be put up 100 metres away from the polling stations. It would be better if collective tents are set up for verifying the slips of the voters as that would lessen the chances of mutual discord and would ensure peaceful polling.

The Government should ensure that motor vehicles are operated as per the prescribed money limit in this regard and permits should be issued to the vehicles operating within a constituency. Other vehicles should not carry any election symbols in order to avoid the influence of money in the elections.

All the voters must be issued identity cards to enable them to vote without any difficulty.

A person should not be allowed to contest from more than one constituency because whenever a person contests from more than one constituency, he is not expected to be serious and in case of his death, the election is countermanded in all the constituencies and the entire election process is required to be started afresh as a result of which not only a lot of money is wasted, but apprehension of loss of life and property also remains there.

The Government have provided that elections would not be countermanded in case of death of an independent candidate. I do not think, it will help in minimising the murder incidents of party candidates.

I suggest that:

(a) a candidate polling less than 2% of votes should be debarred from contesting elections for a period of at least 10 years,

(b) amount of security should be raised, and

(c) the maximum age for contesting elections should also be prescribed.

The above suggestions it is hoped would be looked into and appropriate steps taken to bring about election reforms in the public interest.

This is the translation of the article written in Hindi.

35

Towards Better Elections

Vasant N. Pawar

> "Man, as a physical being, is like other bodies, governed by invariable laws. As an intelligent being, he incessently transgresses the laws established by God, and changes those which he himself has established". Montesquieu

Jawaharlal Nehru once said "There is no permanence in (Indian) Constitution. There should be a certain flexibility. If you make anything rigid and permanent you stop the National Growth, the growth of a living vital organic people. Therefore, it has to be flexible. What we may do today may not be wholly applicable tomorrow. Therefore, while we make the Constitution which is sound and as basic as we can, it should also be flexible and for a period we should be in a position to change it with relative facility".

Long after Nehru, Smt. Indira Gandhi maintained "As Society changes the economic conditions change and we require amendments to the Constitution. The objective is to remove obstacles in realising our objects and we meet the developmental needs of the people".

The Preamble of our Constitution guarantees justice, social, economic and political; liberty and equality of status and of opportunity and to promote among the people, fraternity, assuring the dignity of the individual and the unity and integrity of the nation. To achieve these magnificient goals the most important instrument adopted by the leaders was parliamentary democracy. Articles 324 to 329 of the Constitution are devoted to elections. Since 1950 the Indian electorates have had the

experience of participating in ten General Elections. During the last 20 years, some strange, often frightening scenario, has emerged. For example, the Ninth and Tenth Lok Sabhas did not reflect clear mandate for any political party and this has led many political *Pundits* to predict that the country is heading towards an era of coalition Government at the Centre. Many have put forward the sterility of parliamentary democracy and pleaded for presidential type of democracy. I, for one, do not subscribe to the belief that by changing the type of democracy one could ensure its effective functioning. The fault does not lie with the parliamentary type of democracy but with those who are responsible for the efficient functioning of the system. And the main culprit here is the means, manipulations and methods of electioneering.

Any type of democracy requires two basic things:

(a) systematically organised political parties who have minimum sense of commitment and capacity to give directions to the aspirations of the masses.

(b) free and fair Elections through which the representatives of the people are sent to the representative bodies right from the village-Panchayats to the Parliament. The Constitution provides for the adult-franchise and non-communal electorate.

> "The word election, has by long usage is connected with the process of selection of proper representatives in a democratic institution. It is used to mean the final selection of a candidate which may embrace the result of the poll when there is a polling or a particular candidate being returned unopposed when there is no poll."[1]

The Election Commission of India is a secular body which conducts secular elections, giving no consideration to religion, region, race, caste or sex. The Parliament is the final Arbiter. But somehow the Election Commission itself is groaning under various constraints. From time to time the knowledgeable persons of outstanding merit having no vested interests have raised doubts about the rules regarding game. The number of elected representatives in the British Parliament is 561 while Indians elect lesser members to Lok Sabha though the population of India is 8 to 9 times more than Great Britain. Despite our sincere efforts the number of candidates contesting from a single constituency has increased beyond control.

The Election Commission has mooted serious action against those candidates who do not adhere to the Model code of Conduct. This Model Code of Conduct is codified in a 57-page booklet. The most important provision is of a 6-year ban on those candidates who violate the Model Code of Conduct. The Representation of the People (Amendment) Bill 1990 provides penalties such as imprisonment upto two years and/or fine and also a 6-year ban on such delinquent candidates. Recently in Maharashtra, elections of a couple of Legislative Assembly members were declared void by the law courts. But more than misuse of religion there are grave corrupt practices. There are certain anomalies as well. While an elected member can be unseated for using religion, there are parties which from their very names are religious parties.

There is a general feeling that the party in power misuses the State machinery for its own benefit, especially during the election days. Due to booming explosion of electronic gadgets such as VCR, close circuit TV, Audio and Video cassettes; a whole lot of poisonous pandemonium is let loose. The menace of illegal firearms is universal. The use of liquor is also equally rampant. It is really a very difficult task for the Election Commission to put check on all these undesirable happenings. Therefore, the State Election Commission, political parties and their candidates are also to be made equally responsible for the proper observance of the Model Code of Conduct.

The Election Commission Rules provide for an oath of loyalty to the Indian Constitution. Unfortunately the laws governing election and various electoral reforms and amendments to the laws have been cynically flouted.

There is a wide-spread talk demanding a review of the Constitution. If the Constitution undergoes modifications, the path for the electoral reforms could also be made straight and wide. It could be a multi-way process like:

(a) The laws have to be made more stringent;

(b) The electorate has to be instructed regarding the need of free and fair elections;

(c) The political parties have to be made more responsible for the acts of commission and omission.

The reforms in the electoral process are the need of the hour. The elections are for the people and people are not for the elections. The Indian democracy during the last 45 years of its working has become more vibrant and the electorate has become more conscious. Yet, the political parties have failed not only in keeping the nation together but have also shown a lack of sense of purpose and directions.

The most disturbing thing today is that barring some exceptions, the right type of people could never get elected to the top posts. If we do not mend this rapid trend of deterioration, the rising level of frustration and despair would only complicate the situation further. The electoral reforms in particular and the review of the Constitution in general have to be show-cased and intelligentsia could very well activate the people in this regard. This brain storming business must be made the part of a certain kind of national agenda and model self imposed Code of Conduct.

The Chief Election Commissioner has suggested true autonomy to the Election Commission. The electoral reforms hold the very key to social transformation. Unless elections have validity, veracity and integrity, they would continue to be costly sports of futile exercises. For instance, the estimate of cost of Tenth Lok Sabha election varied between Rs. 1000 crores to Rs. 2000 crores which a poor country like India can ill afford. No democracy in the world can survive with the help of money power or muscle power. Unless the elections are fair, the accountability of the candidates as well as the political system cannot be tested.

Under electoral reforms no two parties should be allowed to form a front whose programmes, promises, manifestos and ideology differ basically.

The Model Code of Conduct as the Chief Election Commissioner has suggested is to be provided with steel sharp teeth. If the political parties have different definitions of Model Code and its practice, the elections would be reduced into a manipulative exercise. If necessary, there should be a provision for penality to the political party for supporting a candidate who misbehaves. The booth capturing and intimidation of voters cannot be done unless a particular political outfit supports the same as a whole. The Speaker, Shri Shivraj Patil has stressed the need for educating the voters and imbiding the right attitude towards life. The suggestion has to be well taken.

The rural areas of India are no more isolated from the political climate of frenzy prevailing in the urban areas. The propaganda machines of political parties vitiate already venomous political climate of the country. Power corrupts and absolute power corrupts absolutely; but in case of number of political parties it is a common experience that they practice corrupt ways and means to achieve power.

The political parties offer tall claims of ameliorating the lot of the poor but on the contrary they make the life of the poor impossible. There should be a ban on excess populist electioneering.

There is every possible threat in the name of religion of democratic infrastructure in India. There are brands of secularism such as Hindu secularism, Muslim secularism but secularism has to be understood in its own terms. It can not be tagged to any one religion. The relations between minorities and majority community have been strained as never before. The communities have been converted not into living voters but into blocks of vote banks. This trend is dangerous for the unity and integrity of the nation. The power-seekers and the power-brokers are out to malign a blessing like Parliamentary democracy into a doom's day prophecy.

The equitous order is the goal of parliamentary democracy and that has to be achieved through free, fearless and fair elections. Unfortunately that remains a distant dream at present. The intense sense of caste complex breeds tension in no time and is taken advantage of by a number of political organisations which is against the spirit of free and fair elections.

In capsule, I would like to conclude with specific suggestions:

(a) Like National Integration Council (NIC) a body like National Election Council (NEC) be created. It should comprise of constitutionalists and non-partisan experts;

(b) National Election Council be made an autonomous body which will be responsible and answerable to the Parliament;

(c) It should work in co-operation (if it feels necessary) with the Election Commission of India;

(d) The Chairman of this Council could be Former President of India or retired Chief Justice of the Supreme Court.

(e) The National Election Council will supervise the alliances of the political parties;

(f) The Parties with contradictory programmes should not be allowed to form alliances. The Model Code of Conduct must be strictly adhered to and violators of the Code be punished both individually and party-wise; and

(g) The National Election Council should censure the erring political parties whenever errors and omissions by them are proved.

I am aware of the fact that the laws and codes alone would not augur the era of electoral reforms. But an honest effort to strictly observe the Code of Conduct and a sincere cooperation from all political parties would definitely usher in an era of reforms.

REFERENCE

1. Tope, T.K., *The Constitution of India,* p. 448.

The article is based on the author's speech at the Seminar "The working of the Constitution of India and the need for Constitutional Reform" at India International Centre on 28 August, 1992.

Part VIII
Need for Review of the Constitution

36

Indian Constitution : The Tryst and the Unfinished Tasks

L.M. Singhvi

Four Fundamental Goals and Five Revolutions

The basic tasks which we, the people of India, set ourselves were to secure to ourselves as citizens of our sovereign democratic republic, which we have also latterly styled as socialist and secular, the blessings of four fundamental goals — *Justice, Liberty, Equality* and *Fraternity*. These four conceptual objectives constitute the sheet-anchor of our constitutional order and are intended to animate its value system, to enliven its institutions and instrumentalities, and to inspire not only the exertions and actions of the state, but also the endeavours of the society and the individual citizens.

We know only too well that these objectives cannot be secured in any human society at one stroke or once and for all. Understandably, we have to keep striving to secure the fulfilment of these objectives at every step, from one stage to another, from one day to another. We have no option but to live with the gaps between our goals and achievements, but we cannot acquiesce in those gaps by being oblivious of the goals.

These goals are not an empty verbiage, nor an airy flourish or some kind of abracadabra of mystic incantation. They were not resurrected from some "drowsy dark cave of the mind" to be forgotten speedily at the break of the dawn. The founders of the Indian Republic were not day-dreaming when they etched these clarion calls on the canvas of our con-

sciousness and made them an integral part of the agenda of the Indian Republic. These are ideals which reflect what Walter Lippmann once described in another context as "imaginative understanding of that which is desirable in that which is possible". They really represent the essence and the spirit of our Constitution. Obviously, these four ideals were not invented by the founding fathers of our Constitution. Nor did they stumble upon them.

Jawaharlal Nehru who led the enterprise of making our constitutional magna carta between 1946 and 1949 in the Constitutent Assembly of India conjured up in those four goals the fighting faiths of five major revolutions in the last two hundred years of human history which had become catalysts and exemplars. These five revolutions, namely, the American Revolution, the French Revolution, the Soviet Revolution, the Gandhian and Anti-Colonial Revolution and finally the Human Rights Revolution, were of crucial relevance to constitution-making throughout the world. Human Rights declarations became the battle cry of the allies in the Second World War. Its revolutionary credo was enshrined in the United Nations Charter and the Universal Declaration of Human Rights. It should be added that our Constitution represents not only the eclectic essence of all the five revolutions but is also the repository of our own heritage, both ancient and modern, and of our approach to national reconstruction and socio-economic transformation evolved during our freedom struggle.

The democratic, republican and secular goals and ideals of Justice, Liberty, Equality and Fraternity provide the historical perspective, the emotional invocation, the rational calculus, the idealistic inspiration and the functional touchstone of our aspirations and endeavours. These goals may sound rhetorical and appear grandiose but they are for that reason no less real and no less pressing. They may seem distant but they also have a constant sense of immediate urgency about them. It is in the context of these objectives that every provision of the Constitution, every pillar in our constitutional edifice speaks to us with a message and a mandate. It is these objectives which illumine the many paths of constitutional understanding and interpretation. These objectives help us to decode the messages and mandates of our Constitution in term of our contemporary needs and futuristic perspectives, making our Constitution a great deal more than a document consolidating the

transfer of power from the British Parliament to the Indian people, a great deal more than a mere arbiter of the disputes and controversies as we saw between 1946 and 1949. These goals together make our Constitution not only a sentinel but also an omnipresent and all-pervasive pathfinder for the summum bonum of freedom in its fullness.

Growth and Development

The two foremost tasks, indeed the most compelling among the unfulfilled tasks of our Constitution, pertain to the growth and development of *citizenship values* and the *values of national unity and solidarity.* Without these values and corresponding patterns of civic behaviour, our constitutional system cannot be sustained and cannot really contribute to the goal of building up a just, free, egalitarian and integrated society. Good citizenship and sense of national unity are indisputably the most vital and valuable human resources of a democratic and republic nation-state. In my opinion, they are also the most neglected in our national life.

Good citizenship is regarded as the meeting point of the state, the society and the individual. It represents private and public virtues in social and civic relationships. It postulates an equation of equipoise between rights and obligations, between power and the accountability of power, and between what a citizen is bound to give and what he is entitled to receive. The age-old concept of excellence in our station of life in whatever we are called upon to do, *Yogah Karmasu Kaushalam,* is an indispensable aspect of good citizenship.

In the inimitable words of Mahatma Gandhi, in his message to Julian Huxley, published in the United Nations Weekly Bulletin of 1947,

> The very right to live accrues to us only when we do the duty of the citizenship of the world. From this one fundamental statement perhaps it easy enough to define the duties of men and women and corelate every right to some corresponding duty to be first performed. Every other right can be shown to be usurpation hardly worth fighting for.

Prof. Harold Laski thought that in order to be a good citizen, a person must possess "instructed judgement". Lord Bryce thought that the qualities necessary for good citizenship are intelligence, self-control

and conscience. Another political scientist, Dr. E.M. White, considered commonsense, knowledge and devotion as necessary qualities of good citizenship. Mr. Walter Scheel, a former President of the Federal Republic of Germany, observed in his Foreword to a book, *Good Citizenship,* published in India, "Citizenship is the cornerstone of the civilized society. Neither economic nor political progress can be achieved without the development of citizenship as a theoretical and applied discipline".

As Mahatma Gandhi pointed out, "The true source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like will-o-the-wisp. The more we pursue them, the farther they will fly." A sense of reciprocity and responsibility, a sense of rights and duties, is fundamental for any civil society which has to develop a coherent and consistent as well as a vigilant and vigorous sense of civic obligations, a sense of belonging, empathy, concern and cooperation, a sense of public order and public accountability. These alone can give meaning to our citizenship, for citizens must "share in the civic life of ruling and being ruled in turn."

Unfortunately, our political discourse suffers from insufferable and bizarre babelisation. Even the forum of our Parliament is afflicted by a chronic climate of pandemonium. The root cause of our political incoherence appears to me to be in the manner in which our political parties are organised and in their styles of functioning. Political parties tend to lose their moorings and are often afloat on the waves of crass and malodorous opportunism. Citizens do not seem to have the power to call them to account. Indeed, some of the antics of some of our politicians would be considered entertaining in a rough and crude sort of way if they were not in effect a sad reflection of the tragic fall in the standards of our public life. It is no wonder then that there is widespread inefficiency, insensitivity and corruption in our country and that patriotism has come to be regarded either as an antiquanted relic of a bygone age or a camouflage for the unscrupulous. Our Constitution is embattled and imperilled because we have failed to impregnate our social and political processes with the inspiration of patriotic citizenship, because we seem to have taken leave of the most basic concepts of reciprocity and responsibility, of rights and obligations, of excellence in whatever task is entrusted to us, and of the principle that our ultimate masters, the People, cannot be taken for granted for ever.

Article 51-A and Part IV-A were introduced in our Constitution by the Forty-second Amendment in 1976 (with effect from 3 January, 1977) to indicate and enumerate the Fundamental Duties of Citizens. It was sensible that Part IV-A was not swept off when much of the Forty-second Amendment came under review and reversal. The author had had occasion to explain the purpose and scope of article 51-A in his opening keynote address at the National Seminar on Citizenship Development and Fundamental Duties at Banglore in 1987. He had said at the Conference that article 51-A is a constitutional reminder to every citizen of India of his basic duties. It offers him a talisman and a touchstone. It may not be fully exhaustive nor quite self-contained, but is a fairly comprehensive code of citizenship priorities. It is not meant to intimidate or penalise citizens, but is meant to create a climate of patriotism, an ethos and ambience of citizenship. It is somewhat like a prayer and a pledge through the forum of a citizen's conscience. Its strength lies not in its enforceability by the police and the courts of law but in its appeal to the nature of man in respect of his conduct as an Indian citizen. It reminds him of the debt he owes to the society and of the individual civic duty he owes to himself. It is a constitutional IOU of a citizen, a citizen's promissory note. Its observance may be highly individualistic and equally communitarian. It is meant to equip the citizen with a compass to give him a sense of direction and involvement. It gives him an encapsulated agenda or a checklist, so that he may regulate and canalise his thoughts and deeds with a measure of enlightened and purposeful coherence. It also relates to the constitutional character of Fundamental Duties to Fundamental Rights and Directive Principles of State Policy. The Fundamental Duties embodied in article 51-A are thus moral assurances of citizens and mutual expectations from citizen to citizen to safeguard Fundamental Rights and to help in securing the progressive fulfilment of some of the more important Directive Principles. Article 51-A is a restatement of the broad principle of patriotism as a civic duty and a call for the resurgence and renewal of our patriotism. As Professor Morris Janowitz wrote in his thought-provoking book, *The Reconstruction of Patriotism (University of Chicago, 1983),* that civic obligations are the "contributions and sacrifices a citizen makes to keep the political system alive".

In the context of Fundamental Duties embodied in article 51-A, the author would respectfully join issue with a great constitutional Pundit,

H.M. Seervai who takes the view that article 51-A was enacted on a mistaken belief. H.M. Seervai thinks that article 51-A(b) and article 51-A (j) "must appear ludicrous to people outside India and even to people within India". Article 51-A9(b) and 51-A(j) ask the citizens to "cherish and follow the noble ideals which inspired our national struggle for freedom" and "to strive towards excellence in all spheres of individual collective activity so that the nation constantly rises to higher levels of endeavour and achievement." Seervai criticises the provision for its wide generality and because according to him citizens cannot be expected to follow conflicting and contrary ideals which differed widely and because there was nothing more common among our national leaders except the desire to secure freedom. Seervai also argues that Chapter IV-A is neither law nor supreme law, that if fundamental duties are disregarded, nothing happens and that clauses (a) to (j) of article 51-A are innocuous. Shri Seervai misses what the author regards as the mainstream of our constitutional evolution and the cultural, social, political, moral and ideological roots of our Constitution. The author finds nothing absurd or ridiculous in article 51-A which could legitimately arouse Seervai's ire and derision. After all, what is wrong with stating basic or general ideals in a constitutional document? The Preamble to our Constitution does it, though more tersely. And were there no discernible set of values and ideas in our freedom struggle? Is it wrong that we should invoke them? Is everything that is not enforceable in a court of law innocuous or meaningless? Shri Seervai is wrong in thinking that nothing happens if fundamental duties are disregarded. That is the Austinian eror in jurisprudence. If duties are disregarded what would happen is a man made disaster in the form of social, moral and constitutional collapse. The author believes that article 51-A embodies our philosophy of citizenship development and is inextricably linked with the four major goals of our Constitution proclaimed in the Preamble for civil rights and civic duties alone can pave the wave for social, economic and cultural freedom through processes of democracy and rule of law.

Last, but not the least, and perhaps the most pressing of our national goals, is the constitutional objective of securing Fraternity, a fundamental republican concept proclaimed during the the French Revolution two hundred years ago in juxtaposition with Equality and Liberty. Liberty cannot be enforced in a paternalistic and authoritarian State. Nor can it be realised without a fellow feeling of fraternity which is a

synonym for reciprocity and responsibility and for rights and obligations among citizens. Equality cannot be fulfilled and the integrity and unity of the nation cannot be pressed without the foundations of fraternity and a shared sense of common citizenship. Our constitutional concept of Fraternity is, in the ultimate analysis, meant to assure the Dignity of the Individual and to assue the Integrity and the Unity of the Nation. It is the broad consensus on these four fundamental goals suffused by a sense of fraternity, and under a humane and dynamic leadership which can help to resolve the seeming contradictions in our national life and pave the way for a greater sense of purpose and direction. By working resourcefully and in a sustained manner for realizing these basic goals we would be trying to translate our constitutional dream into a living reality.

Universal Literacy

Forty years ago, article 45 of the Constitution mandated that the State shall endeavour to provide, within a period to ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of 14 years. Had this mandate fructified, we would have had the whole of our population in a reasonable state or primary instruction. We are still at the stage of getting our "operation blackboard" off the ground. When Dr. Deshmukh delivered the Fifth A.D. Shroff Memorial Lecture in 1970 and captioned it as 'Free but Fettered Illiterate Citizen', he noted that the progress of education and of literacy was lackadaisical. The Education Commission headed by Dr. D.S. Kothari had underlined the fact that India was more illiterate in 1961 than in 1951 due to an addition of about 30 million illiterates during that decennial. Over the years, we appear to be adding to the ranks of the illiterate in our country with massive increases in our population. The Kothari Commission had said that the illiterates are condemned to live an inferior existence, to be isolated from social processes, commerical marketing and democratic government. The Commission also pointed out that they block economic and social progress. Due to them there is less efficient population control, reduced economic productivity, an imperfect understanding of national integration and security, and a retarded improvement in health and sanitation. The Commission reached the conclusion that the uneducated citizen is not in reality a free citizen.

According to the 1981 Census, the national average literacy rate which was 16.67 per cent in 1951 had increased to 36.23 per cent in 1981. It is, thus, clear that although there has been considerable increase in the establishmentarian inputs, we have a long way to go for achieving the goal of universal literacy. On this front, the unfulfilled task of the Constitution stares us in the face and leaves us in a state of profound concern. Illiteracy leaves a large segment of our population in a state of defencelessness and indignity. It can be no consolation that a higher percentage of our country's population is literate today than in 1951 so long as a very high number of our citizens and youngester remain illiterate. The progress in the quality and quantum of adult education, social and functional literacy, female literacy and vocational education has also been very tardy and halting.

Neglect of rural education has been a continuing concern. The New Education Policy, 1986 includes rural education and the disparties and deprivations to which it has been subjected in its inventory of challenges to education. It reiterates the concept of education as an investment in development and as the only instrument of peaceful social change. There is an anguished admission by the Government that there is substance in the estimates of the World Bank which has warned us repeatedly that India will have the largest concentration of illiterate population of the world by the year 2000 AD, and that India will have the dubious distinction of having 54.8 per cent of the world's illiterate popultation in the age group of 15-19 years. Let us also remember that one-fifth of all habitations in India, 1,91,000 out of 9,65,000 habitations including several habitations with a population of less than 300, have no facilities even for primary education more than 40 years after our independence. The following quotation from the Foreword the author wrote for *Education for Rural Transforamation — An Outline of Blueprint* expresses a sense of anguish and despair :

> Today, as a nation, we are being driven to the precipitous wedge of a rural-urban divide in the core section of our nine simple, concurrent and essential human needs, namely, food, drinking-water, clothing, shelter, health care, electricity, education, culture and local self-government. That distressing and dangerous divide makes the highbrow preoccupations and complex computations of our planners somewhat remote as well as less relevant, less proximate and less pressing. In responding to these basic human needs

and basic human rights, the crude cosmetics of occasional remissions of land revenue or exemptions from repayment of loans cannot be regarded as a part of comprehensive policy and integrated programme. A good deal of that kind of tokenism and window-dressing is nothing but a homage of hypocrisy, which is habitually and customarily paid on quinquennial electoral occasions. Ad hoc appeasements, consolatory concessions, tantalising temptations packaged as promises, and strident, impassioned, interlocutory political slogans, no doubt, have a transient efficacy as opiates which are good for creating hallucinations, but they are poor substitutes for curing a chronic malady, the gravity and magnitude of which have been missed all along. We need meaningful inputs into the manistream. Mere assurances and gestures have long been out of place.

Five Segments of Constitutional Solicitude

There are five segments of our population for which our Constitution shows particular solicitude. These five segments are :

(a) women,

(b) children,

(c) scheduled castes,

(d) scheduled tribes, and

(e) socially and educationally backward classes, article 15, clauses 3 and 4 permit the State to make special provision for them.

The reservation provisions and procedures for the Scheduled Castes and the Scheduled Tribes, and in some cases for some of the socially and educationally backward classes, have given rise to stormy controversies. In fact the special provisions were never meant to be a permanent feature. Nor were they meant to be extended to others solely or substantilly on the basis of caste. Initially, the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States was to endure only for a period of ten years, which was successively replaced by 20,30 and 40. Much more than the electoral reservation, it is the reservation in the services and the educational institutions which causes heart-burning. The unfulfilled task of the Constitution is to ensure that there is no

continuing need for affirmative discrimination. That time has not yet arrived. Reservations may, therefore, have to be continued for a longer duration. Reservation cannot, however, be an end in itself. Nor can the ultimate object of the reservation be allowed to be obliterated by any vested interest in the system of reservation itself. Reservation is after all what reservation does. Reservation after one or two generations becomes an irrational dispensation. Reservation is meant to be an opportunity, not a device for cornering privileges and keeping them confined to a few families. It is necessary, therefore, to take a fresh look at 40 years of our reservation policies in the light of functional and factual field data.

There has to be a greater measure of rationalisation in reservations. Due regard should also be given to the requirement of efficiency, as mandated by the Constitution, particularly in higher echelons of services and, therefore, reservations must be rigorously restricted primarily to the stage of entry. It is important that members of the Scheduled Castes and Scheduled Tribes should also be afforded the opportunities to compete on an equal footing by means of scholarships and special courses. We are today confronted with a growing hostility to reservations in Services, particularly at promotional stages in higher echelons. An effective, functional and rational solution which helps to overcome the disabilities of the caste system should, however, be found, though not in the wayward and haphazard manner adopted by the Mandal Commission.

The litmus test for a civilized society is the measure of care and consideration it bestows on women, children and the handicapped. While some progress has been made for ameliorating the condition of urban women, much remains to be done for the marginalised women, children and the handicapped. Children are particularly badly neglected in our society. Article 15(3) contemplated special provision for children. There is hardly anything done under article 15(3) for children. Article 24, which is enforceable in courts, clearly mandates that "no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment". The truth of the matter is that in certain sectors this ban is breached with impunity. Even otherwise, conditions of child labour are precarious and unprotected. Having been intimately involved in the deliberations on the Charter of the Child and as Chairman of the Task Force on Child Labour, the author can say

without any fear of contradiction that the laws relating to children and child labour having neither teeth nor tongue. There seems to be no political will to give them efficacy. No wonder that the bureaucracy also attaches a very low priority to child welfare. Contrary to the constitutional mandate in article 39, the tender age of children is, in fact, being abused. Children do not have and are not given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and childhood and youth are not really protected against exploitation and against moral and material abandonment. In fact, we have no action plan worth the name to deal with this highly neglected sector which I call the unrepresented constituency of the child. The task of fulfilling the generous promises of article 39 goes by the grossest of defaults. The Parliament and the political parties are, of course, too precoccupied with electorally more demanding and rewarding issues to be bothered about such damp squibs as child welfare.

Nutrition and Standard of Living

A provision was made in the Directive Principles that the State shall regard the raising of the level of nutrition and the standard of living of the people and the improvement of public health as among its primary duties, a duty which has been sadly neglected. Reasonable standards of nutrition and public health and hygiene are a far cry. Medicare is in shambles. We as a people are defenceless against disease and epidemics. Old age miseries are heartrending. All the constitutional promises have gone awry and carry little or no conviction. One of the more particularised mandates under that head was to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.

In realistic terms, prohibiton of intoxicating drinks, that is liquor, appears to be clearly out of the question for the present and the foresceable future. No State can afford to forego the liquor excise revenue which constitutes one of the most important fiscal sources for the States. Moreover, enforcing prohibition has been asn elusive task. Experience shows that the prohibitionist becomes an unwitting ally of the bootlegger. Therefore the considered conclusion appears to be that *the unfinished task of achieving legally coercive prohibiton would have to be left un-*

finished for quite some time as a matter of public policy. But there seems not reason why the State should level and exult in its increasing revenues from liquor excise and should do little or nothing to spread the ideal of voluntary prohibition and the outlook of temperance. The impression one gains is that rather than promote temperance, the States have become the hosts to the bout of the booze because it is the States which collect all the money, most of which is required for meeting the heavy cost of our top-heavy bureaucratic establishments.

A far more serious threat than liquor to the constitutional objective of building a well-fed, healthy and happy society looms large upon us in the form of drug addiction, particularly among the young of the nation. We must not forget that nearly 40 per cent of India today is below the age of 15 years. Universities, colleges, even schools have become the hunting grounds of drug-purveying gangs and cartels on the prowl. All these years we have consciously deprecated religious education and discarded moral education as a matter of social policy. Civic education and social work have not made any strides. Parental authority and the authority of the teacher seem to belong to yesteryears. The opiate in the diverse forms of different drugs has literally arrived, perhaps mocking at the conventional dialectical dig at religion. India has a comparatively good record in terms of State action in fighting the menance of international racketeering and smugling of drugs but we have no solution in sight to the problem of drugs. That is a task which is assuming very complex and large proportions.

Right to Work, Livelihood and Public Assistance

The Constitution contemplates right to work, right to an adequate means to earn livelihood, and public assistance in cases of unemployment, old age, sickness, disablement and other cases of undeserved want. These tasks remain unfulfilled. We are in no position to provide a guaranteed right to work or any real unemployment insurance or social security.

Our population explosion eats into the vitals of our economic growth. We have, in fact, made considerable progress, but no sooner we achieve something, it is neutralised because we produce more than one whole Australia every year.

In the year 1981, the working population of India stood at 24.46 crore or 36.77 per cent of the total population of the country. The backlog of unemployment at the outset of the Seventh Plan was officially stated to be of the order of 92 lakh only. The rural pupulation is poorly served, if served at all, in terms of medical and health services. For most of the people in India, it has become impossible to grow old gracefully. Elders who are our senior citizens are likely to fall progressively into a state of increasing neglect. More so because the fabric of our family life is changing swiftly. The handicapped will also become more and more marginalised unless we think imaginatively of plans for their training, rehabilitation and productive employment. These are the segments of our population who require and deserve special attention, but the state does not have the resources, and there is very little political pressure they can exert. The cost of the state establishments for them would be excessively high. There is absence of professionalisation in social work. There is absence of the spirit of self-sacrifice and the transcendental inspiration for social and charitable work which comes either from religious orientation or by the honour system prevailing in the society. What is more, voluntary work is often politicised and is vitiated by self-seeking. It is bad enough that the State is unable to do what it is called upon to do by the Constitution. The worst part of it is that the State often adopts or threatens to adopt fiscal measures which are anti-charity. The absence of fiscal incentives for social work and for charity is clearly an index of the antipathy of the State to the society and a serious impediment in fulfilling the unfulfilled tasks.

Three New Directives

Three newly added directives by means of articles 39-A, 43-A and 48-A inserted by the Forty second Constitutional Amendment in January 1977 seek to underline the tasks of providing equal justice and free legal aid, securing participation of workers in the management of industries, and protecting, improving and safeguarding environment, forests and wild life. Each one of these directives is in the process of being worked out and implemented in some measure.

The task of securing participation of workers in the management of industries has not yet been carried out in a functionally coherent

manner. It serves no useful purpose if it leads only to nepotism, corruption, inefficiency or indiscipline. On the other hand, there are many useful ways in which such participation may lead to amicable consultations, industrial peace, greater productivity, and a sense of belonging.

The environmental concerns of article 48-A are reflected in a fasciculus of overlapping and somewhat hastily drafted statutes which seem to be more punishment-oriented and less-result-oriented. These statutes should be made a part of a single Indian Environment Code. The standards laid down in these statutes should be practicable and affordable. There should be an obligation on the authorities to offer appropriate technology within a resonable time budget. Besides the protection of the environment from pollution, a special emphasis has to be placed on the protection and regeneration of forests.

Provision of Legal Aid to the Accused

In the case of *Janardhan Reddy*[1] a Constitution Bench of the Supreme Cort considered Section 271 of the Hyderabad Criminal Procedure Code, corresponding to Section 340 of Indian Criminal Procedure Code in which it was provided that any person accused of an offence before a criminal court or against whom proceedings are instituted under this court or in any such court may, of right be defended by a pleader. The Court agreed that this provision must be construed liberally in favour of the accused. The Court, however, was not prepared to lay down as a rule of law that in every capital case where the accused is unrepresented, the trial should be held to be vitiated. The Supreme Court also added that a court of appeal or revision could interfere if it found that the accused was so handicapped for want of legal aid that the proceedings against him might be said to amount to negation of a fair trial. The Supreme Court did adopt a liberal approach but it was not prepared to sound the Gideon's trumpet. In the case of Hoskot (1978 (3) Supreme Court Cases 544), a bench of three judges, however, had little difficulty in laying down that the procedure postulated in article 21 of the Constitution means fair and not merely formal procedure and that it was the responsibility of the State necessarily to provide legal aid to the accused. At that point of time, Krishna Iyer, J. was prepared to acknowledge that Gideon's trumpet had been heart across the Atlantic. In the case of *Hussainara Khatoon*[2].

Justice Bhagwati, declared unequivocally that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implict in the guarantee of article 21 as a constitutional right.

In the first National Conference on Legal Aid which the author had the privilege of convening in 1969 as Chairman of the National Legal Aid Association and which the then President of India inaugurated, we were still struggling to stabilise the concept of legal aid as an indispensable spearhead of equal justice, the concept of the obligation of the State of assist in providing funds for legal aid from the public exchequer, and the idea of a nationwide legal aid system. The National Conference on Legal Aid in 1969 made a historic contribution in creating a climate of opinion, a veritable breakthrough. The Krishna Iyer Committee of the Central Government and several State Committes cleared the way but we had still not arrived. The two Bhagwati Committees, the Central Act and the Committee headed by Justice Ranganath Misra appear to have made a decisive headway.

We cannot, however, rest on our oars. Legal aid now enters a new and more crucial phase. The masses of the people and the legal profession as a whole have yet to enter into the spirit of it. A much larger input of human and material resources is going to be needed lest the message of equal justice should be obscured and its its real thrust blunted. Problem solving approaches, already officially adopted, have to be rationalised, institutionalised and enlarged, substituting and even limiting and curtailing if necessary, formal litigious methods of dispute resolution in certain kinds of cases. There are those who would follow the Shakespearean advice and do away with lawyers, law courts and litigation altogether. That kind of a shibboleth can only be an effusion of populist roadside oratory. There is today a higher awareness of rights in the matrix of the revolution of rising expectations. Litigation is often a manifestation of that awareness. It cannot be wished away or brushed under the carpet. We have to resolve the disputes. In many cases, a resort to judicial remedies would be the best course. But there are disputes which by their very nature or by reference to the stage where differences and divrgencies arise can be best resolved by mediation and conciliation, as in Lok Adalats, or by lay local judges, that is, *nyaya pancharyats or gram nyayalayas*. That is an effort worth making in order to fulfil the promise of equal and expeditious justice.

An important strategy of legal aid is what has come to be called as public interest litigation or social action litigation. The Idea could not be operationlised without liberalising the rules relating to *locus standi.* As the Supreme Court put it in the Asian Games case[3].

Where judicial redress is sought of a legal injury or a legal wrong by a person or class of persons who for reasons of poverty, disability or socially or economically disadvantaged position, are unable to approach the Court and the Court is moved for this purpose by a member of the public by addressing a letter drawing the attention of the Court to such legal injury or legal wrong, the Court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it.

Conceptually, the epistolary access to the Court in a limited class of cases did not in any way dispense with the basic requirements of a fair trial. Public interest litigation, unless it is conducted with utmost circumspection and restraint, can become an unruly horse and judges might come to think of themselves as knights in shining armour tilting at all kinds of windmills.

When it comes to judicial legislation as the rider upon the horse of public interest litigation, I have certain reservations because the Courts do not have the proper machinery for collection of data and its analysis, because a Court cannot, while legislating, marshal the consent of the people and take responsibility in the exercise of policy options. There is another danger and that is the possibility of legislative abdication of responsibility and executive lack of commitment for judicially mandated policies and legislation. In other words, the horse should not be unruly and it should certainly not be allowed to become a bull in the china shop.

A Uniform Civil Code

There is no doubt that it is an important national objective to secure a uniform civil code. At the same time we owe decent respect to minority sentiments. These are matters in which we have to hasten slowly and gently. Dr. Ambedkar had made the suggestion in the Constituent Assembly regarding the possibility of an optional implementation of the

uniform civil code in respect of those who make a declaration, so that in the initial stages the application of the uniform law could be purely voluntary, as was done at the time of the passing of the Muslim Personal Law (Shariat Application) Act, 1937. The unfulfilled task of securing a uniform civil code would be fulfilled in some measure if we can put on the statute book such a voluntary code and then begin to work to create an enlightened public opinion and an enlightened leadership among all sections of Indian citizens.

Panchayati Raj Institutions

Revitalisation of *Panchayati Raj* institutions is one of the most important of all the unfulfilled tasks of our Constitution. In fact, the concept of *Panchayati Raj was a part of the* Poorna Swaraj and *Gram Swaraj*. Dr. Ambedkar had strong reservations about village panchayats and thought the they were the ruination of India. When Dr. Ambedkar gave vent to his feelings, there was an uproar behind the scenes. The issue was somehow settled by a patchwork solution. When Shri. K. Santhanam's amendment which eventually became article 40 of our Constitution came to be accepted, no controversial statements were made. Dr. Ambedkar did not articulate his opposition to the idea. Earlier, Dr. Rajendra Prasad had expressed the view, somewhat wistfully, that the Constituent Assembly should have at tempted to adopt village republics as the basis of the Constitution. It was however, too late to make an attempt to change the whole basis of the Constitution. The concept was put into operation not only as an institution for administrative programmes and development projects, but also as an institution of self-government: within the first decade following the Constitution. *Panchayati Raj* institutions, however, fell by the wayside over the years. Recently, as Chairman of the Government of India Committee, the author had occasion to put before the Government a proposal for a constitutional amendment to provide for the integrity and regularity of elections, democratic legitimacy of *Panchayati Raj* as a third tier of government, to find resources for *Panchayati Raj* institutions and to create separate judicial tribunals for *Panchayati Raj* disputes. Certain recommendations for integrated administrative structures, for training, research and public education inputs, and the establishment of institutes of training and research were also made. The Government endorsed and adopted the

idea of the constitutional amendment. One had high hopes that this idea would go a long way in institutionalising and constitutionalising the idea of democracy at the grassroots. Unfortunately, however, the draft constitutional amendment ran into political rough weather of narrow partisanship.

Languages

Part XVII was inserted in the Constitution to provide for an official language, regional languages, language of the Supreme Court, High Courts and for Acts, Bills etc. According to article 343, the official language of the Union is Hindi and the English language could continue to be used for all the official purposes of the Union for a period of 15 years from the commencement of the Constitution. This period of 15 years has further been extended by the Parliament. It seems that these extensions are likely to become perennial. In fact, contrary to the mandate of the Constitution, the Parliament has provided by legislation that the English language will continue for official purposes of the Union and for the transaction of business in Parliament "until resolutions for the discontinuance of the use of the English language have been passed by the legislatures of all the States which have not adopted Hindi as their official language and until a resolution for such discontinuance has been passed by each House of Parliament." The provision just quoted is plainly repugnant to the Constitution.

In Genesis XI, there is a deeply instructive description of the so-called Tower of Babel:

> Once upon a time all the world spoke a single language and men decided to build a city with a tower with its top in the heaven. And the Lord saw the city and lower they were building and He said: "Here they are, one people with a single language, and now they have started to do this, henceforward nothing they have a mind to do will be beyond their reach. Come, let us go down and confuse their speech, so that they will not understand what they say to one another." Their speech was confused; they did not understand one another, they were dispersed over the surface of the earth and their city and tower remained unbuilt.

I am not for a moment advocating Hindi to the exclusion of other Indian languages. Nor do I share militant and wholesale opposition to

English, a language which has in a way endeared itself to Indians and is a world language. But the issue concerns the constitutional mandate for Hindi as the official language of the Union. The issue concerns the use of Indian languages. English must remain as an associate language even when we have an Indian language as the official language of the Union. It is in this context that our speech is confused. We do not have and do not appear to be anxious to have one single language as our *lingua franca* or as the official language of the Indian Union. Mahatma Gandhi had written in the *Harijan Sewak* on 25 January, 1948: "English can never become our National Language on the medium of instruction. It shoud not be allowed to transgress its rightful place." In 1917 he said in Calcutta: "The greatest social service you can render is to revert to our vernaculars, to restore Hindi to its natural place as the National Language." In any case, the Constitution contained the accepted consensus. that consensus has, however, been subverted. Confusion reigns supreme on the linguistic scene. The politics of language and the language of politics have prepetrated a grievous wrong to Part XVII of the Constitution which now appears to be very nearly beyond salvage until possibly the dawn of a better day in the consciousness of national unity and until our common realisation that the common *lingua franca* is an essential unifying force.

Fundamental Rights

Part III of the Constitution enumerates constitutional guarantees of Fundamental Rights of Indian citizens. These rights are enforceable in courts of law. They are not simply future promises. In fact, the remedial rights of obtaining the enforcement of these rights is also a guaranteed constitutional right. These Fundamental Rights are rooted in the recognition of the dignity of the individual as well as the rights of groups and the rights of the society. The concept of resonableness permeates our charter of Fundamental Rights. The executive, the legislature and the courts have to balance the rights of the individual and the interests of the society. The courts have to adjudicate all controversies involving the curtailment or denial or deprivation of Fundamental Rights. These are, however, not static oncepts. These rights and their content and perspectives change. Their frontiers advance. The battle-fields change, weapons and strategies change. Issues are redefined and re-stated. Not all

problems are brought to the courts. There are some embryonic problems which can not even be formulated as legal disputes and claims. Then there are laws which are meant to give effect to these human rights. But many of these laws languish. What is more, the courts cannot always decide disputed questions of facts effectively. A Human Rights Commission should be established, of which the Minorities Commission should also be made a part. The Human Rights Commission should investigate Human Rights issues. It should offer affordable and relevant models of human rights compliance suited to our own conditions. It should also promote human rights education and research. As a monitoring mechanism it could be done of the most effective instruments for the implementation of our human rights obligations under the Constitution and under international instruments. I need hardly say that the establishment of such a commission for the fulfilment of human rights is perhaps as improtant as establishing a remedial judicial frame work for giving relief in matters of human rights violations. Similarly, an ombudsman framework would go a long way in redressing public grievances, reforming public administration, checking maladministration, and, on the whole, in giving administration a human face.

Cooperative Federalism

In the field of cooperative federalism, the Commission headed by Justice R.S. Sarkaria has made extensive recommendations. Contrary to some of the ill-informed criticisms of the Commission's Report, it has offered a large and meaningful agenda for ensuring a better federal equation and balance. The establishment of an Inter-State Council contemplated in the Constitution and a permanent Finance Commission would go a long way in promoting cooperative federalism at its working best.

There is an aspect of our quasi-federal system which also calls for some anxious consideration. When Part I of the Constitution was written at the commencement of our Constitution, the State system had many angularities. It was in the contemplation of the founding fathers of the Constitution that there would have to be a re-organisation of States in India. That is why extensive powers were conferred upon the Parliament which is empowered to form new States, to increase or diminish the area of any State, and to alter the boundaries or the name of any State. Obviously, these powers cannot be exercised except on rational and

functional considerations and with the broad-based support of different political viewpoints in the areas concerned and the country as a whole. The States in the Indian Union are extremely unequal and uneven. The linguistic criterion is, no doubt, relevant but it cannot possibly be the only criterion. Some of our States are like districts while some others are monolithic in size and population. Take for instance, the State of Uttar Pradesh with its population of about 13.3 crore and the State of Bihar with its population of nearly 8.4 crore. On the other hand, there are several states which are quite small. There is need to consider the possibility of creating more manageable and some what smaller states out of the very large ones. This was a task left by the founding fathers of the Constitution to the Parliament and the people. At some point of time in the future we might have to consider the economics, politics and sociology of size in the context of states re-organization. This task should await a more propitious moment in our national life when it may be possible gather constructive consensus more readily.

Government for the People

Robert Frost once wrote, "I have never started a poem yet whose end I knew. Writing a poem is discovery." The making of a Constitution is truly the discovery of the identity and ethos of the nation. It is an eye-opening discovery of great magnitude to see the unfolding of a constitutional system in action in the context of the tasks it is called upon to fulfill. Speaking on 25 November, 1949, Dr. B.R. Ambedkar reflected on "the tasks that lie ahead of us". Many of these tasks still lie ahead of us. Dr. Ambedkar called upon the nation not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer government for the people to government by the people. He concluded by saying "that is the only way to serve the country. I know of no better". No better way has yet been found.

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37

Constitutional Reform, Stability and Change : An Appraisal

K. Vijaya Bhaskara Reddy

The Constitution, as given to us by its founding fathers, has stood the test of time. It is true that we have made as many as 71 amendments to the Constitution during the course of last forty two years. However, some amendments were made with a view to effectively deal with social and economic problems peculiar to our country. Speaking on the nature of our Constitution, Dr. Ambedkar had observed :

> "One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled when the first written Constitution was drafted. It has been followed by many other countries reducing their Constitutions to writing. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country."

As for the changes incorporated in the Constitution, special mention may be made of provisions concerning land reforms as also the advancement of socially and educationally backward classes of citizens or the Scheduled Castes and Scheduled Tribes. Provision has also been made for giving effect to certain Directive Principles contained in Article 39 towards building of a Welfare State. Similarly, incorporation of the Tenth Schedule to the Constitution for containing the politics of defection is yet another important addition.

Yet, despite making amendments such as these, we have not effected any changes so as to alter the main features of the Constitution. The Sarkaria Commission too, in its report on Centre-State Relations, did not recommend any major changes in our Constitutional scheme, but emphasised the need to develop proper conventions for a healthy functioning of our parliamentary democracy. This factor needs to be emphasised upon, as it is incumbent on all constitutional functionaries to perform their duties under the Constitution in the true spirit of the constitutional provisions. As Dr. Rajendra Prasad once said,

> "After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it".

Therefore, if we fail to live upto the mandate of the Constitution, the Constitution cannot be blamed on that count. In a similar vein Dr. Ambedkar had said,

> "I feel that it is workable, it is flexible and it is strong-enough to hold the country together both in peace-time and in war-time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is that man was vile".

One often hears demands for radical reforms of the Constitution. Demands are often made by regional parties for giving more powers to the States in the name of strengthening the federal structure of the Constitution. Some others have favoured a Presidential form of Government. Some have called for redefining the powers of the judiciary alleging that the judiciary has become a super-legislature. Possibly these are reactions to given situations emerging at a particular point of time. It would not be correct to attribute any problems which we may have faced or may be facing, to deficiencies in the Constitution. Our Constitution was drafted after taking into consideration, the constitutional experience of several countries of the world. It is as relevant today as it was at its inception. It is a fine blend of the best available elements in other Constitutions. As Dr. Ambedkar very aptly put it, "if it is a patchwork, it is a beautiful patchwork."

Representative democracies will have no meaning without economic and social justice to the common man. This has been a universal experience. Freedom from foreign domination can be looked upon only as

an opportunity to bring about economic and social advancement. Freedom is nothing else but a chance to lead a better life. This liberty to do better and live better is the theme of the Directive Principles of State Policy in Part IV of the Constitution. We would do well to examine the gap between promise and performance, between resolutions and implementation, between hopes raised and results achieved, between distance travelled and the distance that remains to be travelled and between our radicalism in principle and conservatism in practice. The concept of the State being neutral in social matters is a thing of the past. Today, the State is the principal instrument for bringing about a just and social order.

The Indian Constitution is first and foremost a social document. The majority of its provisions seek to further the goals of the social revolution by establishing conditions necessary for its achievement. Even though in the legislation enacted so far, we had endeavoured to give effect to various Directive Principles of the Constitution, we have yet to go a long way towards fully implementing these principles.

It is hoped that the path of economic liberalism also would, in due course, show results and generate enough resources to enable the Government to take the country to greater heights of progress and, in the process, give a new meaning to the Directive Principles. The Chapter on Directive Principles should indeed become a charter of our progress and development, both economic and social.

In a number of areas affecting our lives, there appears to be a growing gap between what the Constitution proclaims and what is happening in reality. At a time when we need to make greater efforts towards attaining the goal of national integration through secularism and eradication of social evils connected with untouchability, we see that divisive forces and tendencies are taking roots in our country. The virus of communalism and of religionalism seems to corrode our national life. We need to strengthen the struggle for safeguarding the ideal of secularism enshrined in our Constitution. In an effort to separate religion from politics, the Religious Institutions (Prevention of Misuse) Act, 1988 was enacted so as to ensure that religious institutions were not utilised for promotion and propagation of political activities or for promoting disharmony between different religious groups. More recently, the Places of

Worship (Special Provisions) Act, 1991 was enacted with a view to prohibiting conversion of places of worship and to provide for maintenance of their religious character as it existed on the 15 August, 1947. Similarly, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, was also enacted. However, law alone is not enough. All sections of the society need to show the necessary will to overcome the divisive forces in our society.

I would also like to emphasize that there should be a proper balance between rights and duties of the citizens. We sought to achieve this in a small measure by inserting a Chapter on Fundamental Duties in the Constitution. The Fundamental duties are highly relevant today, keeping in view the prevailing atmosphere of violence, terrorism and communalism. The country can march forward only if the citizens learn to attach equal importance to their duties as they do to their rights. The success of our Constitution and democracy would greatly depend on their sense of patriotism and their dedication to the progress of the country.

The Constitution makers have meticulously defined the functions of various organs of the State. The Legislature, executive and judiciary have to function within the spheres demarcated under the Constitution. No organ should usurp functions assigned to another. The functioning of our democracy depends upon the strength and independence of each of its organs. Lately, there have been apprehensions that the principle of separation of powers is not being followed in its true spirit. Respect for this principle is indeed necessary for the smooth functioning of the Constitution and all the organs of the State.

To conclude, I would say that the democratic process in the country can be strengthened by giving precedence to the spirit of the Constitution.

The article is based on the lecture delivered by the author at the Seminar on Constitution of India i n Precept and Practice at Parliament House Annexe, New Delhi on 25 and 26 April, 19 92.

38

RIGHT TO INFORMATION

Ajit Kumar Panja

"While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital organic people. In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow.

A Constitution if it is out of touch with the people's life, aims and aspirations, becomes rather empty; if it falls behind those aims, it drags people down. It should be something ahead to keep people's eyes and minds upto a certain high mark."

Pandit Jawaharlal Nehru

In our country, there is no statute dealing with the right of any members of the public to have inspection of documents in the custody of the State. A participative democracy requires an enlightened and informed electorate. An open Government, functioning in public view, will minimise the possibility of wrong-doing. For increasing people's control over the Government and to curb corruption, a system has to be built to provide increased access to information. It is in this context, a public debate is on for the last two years whether the 'Right to Information' should be enshrined in the Constitution as a Fundamental Right.

Freedom of enquiry is not only an inherent human right to basic advancement of knowledge and discovery of truth but also enables the citizens to judge the propriety of Government's actions. The citizens must have information about the activities of the Government. Concealment is misinformation. The connection between democratic Government and an informed populace would thus be an advantage to achieve progress and prosperity.

An ordinary citizen does not have the time and resources to take on himself the job of collecting information needed for his enlightenment. Besides the public leaders, it is done by the media, both print and electronic, and they actually serve as his main sources of information. Wherever the right to information exists, the media acts on behalf of the people and supplies them the required information.

Freedom to the Mass Media involves three types of liberty:

1. The Freedom to Know, i.e., to get information needed to organise our lives and take an independent part in the process of governance;
2. The Freedom to Tell, which means the freedom to transmit the information freely and take a public stand on various issues and argue for or against a proposal; and
3. The Right of Access, i.e., the freedom to find out and investigate matters of public importance. But this freedom should be exercised with honesty, courage and with patience to sift grain from chaff and distinguish chalk from cheese.

Freedom of the Press was not specifically mentioned in the list of Fundamental Rights, but the Freedom of Speech and Expression, guaranteed under article 19 (1) (a), includes the freedom to propagation of ideas, with reasonable restrictions as might be deemed advisable in the public interest. It is clear that the Press, as an institution, has no constitutional or legal privilege. What is known as the freedom of the Press is nothing but the freedom of expression of every citizen which includes:

(a) the right to lay what sentiments he pleases before the public, or the right to impart information and ideas; and

(b) the right to receive information and ideas from others through any lawful medium.

Freedom of Press has both an affirmative and a negative content. It means the right of an individual to print and publish whatever he pleases, free from any interference by the State excepting those which may be imposed by constitutionally valid laws. It includes the freedom to propagate one's own views as well as of others and to communicate them to others, subject only to such restrictions, imposed by the State, as are constitutionally permissible.

The Press, as such, is not entitled to any special privilege to which other citizens are not entitled. Freedom of the Press does not include immunity from the general laws of the land, which are applicable to the Press, without being discriminatory. In general law, the criminal law does not acknowledge any special immunity of protection in favour of the Press. Thus, the State is not debarred from exercising any of its legitimate powers, so long as the impact of such legislation or its actions is not directly to affect the circulation or other aspect of the freedom of the Press.

It is now widely recognised in all democracies, notably in the USA, Britain, West Germany and Japan, that the Right to Know helps the citizens to correlate their responses to challenges which emerge as time passes and enable them reach consensus on social actions. An informed, enlightened society is vital for development and democracy. Public support to governmental actions becomes easier. It facilitates informed criticism and a better understanding of official policies and promotes mutual trust on matters of national importance. However, it conflicts with an individual's 'right to privacy' and needs to be exercised with discretion. The right to know makes the public vigilant of public affairs and infringement of their rights and develops in them the critical faculty, which is vital for democracy, thus leading to a healthier democratic polity.

Fundamental Rights, as enshrined in Part III of the Constitution of India, are enforceable in a Court of Law. Whereas the Directive Principles of State Policy, as contained in Part IV of the Constitution, only lay down the lines on which the Government should work under the Constitution. The Directive Principles also specify certain rights of the

citizens, which shall not be enforceable by the Courts like the Fundamental Rights, to which State shall nevertheless aim at securing by regulation of its legislative and administrative policy. The Directive Principles are addressed not only to the legislatures and executive authorities of the Union and the States but also to all local or other authorities within the territory of India.

It is suggested that inclusion of the Right to Information in the Directive Principles of State Policy would fully assure the 'right to privacy' and eliminate litigation at enormous cost to the exchequer. The Government machinery would not be unduly burdened to ensure swift sifting of material and supply of information to the requesting public, causing avoidable disturbance to the routine functioning of Government machinery, as this right is likely to be misused for ulterior purposes.

It is to be realised that executive Government is a continuous process which must be carried on uninterruptedly. The first principle of administration that must guide the official is that he should do his work without fear or favour and with objectivity. To make him function in public gaze would render him ineffective and helpless. Officials are prohibited from defending themselves in public and the net result in such a case would be serious damage to his morale and loyalty to the public cause. If the official is left to fend for himself, he tends to play safe and spends his main effort in setting up his own defence against the prospect of attack or criticism. This would lead to an irresponsible administration, seething in corruption and inefficiency.

The Right to Information and the Official Secrets Act go together. Guaranteeing the Right to Information necessarily entails amendment to the Official Secrets Act, with a view to liberalising the provisions of the law in this regard. The major objection has been to the operation of Section 5 of the Official Secrets Act, which makes it criminal to disclose an unnecessarily wide range of official information. It applies to all information without distinction. But, a need for greater access to official information has been felt for a long time. The Second Press Commission has also recommended a legislation to ensure a measure of access to the citizen to official information. It was examined in detail to amend Section 5 of the Official Secrets Act so as to make it more limited in application. However, after careful examination, the Government felt that this was

not necessary "as the existing provision of law seems to be adequate".

Right to Public Information falls within the domain of Ministry of Information and Broadcasting, while the Right to Official Information falls within the Ministry of Home Affairs' jurisdiction. The I & B Ministry simply functions as a servicing Ministry and does not disseminate any public information without due authorisation from the concerned Ministries/Departments at appropriate levels.I & B Ministry does not act *suo moto*. As the Right to Information encompasses both, it acquires a complex and complicated dimension.

Right to Information is guaranteed by the Swedish Constitution. Other countries which allow access to official information are the USA, Finland, Denmark, Norway, Austria, Canada and France. The broad scheme of legislative measures in these countries is to give the citizen access to official documents on the basis of an application. If the request is not granted, an order must be passed giving the reasons for refusal of permission. The relevant laws in these countries do not provide unbridled access to information. Subjects on which information cannot be given have been specified as national security, foreign affairs, material protected by other Statutes, Cabinet proceedings, Trade Secrets, Confidential business information, information about individuals, investigatory records, and records relating to examination of banks and other financial institutions by supervisory agencies. In these advanced countries, stabilised economic development, social cohesion and honed-up value systems with accent on consumerism have all contributed to their urge to sensitise abstract concepts like the Right of Citizens to Official Information. Yet, critics have charged that the exemptions allowed under the relevant law enable the Governments to keep secret almost as much material as before. The lawyers have increasingly utilised the Right to Information more for the benefit of their clients rather than for informing the public. News Agencies have, at times, withheld information from the public by involving 'news judgement and pleading time and space limitations'. Despite notable successes, journalists continue to delay reports and agencies and reluctant to make certain requested data, public. Law Enforcement Agencies are unable to cope up with the overwhelming requests for information by individuals, the Press and the public interest groups.

In a developing country like India, seized with more urgent problems, it could hardly afford to set up a machinery of this enormous dimension. Decision-making process in Government is surely an internal affair in which the citizens should not exhibit direct interest. The final decision of the Government, as approved by the Parliament, can be the subject of enquiry by the citizens. Otherwise, executive Government is impossible to carry on. Traditionally the bureaucracy is shielded from the public gaze. Just to cater to the whims and fanciful demands of a few individuals, students, researchers, etc., it does not behove to make naked exposure of every limb of body politic to public gaze. The assertive Middle Class and the vociferous intelligentsia are prone to agitate, completely oblivious to the pressing problems of our countrymen, half of whom are struggling below the poverty line. There are other pragmatic ways and means to make the functioning of Government transparent, like dissemination of more official information through already existing and time-tested machinery and to provide greater access to information for responsible section of journalists.

With the information explosion and the burst of new and inexpensive technologies, access to material has become much easier. Indeed, there is an increasingly greater flow of information, news and views, subject to the safeguarding of vital interests but allowing for the growing desire of people to be better informed and to be masters of their choice.

The specific issue of Right to Information being covered under the article 19 (1) has not been the subject matter of a particular reference to the Supreme Court. There are also several important Rights conferred by the Constitution which are not Fundamental Rights, like the Right to Vote, the Right to own property, the Right of freedom of trade and commerce and the Right of income. It would be better if this Right is not made a Fundamental Right to avoid the opening up of the flood gates of litigation and the consequent wastage of time and energy of the entire administration in the Government at the Central and the State levels. The Constitution is obviously not expected to spell out the several details, modalities and procedures for working out and implementing the Right to Information in its different facets. For that purpose, a statute and a set of regulations are necessary. In view of this and the need for retaining flexibility, it would be proper if a provision on the

following lines, like article 300 A, is placed in the Constitution under an appropriate chapter:

> "Subject to the other provisions of the Constitution, every citizen shall be entitled to have access to information in the custody or possession of the Government to the extent and subject to the conditions limited by a law of Parliament."

To ensure the 'Citizen's Privacy', a Committee may be set up to undertake a comprehensive study and identify the provisions likely to infringe on such privacy and develop a code of fair information practices to be followed by all Departments, public authorities and undertakings in respect of personal record keeping systems that they maintain, collection of personal information, standards for maintaining the integrity and security of data, controls exercised regarding transfers of data and other related details.

A new Statute, called "The Freedom of Information Act" may be introduced to extend the present laws and systems that provide access to information under the control of the Government of India and to provide a Right of access to information under the control of the Central Government and other Authorities and Corporations, to be notified. It should be made clear that this legislation is to complement and not replace the existing procedures for access to Government information and is not intended to limit in any way access to the type of Government information that is normally available to the general public. A Central Tribunal on Information Practices may be established to exercise the jurisdiction, powers and authority conferred on it by or under the new Statute. This Statute on Freedom of Information shall be covered under Entry 12 of the Concurrent List in the Constitution, which relates to public records, among other things.

The Ministry of Information and Broadcasting may be entrusted with the task of formulating the Information Policy and to issue guidelines to different Departments and Ministries so that they could evolve and implement communication strategies for providing relevant *suo moto* information to the general public as well as to the special users of the information that is held by the Departments.

It is for the press to indicate from time to time what is public opinion

(if not the voice of the people) or what is the opinion of an individual or a group. Correct, frank and impartial reporting is the foundation of a democracy, nay foundation of freedom itself. The Press has two main aspects, as a part of what is known as the information industry and as a factor in the formulation of opinion. In both respects, it has to act with responsibility to be effective and reliable as facts are sacred, comment is free. The mass media now cover a wider ground. The people prevail everywhere and their needs should come uppermost. The media should subserve the interests of "We, the People".

39

Constitution of India as an instrument for Economic Growth and Social Justice

Shaikh Hassan Haroon

The Constitution-makers aimed at making India a land of abundant opportunities. Therefore the Directive Principle enshrined in article 39 (c) directs at the "Operation of economic system which does not result in concentration of wealth and means of production to the common detriment." Article 39 (a) and (b) aim at "securing adequate means of livelihood and distribution of ownership and control of natural resources of the community as best to sub-serve the common good." Even the Preamble of the Constitution makes specific mention of social justice'. Our country has made significant economic development despite many odds, the major odd being the population explosion whereby the number of un-employed keep on increasing despite planned growth. In fact, we are trying to ride two horses simultaneously, i.e., the horse of economic equality and the horse of economic development, but in practice we are not able to do either satisfactorily.

In order to dilute the concentration of economic power, we have made the law against monopolistic practices. In fact there is a tendency in the masses to think that 'profit', 'property' and 'money' are dirty words and accuse that they are tainted with exploitation or certain bad deeds. In fact, the motive of reasonable profit always leads to economic development and creates national wealth. Our large number of public undertakings are making losses and still indulge in social obligations, perhaps to camouflage the intrinsic defects.

Recently, in England powerful trade unions submitted before the U.K. Monopolies Commission that they were in favour of amalgamations and mergers and of big corporations being allowed to grow bigger, because such corporations could offer better wages and better security for labour and could also benefit consumers since they could produce quality goods at cheaper prices because of economies of scale. This is a sound economic approach, and it is not the approach of capitalists but of trade unions and a labour government. However the present Prime Minister has realised many of the follies of the previous Budget and has come up with whole effort to gear up the economic system which has been deteriorating for some time.

In the Western world, the emphasis is on establishing multinational industrial houses having bases in the different parts of the world so that the commodities produced by them could be sold at competitive prices in global markets and could invest money in research and developmental activities. In India, there appears to be a cause for establishing giant Industrial Houses which can create commodities of competitive prices in the world market because in India the labour is comparatively cheaper. There is a proposal also of having a free port in Goa. This will definitely boost the economy and the country will earn foreign exchange which is very much needed.

The idea of social justice is enshrined in the Preamble of the Constitution and the Directive Principles in the Constitution are the guide-post for the Government to frame the policies. There also we find the spirit of social justice — elimination of poverty by creating gainful employment or otherwise. In fact, we have abundant natural resources and man-power and we should be in a position to eliminate poverty if the resources and the man-power are properly employed. Social justice is different from mere equality. Social justice demands that there should be adequate differentials for ability and other laudable qualities. Elimination of such differentials is the very negation of social justice. It is unfair to those who are denied the fruits of their industry, integrity and intellect and it is equally unfair to the tens of millions whose hope will die within their hungry hutments, since in a democracy there can be no economic growth without such reasonable differentials, and drastic policy changes. The present Budget, attempts to liberalize the industrial policy, and brings fresh ideas.

It is the fundamental principle of social justice that labour enterprises get fairly rewarded. That is the reason that there are many ideas of platitudes in the Directive Principles of the State Policy enshrined in the Constitution and it is for the governments to device policies that are consistent with the Directive Principles and whereby this country could have a bright future ensuring the common good of all.

40

Constitutional Amendments by Consensus

Brij Mohan Mishra

Dr. Rajendra Prasad, the President of the Constituent Assembly had said: "Constitution is an inorganic and inanimate document. It is the human beings who infuse life into it". In other words, an experienced driver can drive well even a wobbly vehicle while an inexperienced one will put out of order even a running vehicle. Likewise, if the people are good, whatever may be the Constitution, we can make do with it. We know that England has an unwritten Constitution. Yet democracy has been running along smooth lines there for centuries. We have a written Constitution. It has as many as 395 articles. We have amended it more than 70 times and even then we are discussing whether the expectations of our Constitution framers have been fulfilled or not. The views expressed here represent the perceptions of a common man in this regard.

Socialism, secularism and democratic republic have been enshrined as our aims in the Constitution. These could be achieved only through the Constitution. Persons in power perceived socialism in their own ways, but none could define it in concrete terms till today. The fate of the socialistic pattern from which we had borrowed this ideology is no secret to us.

Is it our misfortune that even after 45 years of our independence, we continue to clamour for a discussion to find out the exact connotation of the terms such as communalism, secularism. We have been using these terms openly and with impunity without understanding them properly. We now propose to hold a debate to find out the exact meaning of these

terms. We do not know what will be the outcome of this debate and whether we will be able to define these terms categorically. Nonetheless, we will be able to get the opinion of various thinkers on terms like nationalism, secularism, etc. as these terms have not so far been defined properly. If we wish to maintain the dignity of this great nation of ours, we will have to redefine our Constitution in the right prerspective.

As far as democracy is concerned, it is existing because we conduct elections according to our Constitution and form the Government. Thus the democracy, in its modern sense, has been established here on political lines. But ours is an ancient culture. The psyche and temperament of the people is marked by tolerance and magnanimity. The seeds of democracy have been present in our culture from the very beginning. People go to Rameshwaram to consecrate the Ganga water. Millions of people participate in the Kumbh Mela even today. The credit for the survival of democracy in the country goes to its great people and not to the politicians. The Constitution has rekindled the tolerance in our blood and our temperament. That is why the democracy has been functioning successfully here and the whole world is a witness to it.

We have accepted federalism in our country. There has been a lot of controversy and debate in this respect as well. If we liken a tree to a nation and do not accept its various branches as the tree itself, we will be far from logic. Ours is a very ancient country with numerous castes and communities inhabiting it from time immemorial. The nation has remained united since the Vedic times. We however find in it certain shortcomings which need to be removed. Article 356 of the Constitution has been misused many times. In exercise of its power under article 356, the Central Government imposed President's rule 89 times during the last four decades. In the words of Dr. Ambedkar, this article was a 'Dead Letter' and was to be taken recourse to in exceptional circumstances but the rulers have made it instrumental in achieving their political objective. The result is before us. It has led to many controversies which have in turn given birth to secessionism. The Central Government often threatens to invoke article 356. Those who run the Government at New Delhi after getting mandate from the people exercise their powers under this article but the Governments that they dissolve also enjoy people's mandate. Are the State Governments or legislature formed by some

second grade mandate? But when there is a discussion on principles, it is said that there should be decentralisation. The States, Panchayats, Municipalities and Municipal Corporation should be strengthened by giving them more powers. But the condition of the State is worse than that of the Municipalities and Panchayats. The situation needs to be remedied without delay. In practice, we take the powers of the State lightly. It is a mockery of the Constitution. Thus the feelings of distrust for each other have been generated with the result that the secessionism is rearing its ugly head in the eastern region, Kashmir and the Punjab.

I will not go into the question of removal of the judges. We all know fully well as to what is happening in Justice Ramaswami case. It is no secret that when a judge himself chooses to resort to contempt of the court, nothing can be done about it. That problem has not been solved even after a lapse of two years and they are soliciting the opinion of the Attorney-General as to whether they can hear this case or not and whether they should discharge the duty cast on them. These are the condition the country is at present going through. On the basis of experience gained so far and through debate and mutual consent, the constitutional provisions on such delicate and serious issues need to be made clean.

If public servants turn anti-people, their services cannot be easily dispensed with. They have been provided protection under article 311, so that they may discharge their duties without fear. But it seems that even this protective cover is being misused. Daily we see that if somebody is transferred, suspended or retired on administrative grounds he can easily obtain stay against such an action. The Executive is unable to run the day-to-day administration. Now the questions that crop up are: Will the legal rights of a Government employee be allowed to swallow the public interest? How to deal with a corrupt or incompetent Government employee? What is the solution of this problem?

If by virtue of his position in the Legislature, a Speaker takes action under the Anti-defection Law, one easily gets stay against it. The result is that a confrontation has started between Legislature and Judiciary. None of these three wings of the government is sovereign in itself. None is superior to the other. The Constitution is supreme and each of the wings has its own parameters. If we transcend these parameters, we will be doing immense harm to democracy.

In the courts, cases remain pending for as long as ten years. In the Madhya Pradesh Legislative Assembly a member was expelled for his indisciplined behaviour in 1978. He has since been elected twice but his old case is still pending in the Supreme Court. We have to respect the Judiciary. Be it the Executive, the Judiciary or the Legislature, all the three have their own standards, limitations and ideals. They have failed to live up to the aspirations of the people. I think the fault does not lie, with the Constitution. If we want to bring any reform in the Constitution, we can do that because our Constitution is very flexible. It has been amended 71 times. But merely amending the Constitution will not help improve matters because the matter is concerned more with 'intention' that with 'policy'. Whatever may be the deficiencies in our Constitution, we can remove them and move ahead, provided our intentions are good. If we work with good intentions and loyalty, we can, despite some lacunae in our Constitution, implement welfare policies in the country, do good to the common man and make our nation strong and powerful. But if our politicians do not have clear conscience and do not rise above party and vested interests, no useful purpose will be served either by keeping the Constitution in its present form or by amending it several times.

In fact, the Constitution is the property of the whole nation and its people. To make amendments, additions and alterations in it is the prerogative of the people of the country and not that of the majority party of judiciary. The amendments in the Constitution should be made by national consensus and not at the instance of the majority party or judiciary. National interest as also the ambitions and aspirations of the common man should be kept uppermost in the mind while making amendments to the Constitution.

This is the translation of the article written in Hindi.

41

CONSTITUTION — APPARATUS FOR CHANGE

Simon D'Souza

The Constituent Assembly which was set up by the will of the people and which derived from the people all power and authority, worked from 1946 to 1949. For the first time people were free to shape their own destiny, to preserve their aims and objectives and to carve institutions for their realisation. The Constituent Assembly began its deliberations on 9 December, 1946. On that historic day, envisioning the constitutional structure of the world's newest democracy, Shri Sachchidananda Sinha, Provisional Chairman of the Constituent Assembly, quoted in his inaugural address the words of Joseph Story:

> The Structure has been erected by architects of consummate skill and fidelity. Its foundations are solid; its compartments are beautiful as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title.

Indeed, the new Constitution of India, adopted on 26 November, 1949, reflects great skillmanship, craftsmanship and workmanship. Once, on a visit to London, Gandhiji was asked what type of a Constitution he would give free India. Prompt came the reply, "I shall strive for a Constitution, which will release India from patronage, I shall work for an India in which poorest shall feel that it is their country, in whose making they have an effective voice..... This is India of my dreams". The Constitution reflects this Gandhian dream.

The Preamble to the Constitution declares with solemnity that it is 'We the People of India' who have enacted a Constitution for ourselves with the objective of fulfilling certain goals. And transcending among them is that of social revolution. Through the revolution would be fulfilled the basic needs of the common man, and it was hoped, that this revolution would bring a fundamental change in the structure of the Indian society—a society with a long and glorious cultural tradition, but greatly in need of a powerful infusion of energy and rationalism. It is this theme of social revolution that runs through the various provisions of the Constitution.

Since the first world war, two revolutions were going on in the country, one was a National Revolution and the other Economic. As Pt. Nehru had observed, with independence, the national revolution would be completed but the social revolution would go on. Freedom was not an end in itself but only a means to an end, "that end being the raising of the people..... to higher levels and hence the general advance of humanity."

K. Santhanam, a member of the Constituent Assembly, had spoken of the three revolutions. The Political Revolution that would end with independence, the Social Revolution, meant to get India out of the medievalism based on birth, religion, custom etc. and the third revolution was an Economic One—the transition from primitive rural economy to scientific and planned agriculture and industry.

The new Constitution tries to free us from social bondage, it tries to feed the starving people and to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity. It ensures stability without stagnation and growth without the destruction of values. It tries to make India a land of opportunity and not of opportunism. It ensures social justice and reconciles individual good with public good. The core of this commitment to social revolution lies in Part III and IV of the Constitution pertaining to the Fundamental Rights and the Directive Principles of State Policy, respectively. These are what Granville Austin calls the 'conscience of the Constitution.'

The Fundamental Rights of the citizen are also those negative obligations on the State not to encroach on individual liberty. They lay down that the State is to deny no one equality before the law and that all citizens have the right to freedom of religion, assembly, association and

movement etc. Although the Fundamental Rights, primarily protect the individual and minority groups from arbitrary, State action, three of the articles have been designed to protect the individuals against the action of other private citizens. Article 17 abolishes untouchability. Article 15 (2) abolishes all types of discrimination. Article 23 prohibits forced labour. The Fundamental Rights try to foster the social revolution by creating an egalitarian society that would free all citizens from coercion or restriction by the State or by the society.

The Directive Principles of State Policy aim at making the Indian masses free in a positive sense from centuries of exploitation, free from abject physical conditions. The Directive Principles of state policy set forth humanitarian socialist principles that were and are the aims of the Indian social revolution. They recognise the fact that one of the chief functions of the State is to secure the social well being of the citizens and the economic prosperity of the nation.

The essence of Directive Principles lies in article 38. The State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may be, a social order in which Justice—social, economic and political shall inform all the institutions of the naitonal life. To achieve this goal, the Constitution contains various provisions in Part IV. It has commanded the State to see that the citizens have an adequate means of livelihood and that the ownership and control of the material resources of the country subserve the common good, that the workers not only get a living wage but a wage that will enable them to maintain and improve their mental and physical health. Thus the Directive Principles are designed to bring about a social revolution. Nehru considered that India's very survival depended on the achievement of this socio-economic revolution. He warned "if one cannot solve this problem soon, all our papers Constitution will become useless and purposeless". Truly, political freedom is useless, without Economic and Social Justice. Through the Directive Principles of State Policy, the Constitution directs the investment of human and material resources in an imaginative and planned manner. Eradication of poverty is a major objective of our country. It can be done by proper use of human and natural resources. So the best cure for economic ills is to fulfil the Directive Principles of State Policy. It is the economic mandate of the Constitution.

Now, how far the State has marched in the direction of social revolution? How far it is able to create a just social order? The Parliament and the State Legislatures have enacted several social legislations to render social justice to common man. A lot of progress has been made in the field of agriculture and industry. There has been legislation on minimum wages for the workers, labour laws have been modernized and conditions of labour have been improved. Land reforms have been passed. Special protection has been given to the social and backward classes of people.

But all said and done, a large section of our people is still without adequate means of livelihood. We have not been able to provide a living wage to all our workers. We still have to take sound steps to see that the ownership and control of material resources of the community are distributed as best to subserve the common good. The operation of our economic system continues to result in the concentration of wealth and means of production to the common detriment. We have still to go a long way to create the social revolution visualised by the Directive Principles of State Policy.

A country is what its people make it and not what its Constitution prescribes. The Constitution can be worked as well as wrecked by its people. The Constitution of India is a workable document. Indeed we may say that if things go wrong in our country the fault will not be that of the Constitution. What we will have to say is that man was vile. So the people who guide the destiny of India should remember that the service of India means the service of millions who suffer; it means the ending of poverty and ignorance and disease and inequality of opportunity. But so long as there are tears and sufferings, the work will not be over. The Constitution is an instrument for economic chance and social justice. It is well planned economic growth on the basis of the Constitution that can alone ensure social justice.

Here I would quote Friederich Max Muller :

> If I were to look over the whole world to find out the country most richly endowed with all the wealth, power and beauty that nature can bestow in some parts, a very paradise on earth—I should point to India.

So let us pledge to preserve this paradise. For, if India goes down; all will go down; if India thrives, all will thrive; and if India lives all will live. So let us not stay away from the path laid down by the Constitution. A Constitution may perish in an hour by the folly, or corruption, or negligence of its keepers, the people. So let us not let down the Constitution.

42

Must we have a Second Republic?

Era Anbarasu

If the national objective is to find a system that on the whole functions reasonably well and responds to the growing popular aspirations, we should be agreeable to give a hard look at the working of our Constitution all these four decades. All these years, we have come across several limitations while responding to the Directive Principles and the Fundamental Rights enshrined in the Constitution. We had to amend the Constitution on several occasions, the most important being the 42nd Amendment.

Now that four decades have passed since adoption of the Constitution, we are certainly in a much better position to examine whether the Constitution is adequately responsive to the urges and aspirations of the people of the country. A periodical review is not, after all, a bad or subversive idea, for a certain Constitution adopted at a certain time more or less reflects the perceptions and dominant trends of the representatives who adopt it. To continue to overlook the new balance of forces emerging in the mean time will be counterproductive, to say the least. The disintegration of the USSR lends a peculiar urgency to the need to review the working of the Constitution, for it is evident that a timely review of the functioning of the Soviet Constitution could have helped the fast deteriorating situation in that country.

When I make a plea that we better review the working of the Constitution and suggest ways and means to further strengthen it so that it emerges as a sharp-edged instrument to get people their due, I

would also suggest that we take a hard look at the subordinate legislation which derives its authority from the Constitution. Take, for instance, the Criminal Procedure Law which was drafted in the 19th century. Dr. B.R. Ambedkar who piloted the Constitution Bill in the Constituent Assembly felt that the subordinate legislation governing various walks of life did not adequately reflect the spirit of Free India's Constitution. Accordingly, I plead we provide in the Constitution effective measures calculated to offset the frustrations we have encountered all these four decades and also review the subordinate legislation with a view to updating it to fit in with the republican spirit of the Constitution, which is not at all negotiable.

The ultimate object of the Indian Constitution and its imperatives have been that it provides social, economic, political and legal justice to the people of this country. There is a specific reference to it in the Preamble of the Constitution. Apart from analysing the functioning of the three important organs of the Constitution, namely Executive, Legislature and Judiciary, I would like to limit my observations to the concept of social justice. Of course, the area of social justice is very vast covering various problems of the under-privileged rural poor, the weak and the meak, the rural landless people living in the remote corners of the country. It also includes women to whom equality of opportunities for their betterment is an important factor. Though the Constitution provided several measures in these areas yet we could not achieve the desired results to the satisfaction of the vulnerable section of the society. For instance, the legal system provides the same punishment to a person who commits theft, whether of a diamond or a loaf of bread. This is a case of glaring injustice to treat a habitual offender on par with a person who had to steal for survival. These are matters of serious concern which call for review of the system. We cannot ignore the depressed, deprived, down-trodden and vulnerable sections of the society.

The President

Although the Constitution, in no uncertain terms, specifies the functions of the Head of the State and the Head of the Government, there were occasions when the President and the Prime Minister differed on Constitutional grounds. In the year 1987, the President's assertion of his

constitutional rights and obligations rocked the entire nation. The facts were simple. It was widely reported that Giani Zail Singh, the then President of India, demanded that he be apprised of all important State matters and consulted on them in terms of article 78 of the Constitution. However, the then Prime Minister, late Shri Rajiv Gandhi, was reported to have taken the earliest opportunity, to tell the President that he had been keeping him informed of all State matters. Besides, the Prime Minister was reported to have argued that when the President insisted on compliance of article 78 of the Constitution, he implicity meant that the Prime Minister was actually not doing so. In a grave situation like this the best course, as the Prime Minister while contending that he was complying with article 78 reportedly conveyed to the President, was to refer to the Attorney-General of India on the intepretation of article 78.

I do not agree with the oft-repeated view that answers to questions related to the nature and scope of the powers of the President to seek information are already provided in the Constitution in clear and unambiguous terms. For, there are many influential legal pundits who hold the view that the President has every right to all information concerning the affairs of the State. It is, they argue, a mis-interpretation of article 78, to maintain that the President is entitled only to such information as the Council of Ministers thinks appropriate. Although several constitutional experts have argued that, in the absence of any concrete proof of corruption and malpractice, the President should not have recourse to a drastic step because it might take our country into a *cul de sac.* there are others who argued that the President in his pleasure could dismiss the Prime Minister. However, it was also argued that the President could not dismiss a Prime Minister who had the backing of the Lok Sabha.

The frightening consequences that controversies of this nature are likely to leave behind will hardly strengthen our fragile democratic fabric. The only effective remedy, I am told, lies in a measure of mutual understanding and mutual regard between the President and the Prime Minister. Ironically, what is claimed to have been provided in the Constitution is conflicting, while the only effective remedy a being prescribed is extra-constitutional, by any standards.

The President-Prime Minister controversy, once again, underlined the urgency of some form of political restructuring which must, so to say,

sum up our specific experiences in the 40 year old working of the Indian polity. Inevitably, the exploration would involve a re-appraisal of the form of government the Constitution has prescribed.

Instability

The other point to which I would like to draw attention is the inherent instability which the Parliamentary form of government inevitably seems to have led to. The danger of instability at the Centre is real. The country is so vast and varied that the electoral waves remain confined to certain zones and by no means take the entire country in their sweep. We can no more hope to have a single party dominating in Lok Sabha in numbers.

Perhaps, the founding fathers of the Constitution envisaged that as in the United Kingdom, India would have a two-party system. At the moment we have a multi-party system and the threat looms large that more fragmentation is in store for all political parties. From the year 1989, we have the continuing spectacle of a minority government ruling the centre. The earlier two minority governments did not last for the whole term.

Owing to the instability at the Centre, there has been a precipitate erosion in the working of all institutions which alone make democracy meaningful. It is not being sufficiently realised that the problem of separatism and secessionism which the country has been facing in recent years owe not a little to the instability at the Centre. In fiscal policy decisions, perspective planning, population control and river-water disputes, the performance of the successive governments at the Centre no long ago did not bring glory to the interests of the people as a whole. In the field of international relations, the short-lived governments at the Centre made shocking departures from the traditions built assiduously over the decades since Independence. Certain moments arrive in history when the country can ill-afford to opt for soft options. Responding to the overall interests of the people the leadership has to make a series of unpopular, hard decisions. An unstable leadership seeking to placate vociferous voters in the next snap election is not expected to have a long range policy. In its own short-term interests, often an unstable leadership was found to have squandered all opportunities to put the country's economy on the right track.

In the existing system when a government at the Centre is voted out, the President has to invite the leader of a minority party to form the government and obtain vote of confidence in the Lok Sabha. In the year 1979, Shri Sanjiv a Reddy, the then President, was exposed to a really ambigous position. For no political party in the Lok Sabha then was assured of majority support and intriguingly, the Janata Party whose leader Shri. Morarji Desai tendered resignation of his government was not prepared to have a new leader being backed by a majority of the party MPs. In the Constitution there is no provision for President's rule at the Centre. There has to be a Prime Minister and there are no well-defined guidelines in the Constitution. In the circumstances, the President has to apply his mind, get in touch with leaders of the political parties represented in Lok Sabha to ascertain who among them could possibly obtain vote of confidence within a month of swearing-in. The situation, inevitably, leads to horse-trading. And the fact remains that different Presidents applied their minds differently. Although high-level appeals are made not to drag the President into any unseemly controversy, the political parties which feel adversely affected by the President's decision invariably put partisan motives on the President's decision. However, it is generally recognised that the President who is merely a Constitutional head, assumes extra-ordinary importance when he is required to invite the leader of the minority party to form government and obtain vote of confidence. Fortunately for the country, the successive President exercised their individual discretion in the best interest of the country. However, one cannot rule out a future President exercising his discretion in an erratic and arbitrary manner. This fear brings us to verify whether the Constitution has within it, any checks and counter-checks regulating the Presidential exercise of discretion in such matters. In the Constitution we do not find any, and precisely for this reason the country is exposed to a grave risk. Accordingly, we cannot any more overlook our past experiences in the matter of Government formation at the Centre when no political party enjoys absolute majority.

Consensual Functions

Given its peculiar composition, its bewildering languages, castes, communities, religions and also its uneven development, India has rightly evolved consensual functioning as a matter of policy and faith. The

leaders of the Indian freedom struggle did not represent any partisan interest. It was for this reason they could mobilise all sections of the country on the common point against colonialism.

However, lately the evil and disintegrating trends of casteisms, communalism, regionalism and fundamentalism have assumed shape as a fact of the Indian polity. Except convening frequent meetings of the National Integration Council and making impassioned appeals for national unity and integrity, we have not been able to devise any concrete measures to make the parochial appeals any less popular.

Parochialism lately has grown so obsessive that one finds a certain degree of erosion in our preparedness to take it on. Recently, the Bombay High Court set aside the election of a few Maharashtra legislators for having made parochial appeals to the electorate. However, worse practices were reported from other States and the election of the legislators who resorted to far worse parochial, communally motivated appeals were not challenged in the courts, let alone being set aside. The Election Commission seems to have overlooked the need to come down heavily on communal and parochial forces. With castiest and communal elements making a sizeable presence in Lok Sabha our consensual creed has often been reduced to a compromising creed. This is because the ruling party at the Centre is without a sufficient majority to antagonise all opposition parties, should there be a basic need for that purpose. The situation today has grown so frustrating that we have, particularly in northern India, only two constituencies, one is that of the caste and the other, of the religious community. Parochial appeal has its seductive appeal to sections of people who are not involved in the tasks of nation-building and strengthening grass-root democracy. Shall we allow our excellent heritage to fritter away in this manner? While several well-meaning friends and political parties are equally concerned over this alarming erosion in our public values, we have not examined so far how the present system has in a way contributed to this erosion in public life.

Diverse political parties are ruling diverse states in diverse ways. Even if there is a majority government at the Centre, the chances are that not all States will have the same political party forming government there. The diversity of the ruling political parties at the Centre and in the States as also a plethora of other important factors has already given rise

to two more contending constituencies — stateism and Leninism. While there are general complaints that the Union government is not responding to the legitimate needs of the States, lately we have seen certain State governments bullying and even black-mailing the Centre. This contradiction is likely to grow, for we have already witnessed the emergence of strong regional forces. Regionalism, I would emphasise, is bound to grow rapidly in a situation when the same political party is not ruling at the Centre and in a given State. We are yet to diagnose and treat this disease.

There are several people who think that there is nothing basically wrong with our system. They also presume that our Constitution does not need any fundamental transformation and uphold the view that the conception of its basic structure is absolutely sound. I would argue, given the hard fact that the Centre is being ruled by a minority government and the states by a plurality of parties, the Westminster model of parliamentary democracy will not be able to check the erosion in our public life and perhaps because of this failure, we shall expose our unity and integrity to new threats.

It is true that the Constitution has created certain institutions and endowed them with certain powers. However, to argue that the men and women entrusted with the charge of manning these institutions drastically eroded the credibility of these institutions because of their power hunger will be an exercise of over-simplification. Be it the Judiciary, the Executive or the Legislature there has been a shocking decline in accountability and the situation has turned out to be so grim that we have not been able to pinpoint how these three institutions have overstepped their constitutional jurisdiction.

Besides, it was assumed that in parliamentary democracy the Executive is responsible to Parliament, and this accountability can be asserted in the last resort through a no-confidence motion tabled and voted upon in the lower House. It was assumed that this provision was largely fictional in that the Prime Minister is generally in effective command of the majority in the House, and he is not likely to be overthrown during his term of office. This argument is flawed, for the assumption is that the Prime Minister is always in effective command of the majority. The Constitution-makers, perhaps, did not visualise that the Prime Minister would belong to a minority party depending on the

unpredictable support of this or that Opposition party on the merits or otherwise of the proposed legislation. It is also claimed that the political Executive (Prime Minister) in India not only holds exclusive executive and administrative power. It also effectively controls the Legislature through its disciplined party majority. The assumption has been that the Prime Minister invariably has a safe majority to fall back upon. The turn of events since 1989 lends credence to the fear that unless a miracle happens the Prime Minister will have either a slender or no majority at all. And notwithstanding the policy of brinkmanship he is compelled to follow as the leader of the largest and yet minority party, the Prime Minister is insecure and the Prime Ministership is unstable, because of the ever-present possibility of a sizeable party MPs defecting, mostly for the spoils in the other alignment taking shape. So the fact has to be recognised that the Office of Prime Minister no more symbolises stability, either of the Government or of the State.

The question today is : which office will represent a measure of stability in the Government and the State? The President is merely a constitutional head, while the Prime Minister is subject to the ever-changing alignments and re-alignments in the lower House. Long ago, Smt. Indira Gandhi felt that the question of having an alternative system should engage the attention of all sections of people : "... whatever the system, it can work only if there is a will to make it work on the part of all concerned. It is not merely the responsibility of the government to let the opposition function, which we do, but there are also certain obligations on ordinary citizens as well as political parties in the Opposition.... As I said, each system has its advantages and disadvantages. I have encouraged the debate — or, rather I have not discouraged the debate on this subject because I did not initiate it — just because I thought that people would study what is happening in other countries and find that there are difficulties everywhere, no matter what system they adopt. And whatever we have must suit our needs. But as I said in reply to an earlier question, basically there must be a feeling that we all want the system to work." The late Mr. Rajiv Gandhi emphasised that the debate on the question be organised to cover all other important questions including Centre-State relations.

I strongly plead that we review the post-1989 developments and take appropriate lessons to mitigate the two over-riding fears — the

likelihood of confrontation between the President and the Prime Minister at some future point of time and secondly, the need to secure and strengthen stability in the working of the Government and the State. On a closer study one will find that the recent distortious in the Judiciary, non-accountability of the public servants, failure of the Election Commission to make the political parties to conform to the secular values of our public life and above all, nursing of the narrower and often contradictory constituencies such as Caste, Creed, Community and Region owe not a little to the post-1989 scenario which is above all characterised by instability and resultant loss in the prestige of the Chief Executive at the Centre. It should be risky I think, to overlook any more the need to secure stability of sovereign authority at the national level.

The debate which Shri Vasant Sathe initiated in early eighties did not stem from the real problems we are facing now. Nonetheless, the reasons he advanced for a radical review of the Constitution are valid. The three reasons be placed before the country were :

(i) threats arising out of regional, parochial, linguistic and communal interests,

(ii) that there is no article in the Constitution which makes it mandatory to call upon the leader of the majority party to be the Prime Minister and head the Council of Ministers, and

(iii) in the forthcoming elections of Lok Sabha, the likelihood is that no single party would gain absolute majority.

To meet these grave situations Shri Sathe wanted all political parties to consider whether the President, now elected by an electoral college consisting of elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States, could be directly elected by the entire electorate of the country subject to his securing more than 50 percent of the votes cast. For this purpose he suggested amendment or modification of Article 54 and 55 of the Constitution.

When Shri Sathe initiated the debate in 1984, a section of the public opinion thought that the proposed amendments were meant to subvert the present system of parliamentary democracy of the Westminster model with the Prime Minister and the Cabinet wielding executive

authority, being responsible to Parliament, by the Presidential system in which the President as the head of the executive was not responsible to the Parliament. It was also feared that the Constitution which would provide for a President who would be head of the Executive and yet not responsible to Parliament would ensure further concentration of powers leading to yet more precipitate erosion of the powers of the States. They argued that the presidential system of democracy would lead to emergence of dictatorship.

Democracy is not negotiable. It is only democracy which keeps India together. Dictatorship is bad for India for the added reason that it will accelerate the process of disintegration of this nascent nation-state. Development, national integrity and democracy in that order must remain our watchwords. Looking at the general decline in all spheres of public life the body politic itself must undergo a process of rejuvenation. I emphasise the word rejuvenation, for the body politic which refuses to go in for periodical diagnosis and health care will degenerate sooner than expected.

This is not to suggest that we shall again get bogged down in the old and barren controversy — whether to continue with the present Westminster model of Parliamentary democracy on change over to the Presidential system? I do not plead for the Presidential system as in the USA or in France. My only contention is that it is time we went into the question whether Westminster model is adequately responding to our specific national tasks and indigenous structures. When confronted with certain unsuspecting and glaring gaps in the working of the Constitution we generally tend to think of solutions because the men and women entrusted with the task of governing have presumably not come up to the highest expectations of the founding fathers of the Constitution.

The two axes which seem to have given the Westminster model its extraordinary stability and strength have been the hereditary sovereign royalty and secondly, its two-party system. Since we have neither, not even apologies for these central British structures, the Indian political system must spell its own concrete responses to the peculiar set of problems which we, and none-else, are facing in our country. The multi-party system, an offshoot of our communal, castiest, regional and factional responses, cannot be wished away, and until we succeed in

eliminating all feudal vestiges, the possibility of having a two-party or even three-party system would remain remote.

The British Crown has been a glorious repository of political, social and even cultural stability of the British life and society. In our own system the institution of President has worked without attracting much notice only in normal times. It is only in certain difficult phases that the office of President assumes the character of a central constitutional authority.

In the Westminster model, they did not encounter any problems of mutual understanding or lack of it between the Crown and the Prime Minister, the latter being none else but a common-man who always exulted in being His Majesty's most obedient and loyal subject. Conversely, in the Indian political system the Prime Minister is the most important leader, his office is the most important office, and the President before his election to this office, as per practices so far, has been invariably a person who remains subordinate to the Prime Minister whether in Party or Government. The President has always secured his office consequent upon the decision of the Prime Minister to put him in that high office. Given the situation, he can never come to enjoy the extraordinary prestige of the British Crown.

Democracy does not necessarily mean Westminster model of parliamentary democracy or presidential form of government. The best course would be to have a single central constitutional authority incorporating the rights and functions both of head of state and head of government. In recent times Zimbabwe, a newly liberated state, abolished its two-tier system and opted for a single constitutional authority. The situation in India is all the more pressing, for, with the emergence of fundamentalist, regional and communal groupings, the political authority of the Prime Minister is bound to erode and show up as unsustainable, neither having the authority to sustain the system. One may designate the central constitutional authority by any nomenclature. A measure like this is likely to give the state a certain degree of stability which the country desperately needs today.

In view of our specific problems the central constitutional authority should be vested with powers to strengthen the secular and federal character of the Indian polity, supremacy of the Constitution and the

democratic and republican form of the Government. It must function as a federal government taking care of the briskly deteriorating Centre-State relations. At the root of the emergence of the several regional parties lies a certain degree of regional dissatisfaction as it were.

Several former British colonies opted for the Westminster model but barring India, all other states later chose to find more relevant system. My plea is that any further tinkering of the Constitution by a set of amendments will not possibly respond to our specific situation. We should imbue a new spirit in the Constitution. It may be noted that the people of France whose regard for the Constitutional governance of their country cannot be questioned, discovered that their Fourth Republic was terribly inadequate to respond to the trauma of political instability, confusion and threats of military insurrection in the 1950s. A new Constitution was drafted to usher in the Fifth Republic of France in 1958. The French success in recent times owes not a little to the French decision to find what is dross and what is vital in their own heritage.

Second Republic

In early eighties Smt. Indira Gandhi encouraged a nation-wide debate on the prevailing system in the country. It is now a decade since we have been debating the issues, while the unsuspecting flurry of events has already overtaken the fragile fabric of our polity. I plead we should opt for our Second Republic; a vital, adequate and responsive Constitution to ensure our stability and national unity and integrity, besides taking care of the inadequacies which have led to erosion of the Judiciary, non-accountability of public servants and erratic behaviour of several other institutions.

Does Federal System provide Equality among the States?

The Constitution provides for a unitary federal structure. There is a lot of resentment over the question of Union and States relations under the Constitution. Owing to the dominant hold of the Centre over its federating units, the discontentment amongst the federating states has increased substantially. Due to the rise in the level of political consciousness of the people in general, there have been frequent demands for greater state autonomy. The iniquitous working of the Indian Federation

and its obvious undertones have resulted in what is called step-motherly treatment to some States by the Union government. This has resulted in the emergence of reactionary tendencies in the adversely affected states and gave rise to the "Sons of the Soil" theory and at times, led to vulgar demand of secession from the Indian Union. It has also led to the growth of regionalism in the country and the overstress on regional and parochial tendencies have sought to threaten the unity and integrity of the country. It has been felt that there is a strong need to review the working of Centre-State relations. The Sarkaria Commission has done a stupendous task in this direction. It is high time that the recommendations of the Sarkaria Commission are implemented in letter and spirit so as to give adequate share to the federating units in the decision-making process and help them meet the people's aspirations at the State/regional levels. Besides, suitable adjustments in 'conflict-resolution mechanisms' such as Planning Commission, Finance Commission and National Integration Council should be made to make cooperative federalism in India a reality.

Functioning of Parliament

Another measure that should be encouraged to strengthen democracy in India is to improve the functioning of Parliament. Over the years, there has been a growing deterioration in standards in the working of Parliament. Lot of unparliamentary things are said on the floor of the House, at times the behaviour of the parliamentarians is without decorum and respect for the Presiding Officer. One of the reasons for this is that conventionally parliaments have performed the role of "talking shops" or debating clubs. Generally, a Member of Parliament is determined to make his presence felt in the House; he is keen to raise technical points, as in a debate, more to exhibit his debating and oratorial skills than letting Parliament transact its serious business.

Another weakness of the functioning of Parliament is the leading role bureaucrats play as compared to legislators, even in the law-making process. Parliament, according to the Constitution is the sovereign law-making body but in reality Parliament has been reduced to a place where the laws are made. There is enormous law-making business and the time at the disposal of parliament is relatively short. Hence, the bills in the House are generally drafted by the bureaucrats and the legislators are

only obliged to put on them their seal of approval.

These weaknesses of the functioning of Parliament can be taken care of if the *Committee System* is encouraged. Undeniably, there are committees in Parliament but there is need for more committees which can serve the purpose of actively involving the parliamentarians in the real decision-making process to help responsive and responsible government. Also, the time has come when the judicial officers must rise above their sectarian interests and ensure justice, as enshrined in the Constitution, in its letter and spirit. They must become the charioteers of social justice instead of halting its process.

Judicial Reforms

The effectiveness of any system or institution depends on the degree of confidence reposed by the persons whose conduct is required to be regulated. Today, administration of the judicial system in the country has reached a point of no return. Our judicial system is crumbling due to its own weight. This calls for review and reform. Goodness or badness of laws no doubt matter but the final credibility and respectability of the system depends on the quality of judges and the quality of justice. Justice itself is a question of faith. Our Judicial System is already under attack for inordinate delay, costs, complexities, technicalities and corruption. These cancerous ills are eating into the fabric of the administration of judicial system of the country. We have to orient the system by way of reforming it. This involves a multi-dimentional approach. For instance, procedural laws, appointment of Judges, judicial process, the system of appeal, revision and review, etc. need some critical attention. We may also consider how best to improve the present administrative justice system such as the Tribunals, Commissions and Committees etc. Tribunalisation of the Judicial system needs to be developed as an alternative model for administering justice by courts. While developing this model, the present constitutional provisions under article 136, 226 and 277 need to be reviewed for providing for appeals from the Tribunals and also for supervision of the Tribunals by an apex body like the Council of Tribunals, modelled on the pattern provided under Tribunals and Inquires Act of the United Kingdom.

A number of reports submitted by the Law Commission of India

on the judicial system provide a ground for exercising review in the area of administration of justice. Is it not paradoxical that since 1950, administration of Justice has never surfaced as an item on the agenda of the National Planning? This is disturbing. Recent instances of corruption at the higher level of judiciary is a matter of great concern to the Nation. We have to think in terms of evolving an institution within the judicial system to deal with complaints regarding corruption and mal-administration. For this, an institution like Ombudsman for Judges may be thought of.

The idea of supremacy, that is, the supremacy of judiciary over legislature and executive, and the supremacy of the executive over the other two organs will only destroy the Constitution itself and perhaps the objectives of the Constitution will come to a naught. Each organ should function within certain specified parameters without intercepting the functions and powers of the other two organs of the Constitution. In fact, all three organs should work in perfect unision to achieve the objects of the Constitution.

Whatever legislation is being brought, it should be first scrutinised by the highest court of the country i.e. Supreme Court of India and only then the legislation should be passed in Parliament so as to avoid future nullification of the Act by the Supreme Court or any other court as the case may be, under the guise of interpretation of law. Once the legislation is passed, it should not be questioned or struck down by any court in India. If we adopt such a system it will avoid unnecessary litigation and questions of supremacy of one organ over the other will not surface. Of course, there can be a provision for review.

Parliamentary Vs. Presidential Forms of Government — Debate to continue

Notwithstanding the fact that the parliamentary form of government has worked quite well for almost 41 years, yet the debate to switch over to the presidential form of government is worth considering. Many of the limitations of the parliamentary form, especially the one concerning defections or "horse-trading" of legislators has wisely been taken care of by the Rajiv Gandhi Government through the Anti-Defection Law. Yet, the Indian polity under the parliamentary system now confronts new

emerging challenges. The reality of the political situation in the country, especially since 1989, shows the need for consensual politics instead of party politics, which is the basic feature of a parliamentary form of government. This either calls for a National Government which should be a coalition of all like-minded national parties, keen to converge for implementing some commonly agreed basic national issues. Alternatively, in a bid to provide stability to the political system, the Presidential Form of government should be seriously considered. Obviously, the Indian nation can ill-afford short-term General Elections so frequently taking place due to the failure of the elected Central governments in completing their full-term in office. The problem of instability can be taken care of by experimenting with the Presidential form of Government after the French Model. A national debate on this issue needs to be encouraged.

Our Constitution does not envisage President's rule in the Centre. Looking at the present political scenario, one is not sure of any political party assuming absolute majority in an election. If some Front or Alliance is formed to get into the saddle of power, such an alliance or Front runs into practical difficulties in a short time since it is formed. Hence, the political situation becomes blind. As per the present Constitutional provisions, one alternative is to form minority governments — all governments formed at the Centre since 1989 have been minority governments. That is undemocratic and it has its own hassles; ultimately the people suffer in a minority government's rule, whether it indulges in "horse-trading" or accepts the undesirable demands of political factions who keep it in the saddle of power. The other alternative is to go in for another general election. It does not sound proper, looking at the present gloomy state of economy and polity. The third is to keep the minority government as "care-taker" government, till an alternative government is formed. Even this has its own short-comings. The lure to make money in the short span of exercising of power has horrendons implications. Also, the credibility of elections held under such care-taker government remains suspect. It is suggested that a provision in the Constitution must exist which should provide for President's rule in the Centre. Such a provision could not have been envisaged by the founding fathers. However, the present unstable times do call for such a provision to keep the polity stable and to mitigate some of the problems of the common-man.

However, such a provision may be invoked by the President of India only when no political party is in a position to form the Government. On such occasions, the President of India can assume power till such time a single political party emerges to form the Government by polarisation of like-minded political parties without going for another general election which costs heavily on the exchequer.

Electoral Reforms

If the decision-makers in the country do not consider the present time ripe enough for switching over to the Presidential form of Government, there is yet a strong need for initiating radical electoral reforms. The Rajiv Gandhi government took a bold decision of reducing the age of voters in a bid to infuse new blood in the electoral process. There is a need for taking similar bold initiatives to make the electoral process quite economical so as to encourage well-meaning people to take to politics. This can be achieved by providing for broadcasts by candidates over radio and Doordarshan. Also, there should be a ban on candidates or parties contesting elections on Caste/Religion or other parochial considerations and effective measures need to be provided to achieve the stated objective. The purpose of electoral reforms should not only remain confined to bringing economy but also to bring forth structural changes to help encourage better public spirited people to come to national politics so that politics no longer remains "the last refuge of scoundrels," as is often cynically stated. Another electoral reform should be examined to do away with the present "simple majority system" so that the electoral process does not remain confined to mere "counting of heads" but also "weighs them". In this regard, proportional representation specially the List System can be provided for. This would go a long way in encouraging the process of providing electoral stability in the country, which is the crying need of the hour. The electoral laws, I once again emphasise, must adequately reflect the Nation's determination to fight all vulgar forms of religious fundamentalism which pose a threat to the unity and integrity of our country. Over the last few years the Bombay High Court invalidated election of several legislators who indulged in appeals to religious sentiments. The time has arrived, I believe, we take a hard look at the Constitution and the electoral laws and strengthen them after drawing upon the Bombay High Court judgements.

People's Democracy

Notwithstanding the fact that the democratic system in the country has generally worked well for all these years, one can argue that it has not ensured real people's participation. The very concept of democracy is aimed at encouraging the devolution of power and involving the common people in decision-making process. Gandhiji described it as *Panchayati Raj*. Despite several half-hearted efforts so far, the democratic fibre of the country still needs to be strengthened. Late Shri Rajiv Gandhi attempted to accomplish a memontous task by introducing the *Panchayati Raj Bill* to help strengthen grass-root democracy in the country because power had failed to really filter down to the masses. Obviously, the efficient working of a democratic system demands certain prerequisites but the converse is equally true that such condition cannot be achieved without really involving the people at the grass-root levels in the democratic governance of the country. Hence, efforts need to be encou-raged to help achieve the concept of people's democracy.

Accountability

The Constitution and the legislation enacted thereunder have virtually reduced India to a bureaucrats' paradise. In no other system is the bureaucrat as powerful and at the same time as unaccountable as in India. In the existing state of affairs, the bureaucrat has emerged as the real dispenser of power at the highest and also the lower strata. He is free to entertain or not, a public appeal. He is free to shelve the appeal into his dustbins. He has shrewdly created an awsome hierarchy which leaves ample scope for alibis to justify decades of inactivity. It is easier to reach the moon than expect a file to reach the Secretary down from the dealing clerk. As parliamentarians we are supposed to strengthen legislation in the broader interests of people However, I must confess, we spend most of our time in chasing files and knocking at the musical chairs game often played by bureaucrats at every stage. As parliamentarians we are mostly exposed to public gaze. But the bureaucrat who wields real power is not exposed to public gaze.

There are instances where the bureaucracy has not taken any decision on a particular files for years together. Very often it is not a dead file but a live file which is consigned to the lumber room in the Secre-

tariat. The concept of accountability is not there. So I suggest we review the Constitution and the legislations and rules framed thereunder and make the public servant accountable. It should be ensured that they do not have unfettered freedom to keep a file pending for any length of time. It is strange that a particular file passes through nearly five hands in the department, starting from the Minister to the dealing clerk. This five tier system must go. Every file should have a specific life time and within that specified time, the file should be disposed of. Some of the laudable suggestions of the recent administrative reforms commissions/tribunal should be implemented.

Similarly, I would urge something very effective to offset the life-denying delay in judicial process. Here too, accountability is missing. I would not suggest any measure to limit the freedom of the Judiciary. But if the judicial right to freedom means extraordinary delay in dispensing justice, the entire exercise will go counter-productive. That the Executive and the Judiciary are accountable to none and have an inherent right to take their own time goes counter to the republican character of the state we are trying to build.

I would, therefore, suggest that the Executive and the Judiciary be made accountable in the sense that they cannot sit over a case ad infinitum. It may involve a hard re-appraisal of the Constitutional safeguards provided to the public servants.

No Constitution is sacrocant in the sense that it is not amendable. Hence amendments are a *sine-qua-non* of any Constitution and the Constitution of India is no exception to this general rule.

In a bid to meet the aspirations of the masses, the cumbersome process of amendments must be done away with. Instead, the time has come when the new Constitution of India should be drafted which is in tune with the present times and is able to effectively achieve the goal of social justice for the common masses. The Constitution of India has been experimented for the last 42 years and still it remains under experiment. It is too long a period to keep the Constitution under experiment. After all, the society is changing. According to the changing times, the Constitution also should be changed. Countries like France, USSR etc. had redrafted and changed their Constitutions several times to suit the need and necessity of the situation. Hence, the time has come for a total repeal of

our Constitution. A question may be raised here as to who would form the new Constituent Assembly so that it is really democratic and representative. The present Parliament must, through a resolution, convert itself into the new Constituent Assembly. If such a resolution could be unanimous, it would be better and it would reflect the will of the entire Nation. Alternatively, it should be incorporated in the election Manifesto of major national parties and on that basis their elected representatives can later converge and join hands to draft the new Constitution. Nonetheless, a serious debate is called for amongst all major national parties about the need to review, repeal and redraft the Constitution of India to start a second Republic and successfully meet the aspirations of the masses.

43

The Indian Constitution — The Ambedkar Perspective

Buta Singh

Constitution-making is the culmination of the aspirations of an emancipated people and a grand finale to the freedom struggle of an enslaved nation. The Constitution of a country will be in the nature of law emanating directly from the inherent authority of the people themselves binding all organs of government and all sections of the society to its principles and provisions as it is the fundamental law of the land. A democratic polity needs to be based on democratic principles embodied in a democratically written Constitution. The Constitution of a country is also made keeping in view the philosophy and concept of a limited government, limited by the longing of a people to be not only free but to be well-governed. We, the people of India set ourselves to such a task once we were freed from the yoke of British Colonial rule of over two centuries. Attainment of freedom by itself would not mean anything if we were not to use that freedom to establish a polity and social and economic order of our own free choice. The Constituent Assembly of India was set up accordingly in 1947 to write the Constitution for and on behalf of the people of free India.

The Constituent Assembly set up in terms of the Cripps and the Cabinet Mission Proposals, was composed of eminent personalities of the times, drawn from different walks of life such as political, constitutional, educational, cultural, etc. It consisted of a galaxy of freedom fighters, constitutional and legal experts, educationists, poets, writers and persons who had made a mark in their respective fields. Mahatma Gandhi was

conspicuous by his absence. Jawaharlal Nehru, Sardar Patel, Rajendra Prasad and a number of leaders were active participants in the task. Dr. B.R. Ambedkar, the then President of the Scheduled Castes Federation of India was another important personality to enter the Assembly, first as a rebel and a protestant, but came to be ultimately made not only a Member of the Drafting Committee but its Chairman. His credentials for discharging such an onerous task were beyond doubt and he emerged as the greatest Constitution-maker of 20th Century. As a relentless champion of the dumb down-trodden millions of India and as a great humanist of our times, he accepted the most challenging task so that he could utilise this life-time's opportunity to write the rights of the hitherto deprived, depraved and suppressed 'untouchable' in particular and of the Indian people in general. His total commitment was to ensure liberty, equality, fraternity and social justice to the people of India. As a staunch believer in constitutionalism and adopting perfectly constitutional means to bring about the much needed social change, he decided to make the Constitution as the fundamental instrument to bring about social change and write into the Constitution JUSTICE in capital letters. We shall, therefore, have to look into the Constitution of India to determine the extent to which the Constitution has succeeded in achieving this goal so dear to Dr. Ambedkar.

The Philosophy of the Constitution

The Constitution of India that emerged from the Constituent Assembly came to be accepted in the name of the People of this country on 26th November, 1949. The Constitution of India is an admirable document prefaced with a lofty Preamble, which provides the clue to a clear understanding of the spirit, the social, political and economic philosophy that pervades the various provisions of the Constitution. It should be relevant to recall here that this Preamble was initially moved by Pandit Nehru, and naturally it breathes and reflects the philosophy of the Indian National Congress party's programmes and that of Mahatma Gandhi. The Preamble virtually summarises the basic aims and objectives of the Constitution and that of the Aims and Objectives Resolution moved by Pandit Nehru which in his own words, was "something more than a resolution. It is a declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication". The Preamble which runs as

follows is sacrosanct and a great commitment on the part of not only political parties and government but also of every citizen of India. We are committed to these lofty humanistic principles in all our socio-economic programmes and developmental activities.

The Preamble

The Preamble reads as follows:

> *"We, The People of India,* having solemnly resolved to constitute India into a *Sovereign Socialist Secular Democratic Republic,* and to secure to all its citizens:
>
> *Justice,* Social, economic and political;
>
> *Liberty* of thought, expression, belief, faith and worship;
>
> *Equality* of status and of opportunity; and to promote among them all;
>
> *Fraternity* assuring the dignity of the Individual and the unity and integrity of the Nation;
>
> *In our constituent assembly* this twenty-sixth day of November, 1949, do *hereby adopt, enact and give to ourselves this Constitution".*

This admirable piece of declaration of our aims and values deserves to be reflected upon by every one of us to remind to ourselves the values the founding-fathers of our Constitution have prescribed. The Preamble is more specific and prescriptive than any other Preamble, including that of the American Declaration of Independence. Each one of the expressions contained in the Preamble is pregnant with meaning and has a great significance to and bearing upon our constitutional system, polity and society. Though, by itself, it is not enforceable in a court of law[2] the Preamble to any written Constitution, while stating the objects which the Constitution seeks to establish and promote, aids the legal interpretation of the Constitution where the language is found to be 'ambiguous'.[3] Hence for a proper appreciation of aims and aspirations embodied in our Constitution and for an evaluation of the several provisions seeking to establish and promote social justice and economic development we have to be guided by the relevant statements of the Preamble.

Social Justice — The Goal

Justice — social, economic and political is clearly laid down in the Preamble as the guiding principle of the Constitution. Social justice is the main plank on which our constitutional edifice is built. In fact, justice is the most positive aspect of Dr. Ambedkar's social and political philosophy. He was fully aware of the fact that it was hard and difficult to wrench justice from the deeply entrenched religious and caste interests. He fully realised that the Aristotelian 'common good' as the basis of social order based on the principle of justice should not be applied in India with millions of untouchables being in social and economic shades. He was painfully aware of the fate of an excluded section of society from the rights of citizenship in Plato's *'Republic'* which fostered that society. He was fully convinced that the denial of full rehabilitation of the untouchables, vested with full rights and privileges of full citizenship would always leave an incurable wound in the Indian society and polity. Perhaps, when he became deeply convinced that the lofty principle of *Justice* would never come to its own in this society, which has shown no inclination to appreciate it fully because of its traditional inhibitions, he decided upon certain constitutional, social, religious and political remedies.[4]

Dr. Ambedkar's primary concern was the secularisation and democratisation of Indian society and polity as a prerequisite for dispensing justice to one and all. He made it clear that only a secular India in which the death-knell of 'casteism' is sounded that can be fit for a socialistic pattern based on equality and justice.[5] No wonder, Pandit Jawaharlal Nehru was virtually swayed by Dr. Ambedkar's influence to accept secularism as the only way to solve the grave problems of heterogeneous India. Secularism, a precious contribution of Dr. Ambedkar is indeed a necessary social prerequisite for ensuring social justice to Indian people.[6]

Constitutional Provisions for Social Justice

Dr. Ambedkar provided for social and political measures in the Constitution for uprooting the heinous practice of untouchability leading to the ushering in of an egalitarian and just society. Part III and Part IV of the Indian Constitution are significant in the direction of social justice and economic development of the citizens. Since law is an effective weapon for bringing about socio-economic justice, the Constitution has to be so

devised as to achieve this objective. Though justice presupposes equal treatment to one and all, different socio-economic situations have to be dealt with differently. Poverty and social backwardness of some sections of society naturally demand special facilities for the advancement of such sections of people. Justice demands special facilities in the form of protective discrimination for the deprived and the backward sections. The great Greek political philosopher Aristotle spoke of justice that is distributive and corrective in nature. Distributive justice operates with a view to ensure a fair division of social benefits and burdens among the members of a community. In other words, distributive justice serves to secure a balance of benefits and burdens among the members of a society. Corrective justice acts in such a way as to restore the *status quo-ante* by redressing the imbalance of benefits and burdens. It operates through courts of law through the formal process of interpretation of construction of statutory provisions in accordance with the wishes of the law makers.

The Constitution of India provides for distributive justice through several articles besides the ones in Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy). Articles 14 to 16 provide for right to equality before law, prohibition of discrimination on grounds of race, religion, caste, sex or place of birth; equality of opportunity in matters of public employment etc. But it is important to note that the Constitution having accepted the principle of protective discrimination, has authorised the State to make special provisions for the upliftment and advancement of socially and economically backward classes of citizens, the Scheduled Castes and Scheduled Tribes through articles 15(4) and 16(4). Article 17 is another provision of great significance as it states categorically that 'untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. Parliament is authorised to make a law prescribing the punishment for this offence (Article 35), and, in exercise of this power, Parliament has enacted the Untouchability (Offences) Act, 1955, which has been amended and renamed in 1976 as the Protection of Civil Rights Act, 1955. There are a number of other provisions like articles 18, 38, 39, 46, 330, 332, 335, 338 and 340 which are intended to promote social justice and equality. Article 46 is intended to promote the educational and economic interests of the Scheduled Castes and Scheduled Tribes and other weaker sections of society. In the course of articles 330, 332, 335, 338, 339, 341 and 342

provision for various political safeguards such as reservation of seats for Scheduled Castes and Scheduled Tribes in the Central and State legislatures and services etc., are made.

Dr. Ambedkar had hoped that these and many other political and constitutional safeguards would help his people to liberate themselves from the clawing clutches of caste politics and pave the way for their emancipation. But unfortunately the constitutional provisions cited already have not been able to provide social justice as envisaged and hoped for by Dr. Ambedkar. The intransigent nature of our social system is coming in the way of accomplishing the goals set by Dr. Ambedkar and the founding fathers of our Constitution. He was totally disillusioned in the post-Constitution period. It was aggravated when his Hindu Code Bill was practically shelved in spite of Mr. Nehru's assurance. In such a milieu he realised that he could see no way out with the intransigent attitude of the Hindu society being reconciled on the plank of social justice with the cause of the untouchable. Hence it was more in despair than as a political rule or expedient that this great leader was compelled to quest for a faith which would promise a destiny — political, social and religious for the untouchable to realise his fulfilment as a person and a human being. He naturally began to feel the clawing hand of frustration. His zeal for searching for a solution being as firm as ever led him into a spiritual answer. Hence he was forced by circumstances to renounce Hinduism and embrace Buddhism at the end.

It is clear from the foregoing that Dr. Ambedkar had a strong desire to realise his ideals including that of social justice through the Constitution. But he could not, in view of the intransigent nature of our society. Even today we see social justice being openly denied and brazenly violated by perpetrating violence and atrocities on the members of the Scheduled Caste communities day-in and day-out. As Justice V.R. Krishna Iyer puts it so succinctly:

> The blunt truth is the hard human condition. Social Justice is enshrined in the Constitution. We, the people of India stand out in the Preamble. Periodic *pooja* is offered to them in election manifestoes. Occasional legislation and judicial pronouncements do verbal homage to them but the bitter truth is that we, elite, are indifferent to them. That is the essence of inhumanity. Justice has been transported for life by the Establishment of which we are a

> part. All professions including the political, are conspiracies against the laity and we have taken thirty years to prove it beyond reasonable doubt.

So apparently it is not that our Constitution is lacking or found deficient of the various measures for establishing and promoting social justice, but it is conspiracy and the hypocrisy of 'We, the people of India' that continues to deny social justice to the millions of our unfortunate brethren, our fellow citizens. How long shall we continue to cheat them? When shall we realise our double standards if not during the birth centenary of the great leader Dr. Babasaheb Ambedkar?

The Constitution and Economic Development

The Constitution of India coming as it did in the wake of freedom at midnight had to take into account the rising expectations and aspirations of a people liberated from centuries of thraldom, economic deprivation, poverty, squalor etc., perpetrated by an alien regime. Freedom from want, disease, hunger, etc., were as important as freedom from alien people. They were yearning for a decent living, at least at subsistence level. The founding fathers of the Constitution, and particularly Dr. Ambedkar who had suffered all these, could not be indifferent to the problems of economic development. He tried his utmost to provide in the Constitution for an accelerated economic growth, in spite of certain constraints and limitations.

It is well-known that the Constitution of India has provided for two sets of rights, i.e., Rights which are Fundamental and hence justiciable, and rights that are not fundamental and hence non-justiciable in the course of Part III and Part IV respectively. Though the scheme is Irish in its origin, it has been adopted in the Constitution keeping in view the need for providing for a welfare state and a socialistic pattern of society. Dr. Ambedkar had his own views and strategy for economic development, though he could not write them fully into the Constitution. He wanted, no doubt, to usher in the much needed socio-economic change and veritably a revolution through perfectly constitutional means, using the Constitution as an instrument of change. The change should cover all walks of life, including the social and economic. He firmly believed that there is a nexus between individual liberty and the economic structure of

society. It was his contention that freedom from want, insecurity, unemployment etc., is essential if Fundamental Rights are to be meaningful. In his own words: "The unemployed are compelled to relinquish their Fundamental Rights for the sake of securing the privilege of working and to subsist.[8] He, therefore, wanted to establish socialism, retain parliamentary democracy and avoid dictatorship through the Constitution itself. However, it is a bitter truth that he could not write all the rights, particularly the economic rights, he would have liked to. The Fundamental Rights enshrined in Part III of the Constitution create only political rights. But economic rights such as right to work, right to adequate wages etc., are provided in Part IV in the nature of non-justiciable rights only.

They are called the Directive Principles of State Policy. While defending these Directive Principles, he said:

> ... Constitution...is merely a mechanism for the purpose of regulating the work of various organs of the State... What should be the policy of the State, how the society should be organised in its social and economic matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether...[9]

He commended the Directives to the House and said:

> "... if these directive principles to which I have drawn attention are not socialistic in their direction and content. I fail to understand what more socialism can be".[10]

To those who are familiar with his views on the question that he laid down in the Memorandum 'States and Minorities: What are their Rights and how to secure them in the Constitution of Free India?' (1947) that he submitted to the Constituent Assembly on behalf of the Scheduled Castes Federation of India, his defence of the Directives comes as a surprise. He was in favour of inscribing in the Constitution itself the principles and structure of the economic life of the people. It was his desire to establish State Socialism through the Constitution. Even though his views in the economic structure of society contained in his 1947 Memorandum were more specific and comprehensive in nature, he could not incorporate them into the Constitution as fundamental, justiciable rights. He had to

be satisfied with just mentioning them as principles, fundamental in the governance of the country, though not fundamental from the point of view of their enforcement. The circumstances, probably, permitted him to achieve only this far and no further. Even that was no small an achievement, for, the Directives provide the ideal of economic democracy the spirit of which would not be and cannot be ignored by the changing pattern of power position of the ruling parties. Though the Directives came to be criticised as 'pious declarations' and 'empty promises', they have come to be looked upon as useful in so far as 'they are fundamental in the governance of the country.

Conclusion

While summing up the outstanding contributions of Dr. Ambedkar, the relentless crusader, the great constitutionalist, emancipator and above all a great humanist, we have only to recapitulate some of the most pregnant and prohpetic statements made by him in and outside the Constituent Assembly. It should be obvious from the foregoing that Dr. Ambedkar's concern was for totality of the socio-economic realities of the people of India and to secure them social and economic justice to enable the downtrodden people to hold aloft their human rights with full dignity and grace as a matter of the inherent right and not as a concession. Naturally, he had the vision of a true and real democracy to achieve this objective. To him, democracy was nothing but the consummation of the three principles liberty, equality and fraternity. He said that these principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of Trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality Liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity liberty and equality could not become a natural course of things. It would require a constable to enforce them. On the social plane, we have in India society based on the principles of graded inequality which means elevation of some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject

poverty. It is for these reasons that he said in his last speech in the Constituent Assembly:

> "On the 26th January, 1950, we are going to enter into a life of contradictions. In politics we will have quality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, be reasons of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this assembly has so laboriously built up."[11]

He also lamented the absence of fraternity, a sense of common brotherhood of all Indians that gives unity and solidarity to social life that is conspicuous by its absence. These observations of Dr. Ambedkar are so significant and relevant even today and point to the hard reality that the Constitution provides for only political democracy and political equality only and does not provide for social and economic equality and democracy. Dr. Ambedkar alone could demonstrate such a courage of his convictions and give full and frank expression to it. This is a rare quality which many of us lack today. It has led to many complications.

Dr. Ambedkar was very often denigrated for his views on several national issues. His detractors had branded him as anti-national as he was not participating in the freedom struggle along with others. Needless to say that this was totally baseless. One has only to recall his statements which gave expression to his patriotic fervor. Just because he had his own differences of opinion on issues and personality, one cannot dub him as anti-national. His concern for freedom from the British rule and the imperative for people to be always vigilant to preserve the hard won freedom are an eloquent testimony to his patriot fervor. While stressing on the responsibilities cast on the people of India he said:

> "...Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence we have lost the excuse of blaming the British for

> anything going wrong. If hereafter things go wrong we will have nobody to blame except ourselves. There is great danger of things going wrong... if we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, not to be weak in our initiative to remove them. That is the only way to serve the country, I know of no better."[12]

Looking at the future of the country, he said with deep anxiety and concern:

> What perturbs me greatly is the fact that India has not only once before lost her independence, but she lost it by the infidelity of her own people... Will history repeat itself? Our independence will be put in jeopardy a second time, probably be lost forever. We must be determined to defend our independence till the last drop of our blood.[13]

What a patriotic exhortation? In these utterances of his, he was not only highly patriotic, but also most prophetic. His apprehensions, warnings and exhortations are relevant even after forty years of his utterance. In order to protect and preserve the constitutional edifice he exhorted the people of India to develop a sense of constitutional morality and adopt constitutional means to solve their problems instead of resolving to unconstitutional methods such as bandhs, gheraos, fasts and other coercive methods and unconstitutional steps which will be the very 'Grammar of Anarchy'. He wanted the people againt developing and practicing *Bhakti* or hero worship in politics. The tragedy is that the prophetic words of his remain valid even today because in the words of Justice Krishna Iyer "Social economic democracy has specialised in slow motion, the proprietariat has evaluated election manifestoes as paper tigers and the dalits, the proletariat and the naxalities have come to know that total revolution and freedom of midnight have little credibility mileage". Ambedkar was a constitutionalist and a lawyer and those who like him wish the militant rule of law to be the means of radical change must think fundamentally on what that frustrated *rishi* had spoken. What is needed today is a proper projection of the 'Complete Ambedkar' and derive inspiration for current movements for social justice. Let us

resolve during the birth centenary to strive our best to make his dreams come true. It is not enough if we only resolve and pay our verbal homage, but to devote ourselves to the task of implementing his great and inspiring ideas. May his philosophy and ideals continue to guide us and inspire us to work for the realisation of socio-economic justice.

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44

The Constitutional Aspects of India's Foreign Policy

Madhavsinh Solanki

Few constitutions in the world contain statements or principles on foreign policy and international relations. The Indian Constitution is unique in this respect. It provides for an article laying down general principles and policy objectives for the State to pursue.

Article 51 of the Constitution ordains the Government to endeavour to :

(a) promote International peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

(d) encourage settlement of international disputes by arbitration.

The policy directives embodied in this article have had a direct bearing on the foreign policy actually pursued by India.

Article 51 is the embodiment of the vision and perspective of the founding fathers of our Constitution on the place and role of the country in the international community; it is a statement of principles to be adhered to by the Republic of India.

Pandit Jawaharlal Nehru, the first Prime Minister as well as the Foreign Minister of the Country, moved the "Objectives Resolution" in

the Constituent Assembly on 13 December, 1946.[1] Sir B.N. Rau presented the draft articles embodying these objectives; with the amendment moved by Dr. B.R. Ambedkar, article 51 was adopted in its present form.

Most of the members of the Constituent Assembly were the leaders of the freedom movement, and had been profoundly influenced by the struggle against colonialism and by the adoption of the Charter of the United Nations.

Article 51 is the last article in Part IV of the Constitution which lays down the "Directive Principles of State Policy", to be observed by the authorities in the governance of the country and in making the laws. Even though the principles in Part IV are not enforceable in Courts, they are nevertheless *"fundamental in the governance of the country"*, and all the organs of the State are under a *"duty . . . to apply these principles in making laws."* (emphasis added). Part IV is, therefore, a constitutional mandate, and the Indian State and its authorities are under an obligation to observe the principles enunciated in article 51 while formulating foreign policy and conducting international relations.

The article lays down broadly four policy guidelines or directives for the State. The first one of them mandates that India should endeavour to promote international peace and security.

Our Constitution was framed soon after the Second World War. The unprecedented human tragedy in terms of death and destruction was fresh in the minds of the framers of the Constitution; so was the declaration of the lofty ideals of the Charter of United Nations about international peace and security. Our founding fathers were also aware that peace is a necessary pre-condition for prosperity and development. Hence the emphasis on the principle of promoting international peace and security and its prime position in article 51.

The Republic of India has been consistently pursuing the objective of promoting international peace and security. It opposed the formation of power or military blocs, and led to the enunciation of the basic tenets of non-alignment. Along with like-minded nation-states, the Non-aligned Movement took shape and India emerged as one of its leading members.

India has been a champion of the principles of peaceful co-existence, known as *Panch Sheel*. These are stated in the Preamble of the Indo-China Agreement of 29 April, 1954, in the following words :

(i) Mutual respect for each other's territorial integrity and sovereignty;

(ii) Mutual non-aggression;

(iii) Mutual non-interference in each other's internal affairs;

(iv) Equality and mutual benefit; and

(v) Peaceful co-existence.

We have consistently adhered to these principles despite stresses and strains.

In pursuance of the directive of promoting international peace and security, we supported the efforts of the United Nations and gave it pride of place. We played an important role in the UN-sponsored peace keeping operations and mediatory efforts for the maintenance for international peace and security. Noteworthy, in this connection, were our participation in the Congo Operations (1960); Korean War (1948-1950); our efforts to defuse the Suez crisis (1956), Indo-China war, and the situation in Afghanistan (1979-89).

The second obligation under article 51 is that India should endeavour to maintain just and honourable relations between nations. The members of the Constituent Assembly as leaders of the freedom struggle, were acutely aware of the history of colonial domination and of the exploitative economic and political system it spawned. They, therefore, recognized the need for a new world order, wherein no nation would dominate or exploit the other. A world order based on equality and respect for the sovereignty and independence of each other. In pursuance of this objective, India worked for the abolition of the system of apartheid in South Africa and discrimination of peoples elsewhere on the basis of race, colour or creed; for decolonization; and for just and equitable trade and economic relations between the States.

It was at the initiative of India that the United Nations General Assembly, in its very first session in 1946, discussed the issue of racial

discrimination and adopted the International Convention on the Elimination of Racial Discrimination in 1965, and the International Convention on the Suppression of the Crime of 'Apartheid' in 1973.

Being the first country to overthrow the colonial yoke soon after the World War II, India undertook to wage a struggle for decolonization of all other Afro-Asian countries. In 1960, India, alongwith 41 other countries, moved in the United Nations General Assembly a resolution, which has become a historic declaration, on the Granting of Independence to colonial countries and peoples.[2]

Political independence is incomplete unless accompanied by economic independence. This realization led India to actively work towards a new international economic order which would ensure greater equity and justice. Towards this end, India was instrumental in the adoption of the resolution on Permanent sovereignty over Natural Resources[3]; Charter of Economic rights and duties[4]; and the establishment of the New International Economic Order [5]. In this way, India's practice in international political and economic fields conformed to the constitutional directive.

The third obligation cast on the Indian State is to foster respect for International law and treaty obligations in dealings of organised peoples with one another. This provision has both legal and political implications.

Although we gained independence from British rule, we chose to remain as a Common law country. We continue to follow the system of judicial precedents and Common law principles and doctrines. As such, the famous Blackstonian doctrine, according to which the "law of nations .... is .... adopted in its full extent by the common law and is held to be part of the law of the land"[6], has come to be the part of our law. Professor Alexandrowicz affirmed this and said that international law is the part of municipal law of India.[7] Dr. Durga Das Basu, in the *Commentary on the Constitution of India,* came to the same conclusion. He stated that "Indian courts .... would apply rules of international law unless they are over ridden by clear rules of domestic law, and would act upon the general presumption"[8] that the Parliament would not enact laws contrary to the rules of international law.

As regards treaties, the framers of the Constitution did not remain

satisfied merely with the enunciation of the directive that treaty obligations must be respected. They went further and incorporated certain provisions into the Constitution that facilitate the conclusion and implementation of treaties by the Union Government.

The Union Executive and Parliament were given exclusive and overriding powers in this regard. The Executive, by virtue of article 73 read with article 246 (1) and item numbers 13 and 14 of the Union list of the Seventh Schedule of the Constitution, is empowered to negotiate, conclude, accede to, or ratify any agreement or treaty with other countries. It is required to be done in the name of the President of India, in whom the executive power is vested by the Constitution under article 53. Though the Parliament is entitled to enact a law governing conclusion of treaties under article 246 (1) read with item 14 of list I of the Seventh Schedule, it has not done so with a view to give the Executive a free hand in these matters. Parliament, however, would come into the picture if the implementation of any treaty affects the rights of persons, changing the existing laws, modifies the powers of any organ of the State, involves expenditure to the exchequer or amounts to cession of the territory of India to a foreign country.[9] Otherwise, the Union Executive has power not only to conclude treaties, but also to exercise rights and authority thereunder without any interference from Parliament. Article 73 (1) lays down that the Executive Power of the Union shall extend....

> to the exercise of such rights, authority and jurisdiction, as are exercisable by the Government of India by virtue of any treaty or agreement.

The framers of the Constitution have also vested in the Union Parliament, the overriding power to implement the treaties under article 253. It says :

> "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has powers to make any law for the whole or any part of the territory of India, for implementation of any treaty, agreement or convention with any other country or countries, or any decision made at any international conference, associations, or other body."

Thus, the founding fathers of the Constitution attempted to remove all constitutional and other legal obstacles so as to enable all the future

Governments of India to respect and adhere to treaty obligations as well as to the rules of Customary International law.

In pursuance of our international obligations, the Parliament has enacted several legislations. To cite a few examples : The United Nations (Privileges and Immunities) Act, 1946; the Genocide Convention Act, 1948, the Anti-Apartheid (United Nations Convention) Act, 1981; the Diplomatic Relations (Vienna Convention) Act, 1972; etc. Our respect and regard for treaty obligations are unquestionable. We have demonstrated to the world our abiding faith in the rule of law in international relations and thereby, in the legally ordained international society.

There is an important political dimension to article 51(c). The use of the words "organised people", is significant. It is generally nation-states, and inter-governmental organizations which have the power to conclude international agreements and to become parties thereto. But the framers of our Constitution also chose to confer on the "organised peoples" the right to conclude international agreements. The framers of the Constitution, as leaders of the freedom movement, were aware of the ongoing freedom struggles at that time in various nations and amongst peoples in different parts of the world against colonialism and imperialism. By referring to "organised peoples", they sought to recognise and express their solidarity with these freedom movements around the world.

The policy of supporting, morally and even materially (in some cases), the freedom struggles and liberation movements all over the world, became one of the basic elements of our foreign policy. Our support to and recognition of the Palestine Liberation Organisation (PLO) and the African National Congress (ANC) are examples of this commitment.

Clause (d) of article 51 of the Constitution directs that the Government must endeavour to encourage settlement of disputes by arbitration. This provision was proposed by Shri Ananthasayanam Ayyangar in the Constituent Assembly.[10]

As a matter of policy, India has always espoused and stood for the settlement of tall international disputes peacefully on the basis of sovereign equality, and in accordance with the principle of free choice of means. Various maritime boundary agreements concluded with our neighbours illustratively attest to the value of this method. On occasions,

when found mutally acceptable, we have resorted to other means of settlement of disputes, viz., arbitration, judicial settlement through the International Court of Justice (ICJ). For example, India resorted to arbitration for the settlement of the terriotrial dispute with Pakistan in the Kutch region in 1968 and implemented the Kutch Award. India is also one of the founding members of the Permanent Court of Arbitration at the Hague.

India has accepted the so-called compulsory jurisdiction of the International Court of Justice (ICJ) by making a declaration under article 36 (2) (optional clause) of the Statute of the ICJ. It has honoured and implemented the judgements of the ICJ in the case of Right of Passage over Indian Territory with Portugal in 1961 and in the case concerning the suspension of over-flights with Pakistan in 1971.

India has also been extending its good offices whenever the situation demands to help in resolving disputes among friendly countries. It has always been the proponent of peace and disarmament.

The Constitution mandates India to be a peace-loving country and to adhere to the rule of law and principles of justice in its international relations. Under the Constitution, the State and its organs are mandated to promote international peace and security; to establish and maintain just and honourable relations between the nations; to foster respect for international law and treaty obligations; to support and stand by the peoples fighting against colonialism and imperialism; and for peaceful settlement of international disputes through arbitration and other similar methods. These are the directives of the Constitution. They form the basis of our foreign policy and the successive Governments of independent India have observed these constitutional commandments in the conduct of India's international relations.

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45

Preamble, Directive Principles and Planned Development

C.K. Jain

We, the people of India, achieved independence after a long period of subjugation under colonial rule. The nation's liberation movement, however, was not merely aimed at throwing away the yoke of colonialism. More than that, the freedom struggle was at once a movement for the uplift of the millions who make up this country. The sagacious minds who were in the vanguard of the fight against the colonialists were fully conscious of the myriad problems facing the people - political, economic and social. In fact, their close contact and interaction with the masses gave them ample opportunities to see and feel for themselves their manifold miseries. It was only natural then that when freedom dawned on the Indian horizon, the resolve was one to strive for the liberation of the people - politically, socially and economically.

The most important task confronting our leaders at the time of independence was to ensure consolidation of the hard-won freedom. Primarily, we had to opt for a political system which could cater to our native requirements and specific needs. This, perhaps, was not all that difficult, especially considering our rich and varied democratic heritage spread over millennia. True to this tradition, we opted for a parliamentary democratic polity, which, it was felt, was best suited to accommodate our diversities.

But more than anything else, the drafting of a Constitution laying down the aims and objectives for the nation at large and the ways and

means to achieve them was by any means the most formidable task before our national leadership. They were acutely aware of the challenges and opportunities freedom offered when it came our way. Having resolved to vest primacy on the sovereign will of the people, they had to make sure that the hopes and aspirations of the masses were adequately taken care of, especially considering the large-scale inequalities which prevailed in our society. They were convinced that political independence merely did not mean much if it was not accompanied by social and economic justice.

The concept of socio-economic justice has always guided the political process in our country. In his monumental treatise *Arthasastra*, Kautilya had recorded a specific injunction for the King that he should "provide the orphan, the dying, the infirm, the afflicted and the helpless with maintenance". Socio-economic emancipation of the people at large was thus at the very core of our political thinking all through our history. The Father of the Nation, Mahatma Gandhi used to say that wiping every tear from every eye was his mission in life. To him, economic justice meant that everyone should be free from want of food, clothing and shelter. In his own words:

> ... The economic constitution of India and for that matter of the world, should be such that no one under it should suffer from want of food and clothing. In other words, everybody should be able to get sufficient work to enable him to make both ends meet. And this ideal can be universally realised only if the means of production of elementary necessities of life remain under the control of the masses. These should be freely available to all of us as God's air and water are, or ought to be; they should not be made a vehicle of traffic for the exploitation of others.

In fact, even before Independence came, our leaders had given serious thought to this crucial matter. The political leadership in the country, irrespective of their ideological inclinations, was united in their conviction that without consistent and concrete endeavours towards socio-economic development, freedom would be in peril. Pandit Jawaharlal Nehru used to repeatedly emphasise on the inseverable linkage between political liberation and economic liberation. He once said:

> India's immediate goal can only be considered in terms of ending of the exploitation of her people. Politically it must mean indepen-

> dence and cessation of the British connection; economically and socially it must mean the ending of all special class privileges and vested interests.

This was, thus, a theme oft-repeated by all our leaders in various fora right through the independence movement. Naturally, the men and women of vision and sagacity who congregated in the Central Hall of Parliament in those historic days were inspired by the noble ideals and cherished goals already set in the national movement for *Swaraj*. These leaders strove hard to enshrine the philosophy of the freedom struggle in free India's Constitution, the single supreme document in our country. The end result was that we, the people of India, got a Constitution which, in the very Preamble itself, asserted the paramount principle of people's power as the sovereign power.

The architect of modern India, Pandit Jawaharlal Nehru and the Chairman of the Drafting Committee of the Constitution, Dr. B.R. Ambedkar both had a humanitarian approach to the socio-political and economic problems that confronted the nation. Dr. Ambedkar was of the opinion that political democracy must be coupled with social democracy if at all it had to be given a true content and meaning. He said in the Constitution Assembly:

> We may make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy.

Elaborating further his concept of social democracy, Dr. Ambedkar observed:

> What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity which are not to be treated as separates items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy ... On the social plane, we have in India a society based on the principle of graded inequality which means elevation of some and degradation of others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty ... Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity.

All those noble thought and ideals eventually came to be enshrined in our Constitution which in essence was a people's document *par excellence*. Having envisioned a parliamentary democratic polity with clear-cut separation of powers among the Legislature, Executive and Judiciary, the Constitution also laid down specific guidelines on the measures intented for the welfare of the mases. Theoretically as well as practically, Government and Parliaments are not an end in themselves; they are merely means to attain certain ends. Needless to say, these ends must be closely inter-linked with the needs, values and interests of the millions who are subject to that Government. It is said that a State which does not enable a common man to secure the bare essentials of life has no meaning or purpose to him. The Constitution to him, in such cases, becomes a meaningless document. Having lived under colonial subjugation, the common man looks up to the State or indeed seeks from it, economic security and social justice. In this context, it would be interesting to analyse as to what the Constitution offers for the common man and what it is that the framers of our Constitution conceived as the role of the State so that Government and Parliament could have a meaning and a purpose and derive their strength from it. To appreciate their vision and foresight, we may attempt to analyse the Preamble and the Directive Principles of State Policy which are doubtless two of the most remarkable features of our Constitution.

The Constitution of India unfolds with the Preamble which states in unequivocal terms that the people of India have solemnly resolved to secure to all its citizens, justice - social, economic and political; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. Without doubt, the constitutional edifice is built on the pillars of these preambulary promises.

The attempt on the part of the framers of our Constitution was to epitomize and reflect in the Preamble the entire philosophy underlying the Constitution. Our Preamble very clearly conveys the broad framework of the ideals which are deeply ingrained in our ancient heritage and are a part of the Indian ethos for which the Constitution stands and the fundamentals on which it has been founded. The Preamble envisages a new society with the cherished goal of justice in the society and economic and political spheres. Social justice demands the eradication of social

inequalities based on caste, colour, creed, race, etc. Economic justice rules out distinction between man and man based on economic values. Political justice refers to the absence of arbitrary treatment of citizens in the political sphere.

The Constitution-makers of India were convinced that rapid economic growth in a socially approved direction could best be attained in a planned economy within the framework of a democratic pattern of socialism. It was an approach that sought to combine the goals of economic development and reduction of social disparities. Accordingly, the Constitution established a Democratic Republic and parliamentary process of socio-economic development and enshrined in the fundamental law several provisions protecting the rights, privileges and liberties of the people. Taking into consideration the egalitarian and socialistic goal of the freedom movement, the concept of welfare state was incorporated through the Directive Principles of State Policy. These directives, in true sense, are the directions to the State to effectuate the hopes expressed in the Preamble by securing a social order for the promotion of the welfare of the people. Indeed, they specify the goals of social, economic and political justice. These directives stand as a sort of State commitment to economic and political justice. They impose an imperative duty on the State to so formulate its policies — legislative and executive — as to imbibe the privileges of economic democracy. Explaining the underlying objectives of the Directive Principles, Dr. Ambedkar said:

> ... While we have established political democracy, it is also the desire that we would lay down as our ideal economic democracy. There are various ways in which economic democracy can be brought about. We have left enough room for different ways of thinking with regard to the reaching of the idea of economic democracy. Our objective in framing the Constitution is two-fold: to lay down that our ideal is economic democracy and also to prescribe that every Government, whatever is in power, shall strive to bring economic democracy.

The Directive Principles contain certain active obligations of the State to promote the welfare of the people. The State is required to secure for all citizens the right to an adequate means of livelihood; equal pay for equal work; protection against abuse and exploitation of worker's economic necessity; protection of their health and strength, as also of

children of tender age and youth, against exploitation and moral and material abandonment. It is required to make effective provision for securing right to work, education and public assistance in case of unemployment, old age, sickness or disablement or in other cases of undeserved want, within limits of economic capacity and development. Besides, it is expected to make provision for just and humane conditions of work and for maternity relief. It is also required to secure work, a living wage and conditions of work ensuring a decent standard of living.

Under the Directive Principles, the State is required to endeavour to provide free and compulsory education to all children until they complete 14 years of age, within ten years of the commencement of the Constitution. It is required to consider it among its primary duties to promote the standard of living and improvement of public health. The State has also been directed to promote with special care educational and economic interests of weaker sections of people, especially Scheduled Castes and Scheduled Tribes, and to protect them from social injustice. It also directs the State to secure better distribution of resources of the community, to check concentration of wealth and to secure a uniform civil code throughout the country. The Directive Principles, in short, have been aptly characterised as basic to our social order. They are an extension of the socio-economic and political concepts outlined in the Preamble to the Constitution.

The Preamble and the Directive principles have given prime importance to the concept of justice in all its manifestations. The preambulary concept of social and economic justice finds elaboration in one of the Directive Principles of State Policy by expressly providing the Constitution that these directions are fundamental in the governance of the country. Pandit Nehru believed that India's survival depended on the achievement of social and economic emancipation. He warned that 'if we cannot solve this problem soon, all our paper Constitution will become useless and purposeless'.

In the post-independence scenario, it was the Parliament which had to play a significant role in socio-economic transformation and it was also the leading actor in the great task of nation building. Over the last four decades, Parliament has evolved into a multi-functional institution representing the people's hopes and fears, urges and aspirations. The

relevance of Parliament in societal change is worth re-emphasising. Parliament is a living dynamic institution which monitors the needs and hopes of the people. It attempts to comprehend and even share the character of the organic growth of our society. It also acts as a beacon to the executive and administrative machinery so that appropriate initiatives and approaches are attempted for social transformation.

It is over four decades since we adopted the Constitution and set about to achieve the goals held dear by our founding fathers. The legislative and executive measures taken from time to time during this period would show that the State has always regarded these directives as principal instruments of providing socio-economic justice to the common man. The first step in this direction was the setting up of a Planning Commission in March 1950. The main aim of constituting the planning machinery was to proceed with planning on the lines suggested by the Directive Principles with a view to accelerating socio-economic development. A brief appraisal of the Five Year Plans would show how a largely agrarian economy at the time of independence has been transformed into one based on a well developed and a highly diversified infrastructure with immense potential for industralisation. Initially, the function of the Planning Commission was to formulate integrated Five Year Plans for economic and social development and for most effective and balanced utilization of resources which would initiate a process of development which would raise living standards and open out to the people new opportunities for a richer and more varied life. Today, the Planning Commission, though not a statutory body, has evolved into an elaborate organisation, almost akin to a governmental wing. Planning has pervaded all departments of Government both at the Union and in the States and this accounts for the ever increasing sweep of economic and financial responsibilities of the Planning Commission.

The objectives of fulfilling the social and human aspirations, meeting the essential requirements of living, raising income levels and improving their quality of life are at the centre of our planning. While these efforts are translated into an accountable form through Five Year Plans, indications of the long-term needs of the society and the direction in which the economy should move over a longer time - frame are needed for drawing up such plans.

Expansion of employment opportunities has been an important objective of development planning in India. There has been significant growth in employment over the years. However, a relatively higher growth of population and labour force has led to an increase in the volume of unemployment from one plan period to another. The Eighth Plan aims at bringing employment into a sharper focus in a medium term perspective with the goal of reducing unemployment to negligible level within the next ten years. Such an approach is considered necessary because it is realised that larger and efficient use of available human resources is the most effective way of poverty alleviation, reduction in inequalities and sustenance of a resonably high pace of economic growth.

If we make an appraisal of the developments in the field of social legislation—legislation aimed at the socio-economic emancipation of the people in line with the guidelines in the Preamble and the Directive Principles — we may see that much has been acomplished during this period. Parliament has enacted several social reform legislations, social welfare legislations and labour welfare legislations. Some of the important social reform legislations are : Suppression of Immoral Traffic in Women and Girls Act, 1956; the Children Act, 1960; the Untouchability (Offences) Act, 1955; the Drugs (Control) Act, 1950; the Narcotics and Psychotropic Substances Act, 1985; the Prevention of Food Adulteration Act, 1956; the Maternity Benefit Act, 1961; the Womens and Children's Institution (Licensing) Act, 1956; the Orphanages and other Charitable Houses (Supervision and Control) Act, 1960; the Medical Termination of Pregnancy Act, 1971; and the Dowry Prohibition (Amendment) Act, 1986. With the setting up of the National Commission for Women in 1990, a long felt need in the field of women's welfare has been fulfilled. As for child welfare, special mention may be made of the Children Act, 1960; the Young Persons (Harmful Publications) Act, 1956 and the Motor Transport Workers Act, 1961. In 1974, the Parliament adopted a resolution on a National Policy for Children giving further importance to the needs of children.

On another plane, we have striven to extend certain protective measures and safeguards for the Scheduled Castes and Scheduled Tribes and other Backward Classes. We have provided for their special representation in the Lok Sabha and the Vidhan Sabhas. We have provided them reservations with the objective of promoting their educational and

economic interests and of removing the social and economic inabilities they are subjected to. Besides, the Untouchability (Offences) Act, 1955 was amended to become the Protection of Civil Rights Act, 1976. Parliament also approved the setting up of a National Commission for Scheduled Castes and Scheduled Tribes and set up a Joint Committee of the two Houses for the purpose of specifying castes, tribes, etc. as the Scheduled Castes and Scheduled Tribes. Again, in pursuance of Article 46 of the Constitution, Parliament amplified clause (3) of Article 15 by adding clause (4) to this Article enabling the State to make laws for the benefit of the socially and educationally Backward Classes and the Scheduled Castes and Scheduled Tribes.

As regards labour welfare legislations, there are laws relating to labour management relations (Industrial Disputes Act, 1947, and Industrial Employment Standing Orders Act, 1966); laws dealing with social security measures (ESI Act, 1948, EPF Act, 1952 and Maternity Benefit Act, 1961); and laws providing for minimum standards in respect of wages, leave, hours of work, weekly holiday, welfare, health, safety, etc. (Minimum wages Act, 1948, Payment of Bonus Act, 1956, and the Bonded Labour System (Abolition) Act, 1976).

If we take a look back, we may thus see that successive Governments have consistently striven hard to ensure that the cherished goals and noble ideals set forth in the Preamble and the Directive Principles are translated into reality. Political, social and economic initiatives undertaken by us have contributed substantially to ameliorate the lot of the people. Parliament and the State Legislatures have enacted many a welfare legislation to mitigate the untold miseries of the people. Successive Plans have also helped in no small measure in ensuring a better living for the people at large. From a predominantly agrarian society, we have become one of the most industrially better off countries in the world. Gone are the days of famines and acute food shortages. Substantial import of food and foodgrains have virtually become a thing of the past so much so that we are in a position to export food to the needy nations. Our scientific and technological advancement has put us among the most advanced countries of the world in this field.

However, the fact remains that we have still a long way to go. Distributive justice in the true sense of the term is yet to be fully realized. Much of our achievements have been considerably offset by the tremen-

dous increase in our population. Unemployment and underemployment continue to plague our country. Illiteracy and lack of adequate educational facilities are still problems to be confronted fully. Economic and even social inequalities remain to be tackled comprehensively. Several of the directives enunciated in the Directive Principles have not been fully implemented. Thus, for example, the directive on prohibition has been put into practice in very few States. On the health care front too, much more has to be done.

Does it mean that our efforts have not borne fruit? Where is it that we have gone wrong? How far have we been successful? These and other related questions need to be addressed urgently on a priority basis. We see that we have achieved much in spite of the gargantuan obstacles that we had to confront. This is particularly so if we take a fleeting look at those countries which achieved independence around the time that India became free. But then, what we have to keep in mind is that much more remains to be done. We have many more miles to go before we can afford to slow down our pace. As Jawaharlal Nehru said:

> The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and sufferings, so long our work will not be over.

In short, we have to ponder over all these issues so that the people of India could look forward to a better and brighter future especially for the generations yet to be born.

After all, the Constitution is only a means and not an end in itself. It lays down a philosophy and provides for a system. a mechanism and an apparatus to help in our endeavours to achieve a peaceful, happy, prosperous and forward-looking society. Men who operate the system are indeed the focal point. If we are not able to achieve the desired goals, it is not the document which is to be blamed; for deficiencies, if any - may be quite a few - have to be made up by men in position. What is necessary is reform of men and not so much reform of the document. Whatever has been achieved is good, but then we have to achieve a lot more. Duty lies in exercising vigilence, which is the price of liberty.

46

Constitution and Challenges of Our Time

Madhu Dandavate

If we review the changes in the Constitution that have taken place ever since 1951, they can be classified into two categories. Firstly, those like the ones introduced during the Emergency period from 1975 to 1977 making a concerted assault on the democratic content of the Constitution, seriously affecting people's liberties and independence of judiciary. The second type of amendments were those which were introduced in response to the claims and requirements of socio-economic changes in the society. While I am totally opposed to the frivolous amendments in the Constitution that are intended, as during the Emergency, to curb people's liberties, stifle independence of judiciary and strengthen authoritarianism, I do not adopt a *status quoist* stance of treating our Constitution as a holy scripture, keeping it immune to any changes that are needed to bring the Constitution in consonance with structural changes in the federal polity and our economy. If, for a more effective devolution and decentralisation of political and financial powers, certain changes are found to be desirable, there should be no hesitation in amending the Constitution suitably in the interest of better Centre-State relations.

Even the founding fathers of the Constitution shared this resilient attitude of Constitution, keeping in mind the desirability of making our democratic Constitution a living embodiment of the will of the people to usher in a new socio-economic order. This perspective regarding changes in the Constitution was amply reflected in the speeches of B.R. Ambedkar, one of the architects of our Constitution. Speaking on this aspect in the Constituent Assembly, Ambedkar said:

> The Constituent Assembly has not only refrained from putting a seal of finality and infallibility upon the Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extra-ordinary terms and conditions as in America, or Australia, but has provided a most facile procedure for amending the Constitution.

Confrontation Between Judiciary and Parliament

In the past, there have been occasions when our Constitution appeared to be facing a crisis. However, it was not so much a crisis of Constitution but a crisis created by the failure of various institutions to conform to the democratic spirit of the Constitution and function within the jurisdiction prescribed for them in the Constitution.

There were instances of sharp and recurrent confrontation between Parliament and the highest judiciary of the land like the Supreme Court. Such a climate of confrontation prevailed because the line of demarcation between the jurisdictions of Supreme Court and Parliament was overlooked and there were mutual encroachments. According to our Constitution, people are sovereign in electing the democratic government, the Parliament is supreme in enacting laws and amending the Constitution, but the Supreme Court is supreme in interpreting whether the laws enacted by Parliament and the amendments made to the Constitution were in consonance with the spirit of the democratic Constitution.

This situation of confrontation can be properly understood only in the context of some of the crucial judgements of the Supreme Court. It would be worthwhile reviewing the circumstances that led to important judgements that became landmarks in judicial pronouncements of the Supreme Court. These judgements were related to *Shankari Prasad Vs. Union of India* case in 1951, *Sajjan Singh Vs. State of Rajasthan* case in 1965, *Golaknath Vs. State of Punjab* case in 1967, and *Keshavanand Bharati Vs. Union of India* case in 1973.

It is interesting to note that these cases arose out of the desire of the landlords to resist the Zamindari Abolition Acts in some of the States on the ground that these laws violated 'right to property', a fundamental

right included in Part III of the Constitution. The plea made on behalf of the aggrieved landlords was on the basis of article 13 (2) of the Constitution which stated:

> The state shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution and any law made in contravention of this clause shall, to the extent of contravention, be void.

To protect the Zamindari abolition laws from the ambit of article 13 (2), the Union Government decided to bring the Constitution (First Amendment) Bill 1951 in Parliament providing for new articles 31 (A) and 31 (B) to ensure saving of laws providing for acquisition of estates and validation of certain Acts and Regulations. This 'First Amendment Bill 1951' was challenged in the Supreme Court by Shankari Prasad under the plea that the Constitution Amendment Bill, introduced under article 368, was itself violative of article 13 (2) of the Constitution, since the Bill sought to abridge or take away the fundamental right to property guaranteed by Part III of the Constitution.

Ordinary Law and Constituent Law

The Supreme Court rejected the plea made on behalf of Shankari Prasad and held that 'Law' to which article 13 (2) referred was an ordinary law whereas the amendment of the Constitution was made under the constituent law.

In the judgement of the *Shankari Prasad case,* Chief Justice Patanjali stated:

> We are of the opinion that in the context of article 13, Law must be taken to mean rules and regulations made in exercise of ordinary legislative powers and not amendment to the Constitution made in the exercise of the constituent powers with the result that article 13 does not affect amendment made under article 368.

The judgement pronounced by Justice Patanjali was in conformity with the views expressed by constitutional experts like Dicey and Ivor Jennings who had unequivocally stated that "there is a fundamental distinction between the Constituent Law and the ordinary law".

In *Sajjan Singh Vs. the State of Rajasthan* case in 1965, the Supreme Court again upheld its previous judgement. However, in the *Golaknath Vs. the State of Punjab* case in 1967, the Supreme Court by a majority judgement reversed the earlier Supreme Court judgements. In a way, through this fresh judgement, the Supreme Court had not merely interpreted the Constitution, but in effect amended it by encroaching upon Parliament's amending power. The criticism offered against the Golaknath judgement was that the Supreme Court had in reality acted as the third chamber of Parliament. The Supreme Court Judgement in the Golaknath case provoked Parliament to adopt the Constitution 24th Amendment Bill making it explicitly clear that "nothing in article 13 will apply to any amendment of this Constitution made under article 368.

However, there were lurking fears in the minds of vocal critics that sweeping powers bestowed on Parliament to amend any part of the Constitution under article 368, though with two-thirds majority in both Houses of Parliament, may be misused by the ruling party with a brute majority having anti-democratic designs.

On Change in Basic Structure

While the attitude to amending powers of Parliament under article 368 oscillated between two extremes, the much needed balance was restored through the Supreme Court judgement in the *Keshavanand Bharati Vs. Union of India* case in 1973, in which the Supreme Court upheld the power of Parliament to amend any part of the Constitution provided the "basic elements" or "fundamental features" of the Constitution were not emasculated. In this case Justice K.S. Hegde and Justice Mukherjee have clearly stated in their judgement:

> The Parliament has no power to abrogate or emasculate the basic elements or fundamental features of the Constitution such as the sovereignty of India, the democratic character of our polity, the unity of the country, the essential features of the individual freedoms secured to the citizens. Nor has Parliament the power to revoke the mandate to build a welfare state and egalitarian society. These limitations are only illustrative and not exhaustive. Despite these limitations, however, there can be no question that the amending power is a wide power and it reaches every article and every part of the Constitution.

As one looks back to those dark days of the Emergency and recalls with anguish the manner in which our democratic Constitution was subverted and mutilated through various constitutional amendments by the captive Parliament with most of the voices of dissent and protest stifled behind the prison bars, one realises the intrinsic merit of the Keshavanand Bharati judgement and its efficacy as a built-in device against the crisis of our democratic Constitution and its consequent collapse.

Emergency Emasculated Constitution

The greatest crisis our Constitution faced was during the Emergency. During the darkest night of the Emergency the Constitution was emasculated. One after another, various levels of our democratic life were destroyed and the time-honoured principle of equality before law was negated. Could there be a greater perversity than attempt in Parliament to amend the Constitution, providing immunity to the Prime Minister, President, Vice-President, and Speaker of the Lok Sabha from criminal prosecution against them in regular law courts? Though during the Emergency the ruling party managed to get this Constitution amendment bill passed in the Rajya Sabha, the burden of its shame was so heavy that before the bill could be brought to the Lok Sabha for consideration it got crushed under its own burden and remained buried for ever.

The Constitution 42nd Amendment Bill was passed by Parliament in the shadow of the Emergency. This bill was a charter of slavery and if it were to face a judicial scrutiny by the Supreme Court, the bill would have been struck down unceremoniously. However, before facing a judicial scrutiny the bill had a direct encounter with the people in the general election of 1977. And because of the massive mandate of the people against the Emergency excesses, including subversion of the democratic Constitution, in the changed political set up after 1977, the anti-democratic provisions from the 42nd Amendment were mostly repealed and a grave crisis of Constitution was overcome, not because of the talent and ingenuity of Parliamentarians and legal luminaries, but because of the effective intervention of the people.

Checks and Balances

Our Constitution conceives of certain checks and balances for democracy. Any efforts to weaken or destroy them leads not only to crisis of Constitution but of democracy as well. Conscious people, a vigilant Parliament, an independent judiciary, and a fearless press constitute effective checks and balances of democracy. People to whom sovereignty ultimately belongs and the pressure of whose opinion either makes or unmakes the government provide the highest check of democracy. In the present form of parliamentary democracy envisaged in our Constitution, article 75 (3) makes it abundantly clear that "The Council of Ministers shall be collectively responsible to the House of the People [Lok Sabha]". This accountability to Parliament is the most significant feature of our democratic life.

Part III of the Constitution confers on the citizens Fundamental Rights. Article 32 of the Constitution further confers on them the right to move the Supreme Court for the enforcement of these rights. If the government, flouting all democratic norms and provisions of the Constitution, brings a legislation before Parliament, its legislative or constitutional competence can be challenged before the Supreme Court. Thus independent judiciary, unfettered by Executive's influence, is one of the most powerful checks in democracy.

The press, whose freedom of expression is guaranteed by Part III of the Constitution, is yet another safety valve of democracy. The power of the press, reinforced by investigative journalism, has proved itself as a potent weapon of exposing and fighting corruption. The 'Watergate' scandal, unearthed and exposed by journalists, could rock the very seat of the US President. In India, the untrustworthy trusts were dug out by investigative journalists and when a judicial verdict in the case of a Chief Minister established a *prima facie* case against him, he had to relinquish Chief Ministership. The repeal of the Bihar Press Bill was again a glaring instance of the power of the press in mobilising public opinion against an unjust measure and ultimately getting it repealed.

Quite naturally, such a fearless press capable of rousing public opinion against tyranny and injustice is an anathema to every authoritarian regime that seeks to suppress democratic institutions and citizens' liberties. It was, therefore, no surprise that during the Emergency the

sledge hammer of the government fell heavily on the freedom of press. Any assault on the freedom of press, assured as a Fundamental Right enshrined in the Constitution, thus not only defaces and defiles the Constitution but it deepens the crisis in democracy by eliminating one of its checks and balances.

Federalism

The framers of the Constitution have carved out a document which would be an instrument to subserve federal polity. In every crisis, like the Emergency, the federal character of the state is invariably under attack. It is a paradox that the nation that swears by Mahatma Gandhi, who strived to put soul into the concept of federalism by spelling out his ideas regarding devolution of political and economic powers and decentralisation of economy, is indulging in a loose talk of "strong Centre" that could stand the stresses and strains of civil commotions. Feelers are being sent to further amend the Constitution to lend more strength to the Centre. Any attempt in this direction will create a new crisis in our Constitution and destroy the edifice of federalism. In a federal structure, States provide the base and Centre is the apex. If the apex is strong and heavy and the base is weak, the entire federal structure would collapse under Centre's weight and the States at the base would lie buried under the debris. Only strong States endowed with adequate strength and powers can build and sustain the strength of the Centre.

The provisos to articles 31A, 31C and 304 (b) of the Constitution provide ample scope for the encroachment by the Executive at the Centre on the legislative powers of the States. These provisions must be carefully examined and necessary amendments made in the Constitution to protect the legislative powers of States.

In matters concerning assent to a bill passed by a State legislature or in conserving it for President's consideration, provisions should be made in the Constitution to ensure that the Governor acts strictly on the advice of the Council of Ministers. To prevent the blocking of bills for an indefinite period, there is need for a constitutional amendment to provide for the completion of consideration of the bill by the President within three months.

It has been claimed that article 355 of the Constitution permits the Union government to deploy in States, Central Reserve Police and other para-military forces even *suo moto*. This is highly objectionable and the Constitution should be suitably amended to provide for the concurrence of State Governments before deploying such para-military forces in the concerned States, since law and order is a state subject.

If States suffer from inadequacy of financial resources and powers, the autonomy of States faces severe constraints and the federal character of the Constitution is also jeopardised. Against this background, the Centre-State relations on financial matters acquire greater significance, and need to be reviewed, followed by appropriate constitutional amendments.

Dismissal of Ministries and Power of President and Governors

In the context of dismissal of ministries at the Centre and in the States, the powers of Governors and the President of India are of vital importance, and if misused, they can play havoc with the ministries formed with the mandate of the electorate.

According to article 75 (2) of the Constitution concerning the Council of Ministers in the Union Government, "The Ministers shall hold office during the pleasure of the President."

Article 164 (1) states :

> The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

Though the Ministers at the Union and State levels are supposed to hold office during the pleasure of the President and the Governor concerned, the framers of the Constitution presumed that the discretionary powers given to the Governors in various States will not be misused and democratic spirit of the Constitution will not be violated.

However, in States after States Governor's discretion has been misused to the detriment of non-Congress parties and for the protection of the interests of the Congress. Whenever a Congress Government or a

Congress-sponsored Government either fell or was likely to fall, the Governor got the Assembly dissolved and President's rule imposed either under article 174 (2) or article 356 of the Constitution without conceding the demand of the Opposition to test the majority on the floor of the legislature and provide the alternative. Such was the situation developed in following states in the years mentioned :

Andhra Pradesh	1954
Travancore-Cochin	1954
Pondicherry	1968
West Bengal	1968
Manipur	1969
Kerala	1970
Bihar	1971
West Bengal	1971
Orissa	1973

On the other hand, whenever non-Congress outgoing Chief Minister or a Chief Minister who was likely to lose majority, recommended dissolution of Assembly, the plea for dissolution was rejected whenever the Congress was willing to manipulate majority and form the Ministry. Following are the instances of various states in which outgoing Chief Ministers had recommended dissolution of Assembly in the year mentioned but the recommendation was not accepted by the Governor :

State	*Chief Minister*	*Year in which dissolution of Assembly was recommended*
Haryana	Rao Birendra Singh	1967
Punjab	Gurnam Singh	1967
Uttar Pradesh	Charan Singh	1968
Bihar	Bhola Paswan Shastri	1968
Madhya Pradesh	Raja Naresh Chandra Singh	1969
Gujarat	Hitendra Desai	1971
Bihar	Karpoori Thakur	1971
Jammu & Kashmir	Farooq Abdullah	1984

It may be recalled that in 1979 President Sanjeeva Reddy announced the decision to dissolve the Lok Sabha without accepting the demand of the Janata Party to allow it to test its majority on the floor of the Lok Sabha.

Following a similar pattern, the Governor of Andhra Pradesh had dismissed the N.T. Rama Rao Ministry without testing the majority on the floor of the Assembly prior to the dismissal.

The misuse of the powers of Governors as well as President takes a cover behind the constitutional provision. The Union Ministry has to function during the pleasure of the President and, likewise, Ministry in the State can survive only during the pleasure of the Governor. However, the nature of this 'pleasure' has been correctly described by the Punjab High Court when the Vice Chancellor of a University was dismissed under the plea that it was the pleasure of the Chancellor, that is, the Governor of Punjab, to dismiss him. The matter went to the Punjab High Court which ruled that this pleasure of the Governor cannot be arbitrary like his other pleasures.

Anyway, against the background of the misuse of powers of the President and Governor to dismiss Ministries, it is desirable to plug loopholes in our Constitution and instead of leaving the judgement about the majority commanded by a party to the arbitrary discretion of the President or the Governor, it is better to have a constitutional obligation to test the majority on the floor of legislature prior to the dismissal of Ministry.

Parliamentary Vs. Presidential System

The controversy regarding parliamentary democracy and presidential form of government, which had erupted during the emergency, has raised its head again. Even some prominent Union Cabinet Ministers had publicly aired the view during Indira Gandhi's regime that a public debate on the issue was desirable and welcome. These seemed to be significant feelers. It must be realised that in the present context what is of importance is not the relative merit and demerit of the two systems, but the motivation behind the controversy. The founding fathers of our Constitution had discussed this issue in depth and had consciously preferred parliamentary democracy to a Presidential form of government

because the framers of the Constitution had put accent on accountability and not stability. Under parliamentary democracy, comparatively there is less stability but more accountability to Parliament since, according to article 75 (3) of the Constitution, the Council of Ministers had to be collectively responsible to Parliament. On the other hand, in a presidential form of government, there is relatively more stability but less accountability to Parliament. Under this system, members of the Cabinet need not be chosen necessarily from among the members of Parliament. Many policy measures can be adopted and implemented without any obligation to refer them to Parliament. Those with an authoritarian trend find accountability to Parliament a great constraint on their powers and functions. And so not because of any intrinsic merit or democratic form of the presidential system, but because of the unfettered freedom from parliamentary accountability this system offers, that many supporters of authoritarianism are inclined to accept presidential system in place of parliamentary democracy. Those who claim that presidential system too is a democratic form must realise that in most of the developing countries the presidential form of government has degenerated into an authoritarian regime. India can overlook this lesson of history only at its own peril.

Barriers in the Way?

Those who complacently feel that there was no danger of a change of system to a presidential form argue that there are two built-in defences against such a change. One is the *Keshavanand Bharati* judgement of the Supreme Court which does not permit any change in the basic structure of the Constitution, as for instance, the parliamentary form of government. In this context, it is worthwhile to remember that a review application is already pending in the *Minerva Case* in the Supreme Court urging the Court to reverse the *Keshavanand Bharati* judgement. The Supreme Court, as it is constituted today, is not likely to reverse its earlier judgement based on the basic structure theory. However, there are vacancies in the Supreme Court created by retirement of some judges. In reply to my question in Parliament, whether these vacancies would be filled up on the basis of norm of seniority or seniority-cum-merit, the former Union Law Minister declined to give any commitment. Obviously, the Government may prefer to pack up the Supreme Court

with "Committed" judges so that roadblocks in the path of reversing the *Keshavanand Bharati* judgement could be removed without any hesitation.

For amendment in the Constitution under article 368, it is obligatory that such an amendment must enjoy the support of two-thirds majority in both Houses of Parliament. The ruling party faces no difficulty in the Lok Sabha. In the Rajya Sabha, it can manage two-thirds majority with the help of its allies. Thus, all the constraints in the way of changing the Constitution can be overcome, and if and when desired, smooth transition to a presidential system ensured.

Basic Electoral Reforms

While I do not favour change over to the presidential system, I do not adopt a *status quoist* approach towards the present form of parliamentary democracy and the existing electoral system. In our parliamentary democracy, if the will of the electorate is to be effectively reflected through parliamentary elections, the electoral system must be liberated from the stranglehold of money power through state funding of elections. If state funding is linked with some prescribed minimum percentage of votes secured by the political parties, political fragmentation will be considerably reduced and small splinter groups will have the tendency to submerge their identity in the appropriate party in the national mainstream. This will also reduce the possibility of formation of government on the minority vote arising out of the division of Opposition vote among large number of parties belonging to the Opposition.

The following chart of seats won and votes secured by the ruling and Opposition parties at the Centre reveals in a glaring way the wide disparity between votes and seats secured by various parties in the elections.

Year	*Congress*		*Opposition*	
	% of votes	*% of seats*	*% of votes*	*% of seats*
1952	45	74.4	55	25.6
1957	47	75.1	52.3	24.9
1962	44.7	73	55.3	27
1967	40.9	54.4	59.1	45.6
1971	43.5	67.9	56.4	32.1

If, along with the existing system of single member constituencies, a part of the membership of Parliament is elected, [on the one hand] on the basis of list system governed by the percentage of votes polled by the political parties, then on one hand there would be reduction in the disparity between votes and seats secured by parties and on the other hand talent could be inducted in the Parliament, thereby improving the efficacy of Parliament.

Promulgation of Ordinances

According to Articles 123 and 213 of the Constitution, the President of India and the Governor of a State are empowered to promulgate Ordinances during the recess of Parliament and State legislatures respectively, if they are satisfied that circumstances exist which render it necessary for them to take immediate action. There is a constitutional obligation that these Ordinances should be laid before both the Houses of Parliament or State legislature concerned and they should cease to operate at the expiry of six weeks from the re-assembling of Parliament or State legislature. Despite this constitutional provision regarding the outer limit for the life of Ordinance, there have been any number of undemocratic actions of the Government in re-promulgating the same Ordinance a number of times, thereby making a mockery of the outer limit for the life of Ordinance. In Bihar, for instance, the same Ordinance was re-promulgated 34 times so that it could survive for 14 long years without being converted into a legislation.

In the case *A. K. Roy Vs. Union of India and others* in 1981 and 1982, in an obvious reference to the re-promulgation of ordinances in the State of Bihar, the Supreme Court stated :

> One of the larger States in India has manifested its addiction to that power by making an over-generous use of it — so generous indeed, that Ordinances which lapsed by efflux of time were renewed successively by a chain of kindred creatures, one after another. And, the Ordinances embrace everything under the sun, from Prince to pauper and crimes to contracts... The Constitutent Assembly... conferred upon the Executive the power to legislate, not of course intending that the said power should be used recklessly or by imagining a state of affairs to exist when, in fact, it did not exist; nor, indeed, intending that it should be *malafide*

> in order to prevent the people's elected representatives from passing or rejecting a bill after a free and open discussion, which is of the essence of democratic process.... The debates of the Constituent Assembly (Vol. 8. Part V. Chapter III, pp. 201-217) would show that the power to issue ordinances was regarded as a necessary evil. That power was to be used to meet extra ordinary situations and not perverted to serve political ends. The Constituent Assembly held forth, as it were, an assurance to the people that an extra ordinary power shall not be used in order to perpetuate a fraud on the Constitution which is conceived with so much faith and vision. That assurance must in all events be made good and the balance struck by the founding fathers between the powers of the Government and the liberties of the people not disturbed or destroyed.

To prevent such a blatant violation of the letter and spirit of the Constitution through successive re-promulgation of the same Ordinances, a suitable amendment plugging all loopholes is urgently called for.

No Encroachment

For the effective functioning of Judiciary as well as Parliament, it is necessary that both these institutions that form the core of our democratic life are allowed to function independently without each other's encroachment. Towards this end, article 121 of the Constitution makes it explicitly clear that no discussion will take place in Parliament with respect to conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties, and, similarly article 122 of the Constitution clearly states that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure. Articles 211 and 212 of the Constitution prescribe similar conditions regarding poceedings of state legislatures and conduct of the judges of Supreme Court and High Courts.

Ambit of Privileges

Recently, there have been some cases in which courts have got involved in the privilege issues before the legislatures. In the interest of unfettered functioning of legislatures, it is highly essential that, except when a

question of violation of the Fundamental Rights is involved, all other matters arising out of breach of privileges must be disposed off by the legislatures themselves without any interference by the courts.

But when legislatures have such wide powers to deal with the cases of breach of privilege, some re-thinking on the ambit of privileges is also necessary. Very often the press correspondent covering the proceedings of Parliament or State legislature does not know at what point he crosses the limit of his freedom and when he impinges upon the privileges of the legislature or of its member. Tamed by this uncertainty, his sharpness in reporting the parliamentary proceedings is blunted, or in the alternative, if he is over-enthusiastic in taking great risks in reporting, he is hauled up for breach of privilege. A second look at this problem has thus become necessary.

Controversy about Article 25

Article 25 or the Constitution regarding right to freedom of religion has recently raised certain controversy and it led to the unfortunate and avoidable agitation of Constitution burning. The misapprehension in the minds of a section of the Sikh community that separate religious identity of Sikhs is obliterated by article 25 has to be allayed. The Constituent Assembly had debated this issue, and according to the framers of the Constitution, the construction of article 25 never brought in doubt the separate religious identity of Sikhs. The government rightly announced that it was willing to get article 25 examined by legal experts. Responding to this gesture, the Akalis suspended their agitation. However, the misfortune is that this announcement came long after the agitation of burning of the Constitution began and not prior to it. It seems, the government has the genius to do right things at the wrong moment.

Failure of Men; Not Constitution

I began with the observation that we should have the resilience of mind to make appropriate changes in the Constitution in response to the needs and claims of socio-economic changes in our society. And, yet, I venture to add that, by and large, our democratic Constitution has stood the test of time. The Constitution has not failed; the men and instruments that implement the Constitution, have failed.

While our democratic Constitution remains a living and vibrant symbol of the ennobling values of liberty and equality, let us not forget the irrefutable lesson of history.

> "Liberty lives in the hearts of men and women. When it dies there, no Constitution, no Parliament, no law and no court can save it."

And so whenever we face any such deepening of crisis, or challenges to our Constitution, as during the Emergency, the only inevitable course of action shall be "Back to the people".

47

The Constitution and the Four Pillars of Indian Polity

Karan Singh

India's freedom in 1947 was indeed a watershed in the world history, because it marked the end of the colonial era that had dominated world affairs for centuries prior to that event. If one date has to be chosen by future historians to mark the end of the colonial era and the beginning of the post-colonial era, it will necessarily be the 15th of August, 1947, speaking not from a chauvinistic attitude but in historical terms, it was India's freedom that really broke the bullwarks of the colonial system throughout the world. Within ten years from that date, literally dozens of countries in Asia and Africa had become free.

But the freedom of India was significant not only as a major historical event marking the end of one and the beginning of another era, but because India chose democracy. This was the logical outcome of the unique nature of our freedom movement from its origins. If we go back to the founding of the Indian National Congress in 1885, we had the great stalwarts, the founding fathers of the movement, people like Dadabhai Naoroji, Pherozeshah Mehta, Gopal Krishna Gokhale, M.G. Ranade - the so called Moderates. Then there were Lokmanya Tilak, Aurobindo Ghosh, Bipin Chandra Pal, Lala Lajpat Rai - the Radicals. Then came the advent of Mahatma Gandhi and the extraordinary group of people he was able to gather around himself in the course of the freedom movement. The unique texture of the movement itself was that it involved millions upon millions of people of this country. Then we had the Constitution makers like Dr. B.R. Ambedkar, Shri B.N. Rao and so many others who

contributed to the texture of freedom movement. We are proud to have worked a vibrant, fully democratic system now for the last 45 years. We have had ten elections to the Lok Sabha and hundreds of elections for Vidhan Sabhas, and we can today call ourselves the greatest democracy in the world, as there is no other country which has more people in a democratic system than India.

Having said this, however, it is also clear that we are now going through a very difficult period. There is tremendous turbulence in the country. The old consensus seems to have broken down, the momentum of the freedom movement has petered out and a new equilibrium has not yet been reached. A complex set of political, economic, social and psychological factors are now in play, with some very disturbing manifestations. There is, for example, the growth of violence, whether individual or collective. Religious and caste factors are assuming alarmingly new dimensions. Assassinations have played havoc with our national leadership. There is a general atmosphere of intolerance and confrontation. In fact, the four basic assumptions, the pillars of Indian polity - democracy, socialism, secularism and non-alignment - are all under tremendous pressure and in various stages of collapse.

What is needed surely is reformulation and reinterpretation of the basic concepts behind our Constitution. In view of the changing circumstances, perhaps we need the intellectual honesty to question some of the cherished beliefs and pet theses with which we were brought up, and certainly we have to face boldly the challenges ahead. Distinguished people have a lot to say in this regard, but I will highlight what I consider to be some of the major problems facing us today. The four pillars of Indian Polity need to be discussed one by one.

Firstly, I will take up democracy. A tremendous achievement of our democratic system has been the growth of political consciousness into every nook and corner of India, whether it is a hamlet in Ladakh or an island in Lakshadweep, a village in Bastar or a colony in one of the metropolitan cities. Everywhere we go, the people of India are now aware of their democratic rights. They have demands; they want electricity and water, roads and schools. They know that they are citizens of a democratic country. This itself is a great achievement.

Vast areas of India were left out of the political mainstream, they have been drawn in. Whole communities were submerged for centuries

in this country; they have been drawn into the political process. The women of India, both in the freedom movement and after, have played a role which is perhaps unique among any of the national freedom movements. The women of India got voting rights before women in Switzerland, and they have certainly made good use of the vote. So the growth of the democratic awareness, the democratisation of the Indian psyche, the fact that political parties of all shades of ideology who accept the Constitution, from the Right to the Left, have had opportunities to participate in government, either at the Centre or in the States, at one stage or another during these forty-five years. This also is a great achievement.

But what is now happening in our democracy? The last two Parliaments have been 'hung', and we had a third minority government in a row. But more dangerous than that is the growing violence in elections. The growth of money power and mafia power in our elections, particularly in some States, is an extremely dangerous and disturbing phenomenon. If vast sums of unaccounted money have to be utilised for elections, and if in some States now you need private armies to get elected, then this is a degradation and erosion of the entire democratic process and brings into question the legitimacy of the whole democratic system. If polling booths are captured, and candidates returned on the basis of captured booths, where does the will of the people get expressed? And what is it that we as a nation are doing to prevent this? People write about it after every election, and yet nobody seems to be really doing anything about it.

What can be done? Do we need further reform of the electoral system? Do we need partial or full State financing of elections? Do we need to make voting compulsory, so that more and more people participate in the system? There are other distortions also. The federal system which we had envisaged, and which is an essential part of the democratic structure of our Constitution, has been distorted in the last 45 years. The very growth of our democracy has resulted in the erosion of federalism to a large extent. What are we going to do about the monster States that we now have, the huge States which are totally ungovernable? How can a State with over 100 million people be governed? Are we worried about it? Do we not realise that if a State becomes so huge that it cannot be governed, then democracy itself gets eroded? These are questions which

will have to be faced. In our democracy, there is a great deal to talk about Fundamental Rights and certainly these are the foundations of a democratic system. But what about the Fundamental Duties? There is a small section, Part IV (A) in the Constitution about Fundamental Duties, but I doubt if even .0001 per cent of the population knows about them. There is no interest in duties, no interest in fulfilling the obligations of a democracy, no interest in imposing upon ourselves the discipline that is needed in order to make a democracy work. We desire only the fruits of democracy, but how are we going to enjoy these if we do not, at the same time, fulfil the responsibilities that devolve upon every citizen?

It is a question of training the citizens. Where is our training for the democratic processes? Do our educational institutions give any such training? Is there any other body which gives such training? We must realise that there is no Shastric injunction that democracy in India has got to succeed. Democracy has succeeded so far because of the vision of the leaders and the democratic temper of the Indian people. But if this sort of distortion continues where a whole State can get hijacked during the elections, then democracy is in grave danger. I would submit very respectfully that the sooner we realise the immensity of the danger the better it will be, because it may still be possible for us to take certain remedial measures.

Let us come to the second pillar of the Indian polity, socialism. We have had a mixed economy for forty years. The theory of the 'commanding heights' of the economy being in the hands of the Government was essential at that time, because we were just emerging from colonial rule and did not want to become dependent upon other nations. We built the infrastructure for economic development — Railways, Steel, Oil, Heavy Industries and so on. The green revolution was a remarkable thing, one of the great achievements of this century. There has been a lot of development, since independence. For example, the life expectency of the average Indian has risen from 30 when we became free to 60 years today, so some of us are now on the margin of the life expectency. This is a great achievement - doubling the life expectency in 40 years. There are areas such as the green revolution where the changes have brought a virtual miracle. If we travel in many parts of the country you do not see the sort of grinding poverty that was there forty years ago, although there are still many areas which are very poor.

But the point is that socialism itself has now become a discredited mode of economic development, production and distribution. The great experiment of socialism in the Soviet Union and in Eastern Europe has totally collapsed. Why did that happen? Is it that socialism became co-terminus with red-tapism, with inefficiency, with unaccountability, with corruption and with wastefulness? Is it a fact that in this system that we have now, corruption has become so widespread that it is now striking at the roots of our economic development and of our administration? If that is true, then what is it that we are going to do about it?

We now have a new economic policy. I personally feel that growth oriented policies are extremely important. India cannot be a island unto itself. But as we move along into this new market economy, what are we going to do about the most vulnerable sections of our society? Is there any safety net? We must certainly move into a new economic order, we cannot continue with the old bureaucracy of the licence-permit system and the terrible corruption that it involved. But we must remember that there are still millions and millions who are below the poverty line, what to speak of two square meals, they do not get even one square meal a day. What are we going to do about them in our economic development? When we talk of socialism, and it has been put in the Preamble of the Constitution, what does it mean? Does it mean the outmoded, exploded socialism? Or are we going to have a new definition, a new interpretation of it? Or are we going to drop the word altogether? These are questions which have to be faced.

The third pillar is secularism. Here again let us not forget the trauma of 1947, the trauma of partition. There are many who actually saw the partition. For them, partition was not simply a chapter in history. They saw it happen, the greatest mass migration in human history, how the partition took place on the basis of religion. It may be unfashionable to say so; but that was the fact. It was the movement led by Mohammad Ali Jinnah and the Muslim League which demanded partition on the basis of religion. Ultimately, the Muslim majority provinces either opted out or were partitioned, this is a historical fact. But despite that, it is to the credit of the founding fathers of the Constitution to the texture of the freedom movement, to the calibre of the leadership at that time, that they did not succumb to the temptation to adopt a reactive Constitution. On the other hand they went out of their way, bent over backwards, in order to ensure every Indian citizen, regardless of his or

her religious orientation, full and equal rights. They even went one step further, they gave certain special rights to the minorities which at that time perhaps were needed in order to reassure them that they would be safe in India despite the creation of Pakistan.

But here again I think the time has come for us to reinterpret the whole concept of secularism. Unfortunately, it has been given an anti-religious orientation by some of our intellectuals. The word itself has been taken from an entirely different context. Secularism in Europe really grew from the conflict between the Church and the State, when the State wanted to reassert its supremacy, when it denounced the authority of the Pope and set up what we call a secular State. That sort of secularism is not really relevant in India. You cannot have an anti-religious secularism in this country. In this country people are deeply religious, whether it is the Hindus, the Muslims, the Sikhs, the Jains, the Buddhists, the Jews or the Parsees. This is par-excellence a land of religion. Four of the world's great religions were born in India — Hindusim, Jainism, Buddhism and Sikkhism. Four of the great religions came to us from West Asia — the religion of Zarathrustra, Prophet of Iran; the religion of Moses, Zionism; Christianity and Islam.

These eight religions have been flourishing here for centuries. If you take an anti-religious view of secularism, or the supercillious view that religion is simply a hang-over from some kind of a feudal system and that when people's basic needs are fulfilled they will forget about it, it will not work. It did not work in the Soviet Union and Eastern Europe. I was there for the thousandth anniversary of the advent of Christianity in Russia. They spent millions of roubles upon rebuilding their Churches, re-painting the icons and giving them back to the Russian Orthodox Church. I was at another five-day inter-religious global conference in Moscow in the beginning of 1990. We met for the valedictory session in the Kremlin, with President Gorbachev, Mr. Shavardanadze and all the top leaders there. Each session started with a prayer by one or the other religion, and that day it was the turn of Hinduism. When the meeting began, Swami Paramananda Bharati of the Shringeri Math, complete with his *Danda and Tripunda,* went upto the podium, recited the Vedas, and asked the audience to chant AUM with him thrice. And the whole Kremlin was reverberating with it. I said to myself, this must be one of the seminal moments in human history.

When I visited Moscow way back in 1959, Mr. V.S. Khrushev gave a dinner for us in the Kremlin. I asked him, "Mr. General Secretary, is it possible in your country to be a communist as well as a believer". He said, 'No, it is not possible'. We respect religious rights and religious feelings; but to be a member of the communist party, atheism is essential'. So there you had 70 years of an atheistic, materialistic regime, and what happened? There is an explosion of religion there today. When people wanted to gather for a political process they gathered at the Churches. In Eastern Europe the role played by the Orthodox Church and the Catholic Church has not been fully appreciated here. There is in fact an upsurge of religion throughout the world. Some manifestations may be good, some may be undesirable - I am not going into that. You have the Islamic revival, you have it in Hinduism, Sikkhism and Buddhism if you go to Japan. So religion cannot be simply dismissed by saying 'secularism'. What we really need is a secularism which involves equal *respect* for all religions, not equal *neglect* of all religions.

Then there is the whole question of minorities and majorities. Here in Delhi I am a member of the majority community. I get into an Indian airlines plane and when I get down at the Srinagar Airport, by some mystic metamorphosis I become a person belonging to the minority community. Then when I get into a car and drive through the Banihal tunnel, I am again transformed into a member of the majority community. We have to consider these matters. Should there not simply be civic rights and religious rights for all religions? These are difficult and embarrasing questions. Why is it that the Ramakrishna Mission, which is the very crest-jewel of Hinduism, has been forced to declare itself non-Hindu because without that it cannot get the protection of the minority laws in West Bengal? What a curious situation is this! Is this what we envisaged when the Constitution was framed? These are matters which have to be considered.

Another divisive issue is caste. I do not want to go into it except to say that our understanding was that castes would gradually erode, and that the whole point was to built a society where caste would no longer remain significant. But what do we find today? We find that attempts are being made to institutionalise caste, and not only four castes, but 3000 castes. Is this what the Constitution envisaged? How does this tally with the whole question of equal democratic rights?

Finally, the issue of non-alignment. In the early '50s this was a major and significant step in the world affairs. After the end of the World War when we were emerging from colonialism, there was an attempt to divide the world again - a sort of Kurukshetra. One had to line either with the Kauravas or the Pandavas. Many leaders, particularly Jawaharlal Nehru, President Nasser and President Tito said, "No. Why should we line up? We have just emerged from the colonial yoke. There is no reason why we have got to take sides." And the Non-Aligned Movement was born. It did not play an extremely valuable role in preventing the outbreak of conflict again when the cold war was at its height. But what has happened now? Embarrasingly enough, the bipolarity has disappeared. The most astounding development in modern human history has been the collapse, implosion of the Soviet Union. The name has disappeared; the flag has disappeared, without a war. It has been an astonishing thing. Some may lament it, some may celebrate it, that is not the point. The point is that there are no longer two poles. Therefore, does the Non-Aligned Movement not need to be re-interpreted? Should we continue to call it 'Non-Aligned', and if we want to call it that, what is the role it is going to play now - an economic role? Because there is still great inequality in the world situation. What about our regional grouping? Should we not be giving more importance to SAARC, for example, with which we are directly involved? It seems as if we are locked into permanent, interminable conflicts with our neighbours.

The basic point that I am making is that these cherished beliefs, values and concepts need to be re-interpreted. Simply reciting the Mantras of Non-Alignment or Socialism is not going to work any longer. What is it that needs to be done? Clearly we are at a crossroads situation, and fundamental restructuring is required. The Constitution is the main instrument of governance. There have been seventy-one Amendments so far, and lots of suggestions have been put forward by very eminent people about the changes that should be made. It is my conviction that if our collective wisdom can be brought to bear upon the problems that we face, surely we should be able to come out with some clear and creative formulations.

It seems to me that we have lost our collective vision. The vision of what we want India to be has disappeared. Where is the vision of a Vivekananda or an Aurobindo, a Mahatma Gandhi or a Jawaharlal

Nehru, a Sardar Patel or a Maulana Azad? Where is the unifying vision, the 'Dharma' in the broader sense of the term, the world view? That is something which we appear to have lost. What we need to do is to re-interpret the Constitution and re-interpret our polity in terms of a new vision. India can play a major role in restructuring global society provided we are able to find our own vision again. If we ourselves are disoriented, if we are sinking into a morass of corruption, if we become a moral wasteland, what sort of leadership can we give to the rest of the world? I still believe that Indian civilisation has the capacity to bring about a new paradigm, a creative synthesis between science and spirtuality, between the outer world of achievements and the inner world of awareness. It is only if we are able to re-interpret the vision of India that we will succeed in meeting the problems that we face. And surely that is what the Constitution and the laws are all about.

48

A Fresh Look at the Constitution

B.K. Nehru

A large proportion of the intellectuals who may be interested in the subject of constitutional reforms, live in Delhi and are so absorbed with the doings of the Government of India that they fail adequately to appreciate what is happening in the rest of the country. The people of India, on the other hand, are concerned not with the stratospheric matters which are the responsibility of the Central Government but with the much more earthy subjects which are the responsibility of the governments of the States. The State Governments are for ever wanting more powers and more autonomy but the fact is that in every single subject which concerns the life of the people of India, responsibility rests with them and not with the Centre. The levels to which the State Governments have fallen is simply not understood by those whose eyes are riveted on Raisina Hill.

Objectives

The very first objective of any proposal for constitutional reform must be to ensure that the system provides a stable government both at the Centre and in the States. I rate stability high in the factors required for good government; instability leads to weakness and weak government leads to chaos. We have been fortunate that since Independence we have had only two periods of instability at the Centre - 1977 to 1979 and 1989 to 1991. This relative stability is not a product of our constitutional system; it is the product of history on the one hand and accident on the other. The long continued struggle for Independence with the Congress

as its leader gave it a loyalty throughout the country which took some time to wear off. The accident was that we had two powerful personalities almost succeeding each other in the office of Prime Minister so that it was the personality rather than the institution which caused the stability.

The States have not been so fortunate. The historical role of Congress was forgotten earlier there than at the Centre. As the towering personalities of the pre-Independence period who ruled the States disappeared one by one and were replaced by ordinary politicians, the instability inherent in the system became apparent. Ever since the elections of 1967, there has been more or less instability in the governments of most of the States of India. Even when a party has come to power with a substantial majority, there is no assurance of stability. For not only is it the constant effort of the opposition to topple the government but an opposition to the Chief Minister develops within the party by those who feel they have not had their fair share of the loaves and fishes of office. The day after a Chief Minister is sworn in, there develops a group of dissidents who, if the party in power is an all-India party, are running constantly to Delhi to complain to the High Command about his misdeeds and asking for his removal. The result is that most of the time of the Chief Minister which should be devoted to the good governance of his State, is taken away in fighting off the intrigues of his opponents. There is a story that Pt. Jawaharlal Nehru once upbraided a Chief Minister for not doing enough for the benefit of his people. The Chief Minister's reply was revealing. He said, "Panditji, both my hands are fully occupied in holding on to my chair; with which hand can I work?"

It is hardly necessary to point out the dangers of instability particularly at the Centre. No concerted policy can be followed nor can any policy be implemented, for the entire effort of government is devoted to keeping itself in the seats of power. The situation that we are faced with in Kashmir, the Punjab and Assam is in no small measure due to a lack of policy and a lack of the persistence in pursuing any policy to deal with the discontents that were manifesting themselves. The economic mess in which we now are, which has made us dependent on outside authority and unable to resist its demands, is once again due to the total absence of the will to take hard and unpopular decisions. A strong government taking action two years ago to correct a situation that anybody could see was fast developing, would have prevented our country from having the

kind of economic setback we are now facing and the political setback that our total dependence on the foreigner has caused.

My second objective is to improve the quality of the men and women who govern us. It is sometimes said that there is nothing wrong with the Constitution; what is wrong is only with the people who exercise power. The trouble is that the Constitution is such that it must almost inevitably and increasingly catapult into the seats of power the more undesirable elements in our society. The proportion of criminals and history sheeters in the legislative assemblies of the country has been increasing from election to election. There have been instances in which criminal charges have actually been pending against Chief or other Ministers in office. There is no shortage of decent, honourable, honest, public-spirited and highly competent people in the country; but the constitutional system is such that it makes it almost impossible for them to enter political life. I should like at this point to pay my tribute to that group of people who have all these qualities and have nevertheless had the courage to overcome the hurdles in their way. Without them our political life would have deteriorated even faster than it has. And from the many critical remarks I shall make about politicians as a class, this category must be rigidly excluded.

The third objective is to ensure that the executive government is strong enough and willing and capable enough to address itself to solving the major problems of this country even though the measures required for their solution may, for the time being, be unpopular. The basic problem in India, of which almost all the troubles that manifest themselves from day-to-day are the facets, is the growth of our population. Even when we became independent, the population-resource ratio was less favourable in India than in many countries of the world. The population since then has more than doubled; by the end of the century it will have tripled. The population-resource ratio is, therefore, very much worse and is worsening every day.

True it is that as a result of better technology, we have been able to increase production from our limited resources slightly faster than the rate at which the population has grown. Prosperity has, therefore, increased and poverty decreased. But the rate of economic growth has been much lower than the rate of the growth of expectations. If the former

has to be increased to approach the latter, the measures required, both in regard to population and in the economic field will, in their immediate consequences, be highly unpopular. The present system makes it impossible to take any unpopular decision, for the vote has become our God. In fact, political decisions are taken which are quite clearly contrary to the national interest because the ruling party of the moment thinks that by taking them it will be returned to power at the next election or even help in getting it more votes at the next by-election.

The fourth objective is to reestablish the Rule of Law. There is no shortage of laws in this country. Every session of Parliament adds a dozen or more to them. The British Government in India passed no more than a little over 400 laws in the 90 years of their rule between 1857 and 1947. The independent Government of India has passed in the 44 years since Independence almost 5,000 Acts at the Centre alone; it is only a minority of them that is actually implemented. Every single one of the British laws was implemented; one of the major considerations in enacting a piece of legislation was whether it was possible, given the limitations of the administrative apparatus, to enforce it. If a proposal for legislation was such that it would be impossible to enforce it, it was considered preferable not to have it, no matter how desirable, than to bring the whole system of law into disrepute by laws being violated with impurity.

Laws today are passed sometimes without much thought and discussion. The Prime Minister or the Chief Minister of the day, gets a brain-wave one day that a certain law is desirable. It is drafted the next day, is passed by the State Assembly or by both Houses of Parliament on the third day and sent up to the Head of State for assent. Furthermore, when legislative business is before the House, there may not be any quorum; legislators who are supposed to have been elected to legislate may not show much interest in legislation.

The reason why some of them may have little interest is that they may know that the law may not matter. Increasingly, the will of the Chief Minister, of the individual Minister and of the local member of legislative Assembly is being substituted for the laws of the land. The Civil Services, whose duty it is to implement the law and not the will or the whim of Ministers or legislators, have been subjected to such enormous pressures

that they have no alternative but to forget the law and carry out these wishes.

The fifth objective is to ensure that the elected representatives of the people, who make the laws, actually represent the people. The members of legislatures should represent every section and every interest of the electorate; under our present system of first-past-the-post elections, the legislature does not reflect the real wishes of the people. The Congress Party, which has been governing us for most of our Independent existence, has not, except on two occasions, had the support of more than half the electors. The number of votes in the country opposed to the policies of the Congress has, for most of these 44 years, been larger than the number of people who support those policies. But under our system, the views of these people are not represented in Parliament as adequately as they should be. The consequence is that instead of disputes and differences being settled through debate and compromise in Parliament, which is the democratic method, they are taken into the streets with increasingly more violence.

The sixth objective is to ensure that local problems are settled and local development takes place, not in accordance with the wishes of the State legislature or even Parliament itself, but according to the wishes of the people of the locality, insofar naturally as their wishes, desires and actions do not come into conflict with the interests of the people of other localities. The system today is of power concentrated in the hands of the State Assembly or in Parliament. The local bodies, the municipalities, the zila parishads, the village panchayats etc. exist almost at the will of the State Governments. They do not have enough resources to meet their obligations and, what is very much worse, if they take actions which the party in power at the State level does not like, the local body is suspended or superseded. This is true not only of territorial bodies such as those I have mentioned, but the craze for power is such, and the safeguards against that power being misused so few, that nominally autonomous bodies such as universities, cooperative societies and the like are infiltrated and dominated, much to their detriment, by appointees of political parties.

Finally, the objective is to reduce the ever-rising tide of corruption which threatens not only to overwhelm the administration, which is

serious enough, but what is even more serious, to destroy the moral fibre of the country. Eleven years ago, I made a speech in Madras which attracted considerable attention in which I traced the roots of corruption to the enormous sums of money required for an election under our present constitutional system. The amounts have grown since then; they were then, and are now, so large that there is no possible honest method by which that kind of money can be raised. Political parties and individual legislators are compelled to raise that money; the only way they can reimburse themselves or their financiers is to extract that money, with usurious interest, from the administrative system. Corruption is, therefore, not only encouraged but the honest officer is virtually compelled both by peer pressure and by the pressure of the bosses to become as corrupt as they are.

My proposals for constitutional reform are based on the essentiality of the separation of powers. It has now for several hundred years been a well-recognised principle of democracy that the three powers of the State, the Executive, the Legislative and the Judicial, should be kept entirely separate from each other. This separation is necessary because each of the three branches of government serves as a check on the others, leading to a balance in the final direction in which government moves. In the parliamentary system there is a confusion between the Legislative and Executive powers. The Chief Minister or the Prime Minister must be a legislator, and so must all the Ministers in his Council of Ministers. In all parliamentary systems, the extent of the confusion is limited to the Ministers being members of the legislature and so it is theoretically in our Constitution. Article 102 of the Constitution in regard to the Centre and article 191 in regard to the States says that "a person shall be disqualified for being chosen as, and for being, a member of" either the Central or the State legislatures, "if he holds any office of profit under the Government of India or the Government of any State." Unfortunately, the same sentence goes on to say "other than an office declared by" the legislature concerned "by law not to disqualify its holders". Both the Central legislature as well as every single State legislature has an enormous list of offices, every single one of which is "under the Government" and is not only of legal profit but often of great illegal profit, to the holder, as being an office which does not disqualify him from the membership of the legislature. In the case of the Mother of Parliaments, whose rules and conventions we think we follow, it took the representatives of the people

almost 200 years to get rid of what were known as the "King's Men", whose loyalty had been bought by the Crown by giving them all kinds of offices.

Executive

We have at one stroke destroyed that essential safeguard of democracy. Once a Chief Minister is appointed, all that he has to do to keep himself in office is to give an office of profit to every single member of his party. Whence it is, that the number of Ministers goes on forever increasing. The result is that subjects which should be, and were, dealt with by Under Secretaries now may have a full Minister to take the same decisions as the Under Secretary used to take. When this sub-division of subjects is impossible, those left out of the ministerial list may be made into Chairmen of Public Sector Corporations of Commissions. If there are not enough corporations in existence to satisfy officeless legislators, more corporations may be created overnight. In fact it is becoming increasingly clear that our great devotion to socialism is based not on any understanding of, or commitment to, socialism, which we never had, but on the fact that under our system it produces enormous profits for legislators no matter what losses it produces for the tax-payer. If unfortunately even this creation of offices is not enough, the legislators still left out may be kept happy with being given government contracts. The life of the Chief Minister may thus be ensured for the statutory term of the legislature.

The price of stability in our system seems to be the transformation of a democracy into a kleptocracy. The only danger that remains is that important legislators may be dissatisfied because they have not been rewarded with a "lucrative" enough portfolio. The term "lucrative portfolio" now current in our political parlance is our contribution to the theory of democracy! Here fortunately the Anti-Defection Law stands in the way but careful Chief Ministers take out an even better insurance policy. They grant to every single member of the legislature, irrespective of party, the right to transfer a given number of officials from place to place within his constituency. What happens to law and order, to education, to development, and to the numerous other services that government is supposed to provide to the people is nobody's concern. Furthermore, ruling party legislators are permitted, encouraged and indeed expected,

to issue orders to the district administration. If they are disobeyed, the official is subjected to the dire wrath of the Minister. The confusion between the legislative and executive powers is complete; the casualties are the Rule of Law and good administration.

My first proposal is, therefore, to separate entirely the legislative from the executive function by making it impossible for any member of the legislature to hold any office of profit under the Government, including a Ministership. The Chief Executive of the country or the State, i.e. the President or the Governor as I would prefer to call them, will be elected separately and will appoint such Ministers as he may wish from outside the legislature. There will be no authority under the Constitution to give anybody the right to waive this prohibition.

The effect of this will be immediately and automatically to reduce drastically the attraction of becoming a legislator. The scores of thousands of people who seek tickets from the party they believe most likely to win do so not because they are interested in legislating but because they are interested in governing. If a member of the legislature cannot exercise any executive power, the only people who will stand for election to a legislature whose only function it is to legislate, will be those who are interested in making good laws. This will automatically raise the quality of the persons wanting to be members of Parliament or of the local Assemblies and improve the quality of legislation by having greater attention paid to it by men and women interested in legislation and having the competence to legislate. It will, secondly, and very importantly, improve the quality of the Ministers because the chief executive will be able to recruit the best men for the job irrespective of whether or not he has the capacity to wheedle votes out of an ill-informed electorate.

My second proposal is that the President or the Governor will hold office for a fixed term of years without any possibility of his removal during that term, except by impeachment for acts of moral delinquency. Not being dependent from day to day for his own existence on a whole horde of rapacious legislators, he will be able to propose unpopular policies and take unpopular actions in the interest of the country. He should have a tenure long enough to be able to give effect to the policies which he considers desirable, say seven years in the case of the President

and five years in the case of the Governor but, very importantly, he should be limited to a single term of office. This limitation is essential because otherwise he will fall a prey to the same temptation as our present politicians, of seeking popularity in order to remain perennially in office and in following more and more populist policies which give immediate pleasure to the voter but harm the long-term interests of the country.

The fixed term of the Chief Executive ensures stability in the executive government. The President or the Governor does not have to waste any time at all in placating the desires for power and pelf of the members of the legislature. They can be discontented with him, but all this will have no effect. He will continue to remain in power till the earth has completed the prescribed number of orbits round the sun. The futility of these efforts will soon become apparent and the enormous amount of time and energy wasted in the effort will hopefully be put to better use.

Theoretically the best way to elect the President or the Governor would be to have him directly elected by all the adult population of the country or the State. But our country is so vast and the population so great that the expenditure involved for any candidate would become colossal. Once again this would lead exactly to that corruption which it is one of our objectives to eliminate.

The next best alternative is for the President or the Governor to be elected by a college of electors who themselves represent the people. It is the general belief that the President of the United States is elected by the direct vote of the people. But this belief is legally and constitutionally wrong. The people vote to elect members of the College of Electors; it is this College which elects the President. The founding fathers of the American Constitution prescribed this indirect method because they felt, rightly, that so important a decision should not be taken by the vast number of people who could be swayed by emotion or a populist appeal or election gimmickry; it should be taken by a very small group of people who, while being representatives of their communities, were relatively immune to these unworthy influences and could act in the best interest of the nation. Theoretically members of the College of Electors were not bound by the wishes of the people who elect them to that College. They could theoretically totally disregard those wishes and vote for

the person who they thought would be best for the country irrespective of who their electors wanted. The conventions that have, however, developed and have probably by now assumed a legal form, debar such a practice.

There is nothing new about the proposal that the Chief Executive should be elected by a College of Electors, for the President today is also so elected, the College of Electors being the members of Parliament and the State legislatures. And indeed the Prime Minister and the Chief Ministers are once again elected by a narrow and small College of Electors, that is to say, the members of the majority party in the Lok Sabha or the lower House of the State legislatures. The College of Electors I propose is much wider consisting of not only the members of Parliament and the members of the State legislatures but also of the members of all local bodies down perhaps to the Panchayat level. The electorate will be wide enough to ensure that it reflects the wishes of the people; it will be small enough not to require much expenditure of money to enable it to get to know the qualities and the merits and the policies of the various candidates for the office. This was the method that was adopted in the Constitution of the Fifth Republic of France originally. It is only later that France changed to a two-stage direct election. But France is smaller than our larger States and France is infinitely richer than India. It is, therefore, easier for them to expand the constituency of the President than it would be for us.

There is one specific provision regarding the election of the President, which should find a place in the Indian Constitution. India has a peculiar problem, shared by Pakistan and Nigeria as also, in another way, by Canada. It is that there is one region of the country with a distinct linguistic and cultural identity which is so large as to dominate the rest of the country. In Canada, the English speaking part dominates Quebec, in Pakistan, the Punjab has more population and more wealth than the rest of the country put together. In Nigeria, the area which used to be the Northern Province is larger than all the other provinces combined. In India, it is the Hindi-speaking belt, undoubtedly more backward than the rest of the country but more populous, which has since Independence tended to dominate the governance of the country particularly in the matter of the choice of the Prime Minister. In 44 years, we have had only two Prime Ministers who have not belonged to Uttar Pradesh. Given the

fact that some of these seven occupants of the Prime Ministerial office would have occupied it in any case because of their outstanding merit no matter which part of the country they came from, it is nevertheless true that this large mass of northern India enjoys an unfair advantage over the rest of the country. The dissatisfaction that arises from this kind of imbalance without adequate safeguards in the Constitution to protect the rights of the other States are clearly visible in Canada and Pakistan. The only country which has recognised the problem in its Constitution is Nigeria and I would suggest that we take a cue from what that country has done. In our conditions, I would notionally divide the country into four zones — east, west, south and north — and would require a successful candidate for the Presidency not only to get an overall majority of the votes cast throughout the country but also a specified, relatively small, percentage of votes in all the zones, before he can be declared elected. This is to ensure that we do not get a President whose knowledge of the rest of India is so confined as to think of everyone coming from the south of the Vindhyas as a *Madarasi.*

Legislature

The proposals I wish to make about the powers of the Legislatures and the methods of their election are so inter-linked with the question of the devolution of power that it would be preferable if I discuss that first before proposing the mechanism of election.

The States in general are forever wanting more autonomy. The discontents in the Punjab, Assam and to some extent even in Kashmir are traceable to a certain extent to the lack of autonomy. This question has been gone into very thoroughly by Justice Sarkaria and his Commission. I would agree with his findings that, bearing in mind the interests of the country as a whole, the powers and responsibilities that have been allocated to the Centre and the States under our Constitution do not require any radical change. There may be some adjustments here and there which may be of benefit but these are marginal.

What has harmed and indeed, to a certain extent, destroyed the autonomy of the States are three factors. The moment the country, with general consent, adopted central planning for economic development, it followed that certain powers which the Constitution gave to the States

would have to be vested in the Centre. To take but one example, industry under the Constitution is a State subject. But economic planning for India as a whole cannot be done without central control of industrial policy; control over industry was, therefore, transferred to the Centre by the willing consent of the States.

But the most important factor in the destruction of the autonomy of the States has been the extra-constitutional authority that is exercised by the all-India political parties. Under the Constitution, it is for the people of the State freely to choose and elect their own candidates to the legislature and for the members of the legislature to choose the person they like best as their Chief Minister. The Chief Minister then chooses his Ministers and the Head of the State, who is above all political conflict, swears them in. There is no room in the Constitution for any outside interference. However, the existence of all-India parties has resulted in the destruction of this freedom of advice. The Congress gets the principal blame for this for the simple reason that it has been in power for the longest period of time. But the guilt is as much that of all other all-India political parties; the Janata Dal or the BJP act exactly in the same manner. The interference goes to such an extent that even the list of party candidates to the local legislature has to be approved by the central organisation, the Chief Minister to be elected has to be its nominee, the Ministers he chooses and even the portfolios that he gives them are dictated to him by the same authority. One of the great appeals of regional parties is that there is no such interference with them from outside; regional parties in power consequently enjoy much greater freedom than governments belonging to all-India parties. No constitutional provision can be devised to prevent this kind of unconstitutional interference based as it is on the free will of the people; the remedy for restoring the autonomy that the Constitution guarantees to the States lies in their own hands.

The third factor that has operated to weaken the autonomy of the States is the misuse of the institution of the Governor. It was the clear intention of the founding fathers that office should be totally above the political fray and that its occupants would in no way be interested in furthering any political party. In order to ensure that the Governor would not be subjected to the pressure of the Central Government he was given a fixed term of office of five years. The oath of office of the Governor is

clear. It says that he will, to the best of his ability, preserve, protect and defend the Constitution and the law and that he will devote himself to the service and well-being of the people of the State.

This would involve, as the Sarkaria Commission has pointed out, the appointment of individuals as Governors who have achieved eminence in fields of activity other than politics or who, though they may have started as politicians have no further political ambitions or role. However, over the years this concept of an independent and impartial Governor has increasingly become unacceptable to the Central Government. The day after the Sarkaria Commission report was made public, seven appointments of Governors were made of whom six were active politicians belonging to the party in power at the Centre. The concept seems increasingly to be that the Governor is no more than a representative of the Government of India subject to its orders whose function is to serve the interests of the party ruling at the Centre. This concept has been accepted to such a point that the Union Cabinet advised the President to dismiss all the Governors who were in office when they themselves came to power and the President accepted this advice. There could have been no clearer demonstration of the changed character of the Governorship; the Governor had become a political hack not to hold office for the five years which the Constitution required but only till the Government at the Centre changed its colour.

My proposal has the inestimable advantage of abolishing the institution of the Governor as it exists at present thereby removing all threats presented by that office to the autonomy of the State. The new Governor freely elected by the people of the State can cock a snook at the Central Government and tell them to mind their own business. Whether or not he obeys the orders of an all-India political party will depend on him and the wishes of his electors. If, in addition, central planning is abandoned as it is likely gradually to be, the autonomy of the States will be restored to its original position.

But the devolution of power that I seek is not from the Centre to the States but from the States to its local bodies, i.e. the municipalities, the town area committees, the district boards, the village panchayats and the like, which are much closer to the people than the members of Legislative Assembly sitting in State Capitals. All these bodies now exist but none of them has constitutional protection. What I would want is that

their rights, their obligations, their powers, their resources, their method of election and organisation should all be given constitutional protection without the right of any authority whether State Government or Centre to supersede or suspend them. If the State Government or any other authority had any objection to any of their actions, it would be for the courts to decide whether the action was intra or ultra vires.

I would hold direct elections only to the primary legislative body, i.e. the village panchayats in the rural areas or the town areas committee or municipal committee in the urban areas. These elections should be held with proportional representation on the basis of a single transferable vote in multi-member constituencies so that every caste, creed, trade or calling or other interest would have a fair and equal chance of representation. A village is a small body of people who inevitably know each other intimately. They know who is good and who is bad; they know who is competent and who is incompetent; they know who works for the public good and who is a self-seeker. They can be trusted to elect to their panchayats the best people in the village.

It is often said that giving additional powers to a village panchayat would only mean giving powers to the local strong arm *Chaudhri.* This may be true in present conditions. But if the panchayat is given constitutional recognition and its elections conducted under the same safeguards as those to Parliament, I do not see why the panchayat cannot be as true a reflection of the will of the people as it is humanly possible for any elected body to be.

The primary body, i.e. the village panchayat or the town area of the municipal committee would be in my scheme of things the base on which further representative bodies would be built. The next tier of local-self government would be the district board, unless local conditions require yet another intermediate body. This would be elected not directly but by a college of electors. This college could consist of the members of all the primary local bodies in the district. For the next stage of government, namely, the State legislature, there again should be no direct elections, the college of electors being members of the district boards of the States. The final stage would be the election to the Central Parliament for which the college of electors should be the members of the State legislatures.

All these elections should be on the basis of proportional representation on the basis of the single transferable vote. The system of the single transferable vote has been in practice in our country since the beginning of our Constitution for elections to the members of the Rajya Sabha. It is by no means unknown to us and should easily be practicable even at the lower levels of elections. It is by far the fairest way of electing a body or an individual which or who reflects in themselves or himself the totality of the interests of the electors. The first-past-the-post system as I have earlier pointed out completely distorts the will of the people and is, to that extent, undemocratic. This system is prevalent only in the United Kingdom and in the countries which at one time were part of the British Empire. In all other democracies, some form of proportional representation is practised. For some reason, the only other form of proportional representation known in India is the German system of list voting. In that system for half the seats in the legislature the people vote not for individuals but for political parties. The number of seats of a political party depends on the proportion of votes it gets. Which individual actually gets elected depends on the position his name occupies in the party list. This is a method that takes away the power of election from the individual voter and transfers it to the party bosses. In Indian conditions where the party bosses in general have no elective authority, this system would be absolutely disastrous.

The merits of the proposals I make are first that the electorate at every stage is limited to electing the people who are to decide on the issues which are of the most direct consequence to them. The normal villager in an Indian village has neither any concern with nor any knowledge of abstruse subjects such as foreign policy on which, under the present system, he is supposed to vote. He is concerned as a villager with the supply of drinking water or proper working of the school or the establishment of a hospital or a dispensary, the timely supply of seeds and fertilizers and irrigation water. He could not care less about whether India followed a policy of alignment or non-alignment.

Further, he knows personally the people who want his vote; whether they stand on the symbol of one party or another is irrelevant to him. He will choose the man who in his opinion is the best man and in whom he has the greatest faith.

Similarly at the next tier of government, the likelihood is that the voter would have sophistication enough, knowledge enough and interest enough, to be concerned with the affairs which are the responsibility of the next tier which are wider than the village or the town area. He would, in addition, be more personally knowledgeable about the individuals who are wanting his vote than would be the general elector. As this process proceeds, the expectation is reasonable that the level of sophistication, knowledge, and interest will increase. What happens at the moment is quite the reverse. A blitzkrieg overtakes a village or a town at enormous expense asking the voter to vote for the Hand or the Lotus or whatever. At that he may know is the name of the leader of the party and the vote that he gives represents his confidence in that leader rather than in the individual for whom he is voting.

The Services

Lastly, but very definitely not least importantly, I deal with the services whose position I feel should be specifically and clearly defined in the Constitution. Whereas in the classical theory of the separation of powers, the Executive is regarded as one undifferentiated whole, modern political theory tends increasingly to divide the executive power also into two separate branches. There is the political executive whose function it is to direct policy and in the classical words of Harold Laski "to inject a current of tendency into the stream of affairs". These policies, in order to be effective, have to be given shape into laws which have to be approved by the second branch of government, namely, the Legislative. The application of the law in particular cases is not, however, the function of the political executive; it is the function of the permanent civil service. This group of people are entrusted with the implementation of the law. The Income Tax Act, the contents of which are a matter of policy, does not vest in the Minister of Finance any powers at all; the persons in whom various powers are vested are the Income Tax Officer, the Commissioner of Income Tax etc. etc. Similarly, no Minister has any function at all under the Criminal Procedure Code; the peopple who are entrusted with functions under that Code are the District Magistrates, the Superintendents of Police and the like. There is no law, whether in India or in any other democracy which empowers a Minister to decide an individual case; Ministers are merely advisers to the President or the Governor; those whose duty it is to carry out the orders which the Ministers have advised

the President to give, are the servants of the President which Ministers are not.

The reason why India is increasingly becoming a lawless country is that those to whom the law entrusts its enforcement are not allowed to exercise their powers. The law is replaced by the will of the Ministers and, indeed, often by the will of individual members of Legislatures. The law says that the police must take cognizance of a murder, investigate it, and proceed to prosecute the party or parties which it considers guilty. The Minister, on the other hand, says that if the murder has been committed by his henchmen, the case has either not to be registered at all or not investigated or investigated improperly or the post mortem report has to be cooked or other steps taken to ensure that the guilty party gets away scot-free. Not only that but there have been well-known instances where the Chief Minister has used the police force as his own private army virtually converting it into a gang of outlaws committing murder and rapine. To collect money for his own private purse through the agency of the police force is something that unfortunately is by no means now unknown in our country.

We have gotten to a point at which many parts of the country - and I do not refer to Assam, the Punjab or Kashmir which are special cases - have no law and order. The only persons whose life and property can be regarded as safe are those who are the political bosses connected with the party in power at the moment or those who are fortunate enough to enjoy their favours.

How is it then that the permanent civil services have abdicated the functions entrusted to them by law? The Constitution has provisions which show clearly that the permanent services were supposed to be independent of the political executive and not to be swayed by the political bias of whoever happened to occupy the seats of powers for the time being. The Public Service Commissions which were supposed to be completely impartial and independent were to recruit the personnel of the services; under article 311 of the Constitution the public servants once recruited were given special protection; they could not be dismissed or demoted or other disciplinary action taken against them without an elaborate inquiry.

But the provisions of the Constitution did not specifically prevent the Minister from transferring, denying promotion or suspending an

officer who was not pliable and performed his duties without fear or favour as he was expected to do. It is these three powers of transfer, denial of promotion and suspension that have been ruthlessly used completely to demoralise the services. In a country where jobs are not easily available, it is not surprising, though it is tragic, that a larger number of civil servants, including the corps of d'elite of the all-India services, namely, the IAS and the IPS should not have been able to live up to the great traditions of independence and impartiality which they inherited.

In virtually all well-run democracies, the civil services have, mostly by convention, a special position which excludes the kind of pressure that is applied against them in India. In the United Kingdom - and this is true *mutatis mutandis* of all European democracies - recruitment is made by Public Service Commissions which are truly independent and immune from political influences. Appointments, postings, transfers, promotions or denial thereof, are all decided not by Ministers but by a group of senior civil servants themselves. As the civil servant's future does not depend on whether or not he has been able to please his political master but whether or not he has been successful in implementing the law, it is the law and not the ministerial whim which get obeyed.

The idea that the civil services should have autonomy is, of course, anathema to politicians of all kinds and of all parties. The Indian tradition of governance is not through the Rule of Law; the law in our tradition is what the ruler wishes. It is not understood that in a proper democracy there is no ruler in the sense that we have understood the term but that every functionary of government from the highest to the lowest has a strictly limited task to perform. That task is defined by the Constitution and the laws; the will of any individual no matter how highly placed, cannot prevail against the law. Even if it is the President who breaks the law, he is liable to impeachment. We are all aware that Richard Nixon who had authorised a kind of house breaking and larceny, had to abdicate what is, perhaps the most powerful office in the world, the Presidency of the United States as he found himself defenceless against the threat of impeachment. In India even a minor Minister can authorise and does authorise that kind of action without the slightest fear that any authority would take any action against him. Indeed, extortion, bribery, unlawful detention, assault and even murder seem in our political

consciousness to be the legitimate rights of the person who regards himself and is often regarded as the Ruler.

I suggest that if we do not want to descend into chaos, a major change in our Constitution will have to be to define the respective and distinct functions of the permanent and political parts of the Executive branch of government. The conventions on which we were relying for good government under the Constitution have all been broken; they have, therefore, to be replaced by law.

I have attempted to sketch the outlines of a Constitution which, in my view, should replace the present one if we are again to become a peaceful, honest, just and progressive nation. Each one of the specific proposals I have made requires to be greatly elaborated after mature thought and wide discussion. I do not for a moment claim a monopoly of wisdom; what I would like to suggest is that these ideas of mine should be discussed for what they are worth, more objectively than has hitherto been the case.

The objection that is often raised even to the discussion of this kind of basic constitutional reform is that it is so radical that it is never likely to be accepted by the only people who can change the Constitution, namely the politicians themselves whose present access to power and pelf it will totally eliminate. That is true in normal circumstances. But the body politic is deteriorating at so rapid a pace that it is just possible that within a foreseable future an abnormal set of circumstances will arise where the present day politician will not have the last word in determining the future of the country. Who would have thought only a couple of years ago that the Soviet Union would collapse and be replaced by something so entirely different. The conventional wisdom was that the power of the rulers of the Union was so formidably entrenched that nobody could ever challenge it. But circumstances are not bodies; it was the force of circumstance, the economic collapse of the system which forced the change. All that I urge is that at least the intelligentsia should discuss these matters and come to some kind of consensus on the shape that we would like the constitutional reforms to take so that when the irresistible force of circumstance compels the change, we should not face the kind of chaos that has replaced the breakdown of the old system in the Soviet Union.

The article is based on *S. Ranganathan Memorial Lecture* delivered by the author at New Delhi on 12 January, 1992.

49

A Re-Incarnation of the Constitution with Mutations - Some Reflections

V.R. Krishna Iyer

> **"We may consider each generation as a distinct nation, with a right, by the will of its majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country".**

This Jeffersonian wisdom was quoted by Dr. Ambedkar in our Constituent Assembly to make the point that no Constitution is immutable. Nor is it immortal. All living organisms must renew themselves to preserve their perennial *aliveness* —and the Constitution of a vibrant people throbs with life and suffers metamorphosis, even heart transplant — when social pressures, and political compulsions, fresh forces and inner urges command imperative changes to evolve a newer stability out of turbulent entropy, a higher synthesis out of a clash of heritage and heresy, a surer jural cosmos out of a disintegrating lawless chaos. Such is the *raison d'etre* of the demand for a fresh and urgent look at the *Suprema Lex* when, under unsuspected strains and stresses, it tunes ill with the great challenges of our times. Our founding fathers, wise and sincere, were not profound prophets for all times, but did their best under given circumstances. When the latent convulsions and environmental explosions acquire a new power, the dogmas of the dying century must yield place to the vibrant desiderata expressed by the storms of change. Life, as people conditioned by space and time live it, changes, and freedom to adapt is implicit in the quest for the truth of life. Justice Holmes put it best in his famous dissent :

> "But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution."

Therefore, there is a case for review of the 1950 model Constitution of India, now that a generation or more of experience has taught new lessons, a universe of new meanings and values has emerged and a world of ideas, actions, ideologies and technologies has shaken and shaped a new Human Order. What is important is that a constructive intent, not destructive bent, should nevigate the *perestroika* process and a national consultation and participation must precede any reform and restructuring and reincarnation of a radical constitutional Instrument. The elan vital, impelling constitutional evolution, is the urge for fuller self-expression of individuals and groups, larger freedoms and more developmental opportunities for suppressed, marginalised and alienated sub-nationalities. A brave new *Bharat*, with its sacred essence, hungers for satisfaction through better manifestation. But today, a few elitist elements, abetted by tycoons, compradors and re-colonising powers are seeking to distort even the basic features and fundamental goals. Inevitably, tensions shoot up, making the creative statesmen go to teleological understanding of the phenomena of social disorder.

Another grave danger causing constitutional consternation is the reckless dismissal of the fighting faiths in our founding deed of a Socialistic Social Order, of an Economic Justice Project *where the poor matter*, where *laissez faire* 'red in tooth and claw' is ruled out and planned processes of development, rejecting concentration of wealth and exploitation and defending distributive justice is guardianed by the State.

Jefferson was realistic when he wrote :

> "Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment... Laws and institutions must go hand in hand with

> the progress of the human mind .... As new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times .... Each generation ... has the right to choose for itself the form of government it believes the most promotive of its own happiness ...."

But there is the caveat that the masses are the masters, not Judas economists with scary theories obliging our resources using nascent jargon and undermining our very sovereignty taking advantage of the illiteracy of the people about the dangers of "liberalisation" which is sweetened poison! The Indian imbroglio is too complicated for simplistic constitutional reform.

Even so, our Constitution demands reform, structural, ideological and operational. We must venture. But every new structure or change of texture must respond to the pressures of a creative culture pregnant with a national or sub-national, ethnic or separatist idea struggling to be born and has gathered strength through a period of gestation and tension. To suppress such a puissant urge for change is to hasten disintegration or distortion, and the path of impaginative patriotism lies in accommodative mutations, not annihilative obstinacy. Victor Hugo's words have application in all conditions :

> "There is one thing stronger than all the armies in the world; and that is an idea whose time has come".

The heritage of yesterday may, when a radical consciousness has wrought change in a community, become the heresy of today. Who could put it better than Justice Holmes who observed :

> "About seventy-five years ago I learned that I was not God. And so, when the people of the various States want to do something and I can't find anything in the Constitution expressly forbidding them to do it, I say, whether I like it or not : Damn it, let 'em do it."

The national agenda for the transformation of the social order, therefore, needs serious reflection, not violent suppression. To-day, sorry to say, midgets strut and fret and fundamentals go by default. Deepening confusion, day-to-day politics, judicial pettifoggery, administrative charlatanry and fascist temptations eclipse basic constitutional

thinking, superficialities and trivialities sprayed through the media doping the people.

> "And we are here as on a darkling plain
> Swept with confused alarms of struggle and flight,
> Where ignorant armies clash by night. Mathew Arnold

A great hindrance to creative intelligence in constitutional reform is the 'fast foods' politician, especially if in power, who makes noises and black out contrary voices.

Edmund Burke reminded the British once :

> "Because half a dozen grasshoppers under a fern make the field ring with their importunate chink, whilst thousands of great cattle, reposed beneath the shadow of the British oak, chew the cud and are silent, pray do not imagine that those who make the noise are the only inhabitants of the field; that, of course, they are many in number; or that, after all, they are other than the little, shrivelled, meagre, hopping, though loud and troublesome insects of the hour."

The touchstone of valid change is *not* what courts will uphold. They may be myopics and logomachics and lexical lordships. We want new thinking based on burning experience.

The first and most obvious issue which falls for debate is whether a Presidential pattern of power exercise must replace the current decadent Parliamentary System. This question was considered in the Constituent Assembly and rejected, although that does not forbid fresh consideration. Dr. Ambedkar explained why Indian political history, ethos and popular urge for accountability are more in consonance with Westminster and Whitehall than Capitol Hill and White House. Indian political familiarity with parliamentarism and the special advantages of popular impact on the Administration in such a system weighed with our founding fathers.

The fundamental difference between the White House and 10 Downing Street is that the Executive power concentrated in the President is not under daily scrutiny or constant control by the Congress; and so, an unbridled freedom of action is enjoyed by him which makes the

office strong, capable of meeting changes and challenges and indulging in secrecies and excesses, without vindicating before the House, even though with all its passion of debate and babel of unreason, every measure or move or policy or strategy. In a world of pushes and pressures, in a country of diverse conflicts, violent upsurges and swift decisions, the unitive power process and secure tenure under the Presidential System may have great advantages. A debating society cannot run an army in action but national affairs are not military operations, especially when Watergates, Irangates are corrupt potentialities which miss no opportunity. But the frequency of accountability and popular control which obtain in the parliamentary system are so valuable a restraint on any authoritarian and corrupt administration, even if, at times, irritating, irrational, uninformed and noisily nonsensical.

There is a qualitative difference between parliamentary debates and Question Hour interrogatories, on the one hand, and Congressional debates and investigations and party-neutral, lobby-influenced alignments with limited orality inside the House. The Westminster pattern is more powerful in controlling the Treasury Bench than the White House style of Presidential Government. Of course, there are various brands of Presidential and Parliamentary Systems, with permutations and combinations of the American and British models. We, in India, have almost bodily borrowed and transplanted the British style. Unfortunately, even the privileges of parliamentarians and of the House are models fastidiously adopted from what prevailed in the House of Commons in 1950. This simian syndrome makes one blush. Even so, the great words of Winston Churchill, when winding up his reply to the debate on the censure motion during the critical days of World War II, are worth repeating, to show the excellence of the Parliamentary System when it works at its best (even in a crisis) :

> "This long debate has now reached its final stage. What a remarkable example it has been of the unbridled freedom of our Parliamentary institutions in time of war! Everything that could be thought of or raked up has been used to weaken confidence in the Government, has been used to prove that Ministers are incompetent and to weaken their confidence in themselves, to make the Army distrust the backing it is getting from the civil power, to make the workmen lose confidence in the weapons they are

> striving so hard to make, to present the Government as a set of nonentities over whom the Prime Minister towers, and then to undermine him in his own heart, and, if possible, before the eyes of the nation. All this poured out by cable and radio to all parts of the world, to the distress of all our friends and to the delight of all our foes ! I am in favour of this freedom, which no other country would use, or dare to use, in times of mortal peril such as those through which we are passing."[1]

The Indian experience during the last more than four decades has demonstrated that popular participation in the national or State administration has better chance in the Parliamentary System than in the Presidential form. Even if the French or the Sri Lankan system were to be considered as alternative forms, we may conclude that an irremovable President can well defy public opinion and virtually ignore parliamentary displeasure. The Vietnam war and the Iraq invasion indicate the powerlessness of the Congress and the ability of a shrewd President to manipulate publicity and manage to mould congress opinion the way he desires. The Indian people, being more illiterate and Indian Parties being less enriched with think-tanks, a terrible President can virtually subvert democracy, retaining its formal character as Republic. Even the Judiciary, through genetic manipulation and periodic blandishments, may be rendered ineffectual as a check on authoritarianism. Perhaps, the Indian experience shows that even in a parliamentary system the Courts are not very fruitful in the preservation of democratic values while Sri Lanka is a classic instance of judicial impotence when the President is determined to go his way. President Jayawardane even locked up the Court barring entry for judges themselves into the court house. Therefore, the conclusion is that the Parliamentary System is more congenial, in current conditions, for Indian realities.

The Parliamentary System, as we practise it, being full of sound and fury; has no resemblance to the glorious image we have of the debating excellence and reasoned exchanges of the earlier days in Britain or India. The deterioration has become so chronic that our surrogates in the House can hardly fulfill the urgent requirements the nation needs. As a legislative body, the Parliament is a thorough failure. As a machinery which sensitively responds to the people's problems it is a cipher. As a great institution, with heavy responsibilities and demanding studies of intricate subjects, the parliamentary membership suffers from incompe-

tence, ignorance and hysterical, even para-violent, behaviourism. Moreover, few members take interest in the issues under consideration, especially when legislative business is being handled. It is not uncommon to find the House depleted of members and when, on an exciting issue, many are present the disorderly scenario is hardly edifying. We cannot afford such parliamentary entropy do-nothing luxury. One cannot but agree with the anecdote recounted by Prof. Griffith about the British Commons :

> "One of the most distinguished men of letters to become a Member of Parliament for a short time at the beginning of this century was Hilaire Belloc. It is said that many years later when he was over 80 years of age, a young politician dropped in to see him at the Reform Club. "I have just come from the House", said the young man, perhaps a shade self-importantly. "God !" said Belloc, "Is that bloody nonsense still going on ? May be Westminster today is the excited activity of a chicken that has lost its head. May be the Constitution is dead".[2]

It is right to hold that our Parliamentary System, to be efficient, must slough off its crude scales and undergo great institutional mutations so that the momentous, even fatal challenges which shock and shape the nation to-day may be effectively confronted.

One of the changes which may be wrought is by galvanising parliamentarism using the Committee system. Parliament transacts a great deal of business and much of it requires expert or detailed consideration. The system of parliamentary committees is especially helpful when items of special or technical nature are required to be considered in great detail. Many members, whose political genius and electoral expertise may be considerable, may be innocent of the technology of parliamentary processes and unskilled in anything but politicking. But the nation cannot mess up its business with five hundred sources of noises. The Committee system saves the time of the House and prevents Parliament from getting lost in details thereby finding inadequate time to control the Executive on matters of important policy and broad principle.

While both in England and in India the Committe system has taken root, what I advocate is the clothing of such committees with enormous

powers of investigation, collection of evidence, recording of findings, recommending of action and the like over a wide variety of matters as the American System permits. The Soviet Committees in their great days did consult experts across the nation and drew up drafts so that legislation itself hardly needed long parliamentary discussion. Experts must be available outside the governmental orbit and almost every type of business must come under scrutiny through Parliamentary Committees. The Indian system, compared to the American, is anaemic; its operations superficial; its powers rather poor. Every subject of concern for the nation must come under the scrutiny of some committee of Parliament or other and there must be not merely *consultation* among members constituting committees but authority vested in such committees to suggest action. Government by Committee, like hearing by benches of the Judiciary, must acquire far more depth and width and must have the assistance of specialists, official and non-official, so that their reports and studies will become masterpieces of scholarship and systematized facts. Committees must have the power to control the bureaucracy and must be more or less in continuous session with right to inspect offices, investigate operations of Government and institute legal action wherever necessary. A diffusion of parliamentary power, a dynamic pluralism where informed and expert opinion will have access to Parliament through relevant committees and direct links with researchers, critics, social activists can strengthen parliamentary wisdom.

Appointments of members to Committees by the House must take into consideration specialization or aptitude of the members. Moreover, whenever new legislations are enacted, there must also be committees appointed constantly to monitor the working of such enactments, including framing of rules and regulations, the fortunes of the provisions when challenged in Courts and periodic review or the results of such legislation in action. Indeed, every legislation of some consequence must have a Committee which will be a kind of functional ombudsman with power to suggest amendments whenever needed. In short, a radicalisation of parliamentary functionalism through the Committee system must include bringing in experts in various fields as assessors to assist in the working of Committees. If only such experts are drawn from outside the conventional highbrows of the Establishment, the House will have the benefit of views and critiques beyond the bounds of the bureaucracy.

The Committee system can make a dynamic change, if its range can be broadened to cover public finance, public undertakings, export and import control and regulations, public debt and public expenditure and other areas including foreign affairs — not superficially, listening to Government bosses and Ministers but playing navigator's role too. Perhaps, even the legal system and the Judiciary may come under general scrutiny in a discreet and critical review, without interfering in any manner with the independence of the Justice system. Currently, nobody takes the Parliament seriously, not even the members and so there is considerable room for revolutionising parliamentary vigilance and control and initiation and catalysation of policies through activist Committees. When dealing with the Judiciary, leading lawyers and retired judges may be called in for help. Likewise, when dealing with energy, fiscal policies and other aspects of public finance, economists may be summoned to help, not for giving evidence on a particular day but on a more abiding basis. Public health, tribal welfare and a hundred other items will receive invigilation through parliamentary committees if only the intellectual resources of the nation are called into play in a perennial flow by the Committee System.

Taking a futuristic view, based on the pernicious misuses in the past, of constitutional power, I plead for a *Federal* system, not a mongrel pattern of quasi-federalism, as we have now. Currently, the Centre has financial powers, administrative powers, and legislative powers which can oppress and emasculate State autonomy and deny to the people decentralised democracy. The Judiciary, under circumstances of misuse, may be expected to intervene and save the State but precedents - a la Rajasthan Assembly case - show that the Judiciary subconsciously influenced by the circumstance that it owes its appointment, purse and sword to the Centre has been supportive of the Executive and deaf to the dissenter. The restoration of federalism is, therefore, an item high on the agenda of constitutional reform. More autonomy, better sub-autonomous regional self-expression, more active role in management of local resources and surer cultural pluralism, till now suppressed by illiterate and dogmatic politicians, chauvinists and bigots have caused tensions and havoc. A dialectically educated direction in decentralised democracy is a constitutional imperative.

Let us consider the implications of article 356 which, if the text be

read literally, is a set of provisions calculated to take care of the failure of the constitutional machinery at the State level, a situation of emergency designed to salvage democracy derailed by unconstitutional developments. Our founding fathers were not sages and their wisdom was not infallible. Undoubtedly, their collective statesmanship did its best to preserve the federal structure and democratic texture except in exceptional cases where the failure of the constitutional structure constrained the intervention of central power for the limited purpose of rehabilitation of popular rule and Presidential Administration in the interregnum as a step in aid of re-incarnation of elected government. This deviation from the normal regime at the State level is fraught with danger because authoritarian motivation on the part of the Prime Minister may spell ruination through abuses and excesses indulged in utter irresponsibility. The jeopardy is all the greater when the Union Cabinet, through its own party or vicariously through a supportive coalition making up a parliamentary majority, commands control over the only watchdog, the two Houses.

One should have thought that the potential for misuse was sufficient caveat for elimination of such a project from the Constitution which was designed to guarantee government by the people both at Central and State tiers. Dr. Ambedkar, a sensitive democrat and prophetic jurist, had qualms about article 356 but somehow surrendered his better judgement and recommended the provision to the Constituent Assembly in the following words :

> "I may say that I do not altogether deny that there is a possibility of this Article being abused or applied for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact, I share the sentiments expressed yesterday that the proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President who is endowed with this power will take proper precaution before actually suspending the administration of the provinces."[3]

M.C. Setalvad, one of the leading lights of the Indian Bar ever, has admitted that the hopes entertained by Dr. Ambedkar have been grievously belied. The Sarkaria Commission, which extensively and inten-

sively analysed the intent and portent of article 356, did observe.

> "The Constitution framers expected that these extra-ordinary provisions would be called into operation rarely, in extreme cases, as a last resort, when all alternative correctives fail. Despite the hopes and expectations so emphatically expressed by the framers, in the last 37 years, article 356 has been brought into action no less than 75 times."

Since the Sarkaria report, the abuse has continued unabated, come Congress, come Janata, come Janata Dal, come Janata Dal (S). After all, power corrupts and absolute power corrupts absolutely. The protean potential of this provision for Presidential subversion of provincial autonomy has often lent itself to versatile temptations in the hands of political pettifoggers in the Moghul mansions in Delhi, abetted by boneless wonders in Raj Bhavans across the board ! Alas, 'custom reconciles us to everything', and little minds with large powers are a self-righteous menace, especially when parliamentary checks are but the noisy opium of conditioned numbers!

Article 352, which deals with grave emergencies caused by war or external aggression or internal disturbance (now replaced by the more restrictive expression 'armed rebellion') has been darklingly operated in this country in 1975, and sensitive Indians are aware how fundamental freedoms, even life and liberty, have suffered mortal mayhem despite massive resistance by the Mahatma's countrymen. Article 356, which is the subject under direct discussion here, has also been invoked with anathematic frequency and callous unconscionability, so much so, State autonomy the very life-breath of federal polity, has been the play-thing of infantile adventurism and political expediency by Central Moghuls. Although the safeguard of parliamentary ratification has been built into the provision, there has never been a single case where this vigilant sentinel has voided even the most blatantly mischievous misuse. The shocking instance of nine State Governments and legislatures being subverted by the Janata Government, followed by an equal number of reckless Presidential coups by the Congress when it returned to power, demonstrated the utter futility of parliamentary supervision and even judicial invigilation. A Constitution *is* what a Constitution *does* and when legislative and judicial instrumentalities remain illusory checks, people's poll upsurge becomes the only guarantee of self-government at

any level. Our tragic times bear testimony to ballot baloney and booth robbery with the result that the only residuary sanction for the preservation of government *by* the people is the militantly perennial and politically independent initiatives of the alert, aware and irrepressible public opinion, media crusade and sharp mass action on sheer Gandhian lines of strategy. Mobilisation of the democratic forces against malafide Presidential intervention, whatever Parties and Coalitions, for reasons of expediency, may consider, is the categorical imperative of people's power at State tier.

Justice Sarkaria, in his Report, cautions :

> "Imposition of President's Rule thus brings to an end, for the time being, a government in the State responsible to the State Legislature. Indeed, this is a very drastic power. Exercised correctly, it may operate as a safety mechanism for the system. Abused or misused, it can destroy the constitutional equilibrium between the Union and the States."[4]

Even so, this Report does not argue for abolition altogether but recommends severly restricted use of the power. Historically speaking, this provision has an imperial pedigree being a descendant of section 93 of the Government of India Act, 1935. It is equally significant that the 44th Amendment to the Constitution, which sought to delete some of the objectionable changes brought out by the 42nd Amendment in our Constitution, did not jettison article 356. One may, therefore, proceed to discuss not the abolition of article 356 but the absolute necessity for very severe restraints and invigilatory mechanisms before this quasi-fatal power is made operational.

I must clarify that there may be ministries in the States (as also in the Union) reeking with corruption, authoritarian excess or other vices and misuses but these gravely ubiquitous infirmities, which have shamed and shocked our Republic both in Delhi and State capitals, call for immediate, effective remedies. The soul of India is suffering asphyxiation but President's rule, opportunistically operated, only aggravates the agony. Article 356 cannot be converted into constitutional terrorism or political nostrum for resolving other problems. Even the Union Ministers reek with corruption, now and then, a pathology which has slowly infected even the Judiciary.

Some more glimpses of history *vis a vis* President's Rule. This Emergency Power is reduced to a comedy and a tragedy making constitutional democracy a mockery and a perennial menace to State-level popular government, whichever the party in provincial power. That great judge of the U.S. Supreme Court, Justice Douglas, has said : "There is no such reservoir of emergency power in the Federal Government of the United States."

Under the Government of India Act, 1919, with a debilitated dyarchy, the Governor-General had a weaker version of the power to suspend transfer of provincial subjects. The truth is that the provision is of colonial vintage and its present use actually makes the States mere colonies, whenever there is displeasure in Delhi. The Simon Commission's Report of old stated :

> "Experience in the past has shown that, however, carefully a provincial Constitution may be framed, a breakdown may occur through such causes as complete inability to form or maintain in office any Ministry enjoying support from the legislature. A situation equally grave would arise if there was wide-spread refusal to work the normal Constitution of the Province, or general adoption of a policy which aimed at bringing Government to a standstill. We hope that the extended trust now to be placed in representative institutions will bring about such a change of atmosphere and attitude as well make such developments unlikely. But if such an emergency were to arise, it is essential to insert into the Constitution provisions to make the situation secure. This is no denial of Self Government; it is an ultimate recourse if self Government is repudiated."[5]

Likewise, the (British) Joint Parliamentary Committee on Indian Constitutional Reform (1933-34) also proposed that the Governor (a creature of colonial power) could, if satisfied that a situation had arisen rendering it impossible for the Government of the Province to be carried on in accordance with the provisions of the Constitution Act, assume to himself, by proclamation, of such powers vested in any provincial authority as appeared to him to be necessary for the purpose of securing that Government of the Province shall be carried on effectively. Indeed, the Committee's report goes to the extent of saying that even under *responsible Government* these extra-ordinary powers may unhappily be not

unnecessary. Our founding fathers were conditioned by this colonial thought, as it were, but hoped that under *swaraj* this scuttling operation would be a rare phenomenon. The British Empire has left this legacy for us in the guise of Section 93 of the Government of India Act which has re-incarnated as article 356 now, with North Block taking the place of Whitehall. In Gandhi's country, where decentralised democracy is a fundamental faith, the reverse process, ultimately vesting all power in one person, is the reality of the Administration. What is more poignant is that the Supreme Court itself has not corrected this constitutional distortion. I mean no reflection on the Court but the common man, because of this judicial hands-off cult, is left with a sense of unreality when even an excellent Government at the State level can, with impunity, be overthrown by a hostile party which happens to be on the Delhi throne. There is no use referring to the Constitutions of other countries to justify immoral intervention in the Indian situation. Of course, section 48 (1) of the Weimar Constitution of Germany (1919) contained a similar provision and one need not make any comment on the misfortunes of that nation.

The Sarkaria Commission in its Report has also referred to the political *mala fides* behind many of these emergency exercises :

> "The main point of the criticism in regard to the use of article 356 is that, more often than not, it has been interpreted and applied differently in similar situations to suit the political interests of the party in power in the Union. It has been alleged that, motivated by such extraneous considerations :
>
> (i) Opposition parties or groups had not been given a chance to form alternate government.
>
> (ii) Legislative Assemblies were dissolved or kept in a state of suspended animation.
>
> (iii) President's rule was used for partisan purposes like buying time to realign party strengths or sorting out intra-party differences or for resolving leadership crisis, etc.
>
> (iv) President's rule was used to dislodge State Governments run by parties or coalitions other than the party in power at the Union, on plea of corruption, political instability, maladminis-

> tration, unhappy state of law and order, etc. even though they commanded the confidence of their respective Assemblies."[6]

Says Sarkaria

> "The proclamation of President's Rule in Punjab in June, 1951 and in Andhra Pradesh in January, 1973 are instances of the use of article 356 for sorting out intra-party disputes. The imposition of President's rule in Tamil Nadu in 1976 and in Manipur in 1979, were on the consideration that there was maladministration in these States."[7]

A closer study of the application of article 356 in Tamilnadu proves that this emergency provision is now a constitutional joke or hubristic stroke or worse, a tool to win support for the ruling party from other popular Parties.

It is appropriate to conclude this part of the discussion by quoting the recommendations of the Sarkaria Commission, extremely moderate and impossible to attenuate, if minimal justice to this emergency power is to be rendered :

> Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a break-down of constitutional machinery in the State. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes and exigencies of the situation. These alternatives may be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action under article 356 will lead to disastrous consequences.
>
> A warning should be issued to the errant State, in specific terms, that it is not carrying on the Government of the State in accordance with the Constitution. Before taking action under article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.
>
> When an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a

potential breakdown of the Constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under article 355 should be exhausted to contain the situation.

In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision.

If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend proclamation of President's rule without dissolving the Assembly.

Every Proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of the two month period contemplated in clause (3) of article 356.

The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under article 356 (1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

Safeguards corresponding, in principle, to clauses (7) and (8) of article 352 should be incorporated in article 356 to enable Parliament to review continuance in force of a Proclamation.

To make the remedy of judicial review on the ground of mala fides a little more meaningful, it should be provided, through an appropriate amendment, that, notwithstanding anything in clause (2) of article 74 of the Constitution, the material facts and ground

> on which article 356 (1) is invoked should be made an integral part of the Proclamation issued under that article. This will also make the control of Parliament over the exercise of this power by the Union Executive more effective.
>
> Normally, the President is moved to action under article 356 on the report of the Governor. The report of the Governor is placed before each House of Parliament. Such a report should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in article 356.
>
> The Governor's report, on the basis of which a Proclamation under article 356 (1) is issued, should be given wide publicity in all the media and in full.
>
> Normally, President's Rule in a State should be proclaimed on the basis of the Governor's report under article 356 (1)."[8]

Governors usually have an important role since their reports are the first steps for the Centre to act. The article, of course, is wider but ordinarily Governors are obliging enough to furnish the required basis. It is unfortunate that even where independent advice should be tendered by Governors they have often functionally genuflected or played secret politics. This President's Rule syndrome applies not merely to the Congress Party but also to others who have tasted power at the Centre.

Even when Governors decline to recommend President's rule, if the political party at the Centre wants to get rid of a different party in power at the State level, the Prime Minister disregards the Governor's advice and imposes President's rule under article 356. This was brought out when Karunanidhi's Government was thrown out by the Chandrasekhar regime. In my view, article 356 must be abolished and an alternative provision found for the check on the powers of the State Government when it runs berserk and turns tyrannical. A tentative thought : if a resolution is passed by both Houses commanding the majority of the members of the Houses and two-thirds majority of the members present demanding President's rule, this will be a serious check on misuse of power under article 356 and, at the same time, will take care of extra-ordinary situations where intervention becomes necessary in national interest.

To politicise article 356, to terrorise State Administrations and to achieve illegitimate ends through colourable means is now becoming a habitual constitutional delinquency of the Party in Power at the Centre. The destabilisation of democracy and the generation of disintegrative tendencies are the bonus of misuse of the power of President's Rule.

Another Fundamental Suggestion

India, formerly part of the British Empire, not only borrowed the parliamentary pattern but also used the euphemisms reflecting the prevailing power equations in England. The Queen reigns but the Cabinet rules. In India, the President is the ceremonial head of the Republic but all power vests in the Central Cabinet even as at the State level the Governor is more ornamental except in a narrow category of cases. It is my conviction that there is always possibility of tragic confusion when political conventions and constitutional texts conflict. If a President chooses to defy a Cabinet in a situation where the parliamentary composition is too splintered, the Party in Office has no majority and the Opposition bitterly antagonistic to permit of an impeachment, despotism can be the consequence, the judiciary itself being unable to intervene. Prof. Alen Glendhill, dealing with the dangers lurking in the Indian Context, points to a possible constitutional coup unless political maturity in the people forbids Presidential over-ambition. Prof. Glendhill wrote :

> "Let us assume that a President has been elected who has successfully concealed his ambition to establish an authoritarian system of Government. One-fourth of the members of a House of Parliament, suddenly aware of the danger, give notice of a motion to impeach the President. Before the fourteen days within which it can be moved, the President dissolves Parliament; a new House must be elected but it need not meet for six months. He dismisses the Ministers and appoints others of his own choice, who for six months need not be Members of Parliament and during that period he can legislate by Ordinance. He can issue a proclamation of Emergency, legislate on any subject and deprive the States of their shares in the proceeds of distributable taxes. He can issue directions to States calculated to provoke disobedience and then suspend the States' Constitutions. He can use the armed forces in support of the civil power. He can promulgate preventive detention ordinances and imprison his opponents."

Again, that learned jurist has commented :

> "The Constitution vests the executive power of the Union in the President and provides that all executive action shall be taken in his name. The President is also given many powers, shortly to be discussed, but the last fourteen years have shown the world that India is a parliamentary democracy in which Ministers decide policy and carry on Government but the Constitution does not say in as many words that the President must act on ministerial advice; what it says is that there shall be a Council of Ministers to aid and advice the President; no court may inquire into the question whether any, and if so what, advice was tendered to the President. What the Constitution contemplates is that normally the government shall be carried on by a committee of Ministers selected from the elected representatives of the people, but it recognises that circumstances may arise in which that system may break down, so it is desirable that there should be some authority empowered to continue the government and set about restoring parliamentary government as soon as possible. It is for this reason that the Constitution legally vests the executive power in the President."[9]

Without going deeper into the dangers latent in a system where constitutional fiction and convention are diametrically opposed to the power process in actual fact, I consider it appropriate now to put an end to paper Moghaldom and to state explicitly the role of the *Rashtrapathi,* his powers and limitations, without taking risks with the incumbents of the President's Office. Remember, there were rumblings that even Rajen Babu and Nehru had differences.

Therefore, the entire constitutional provisions will have to be rewritten both at the Central and the State levels plainly vesting power in the Parliament and the State Legislature and declaring that the *Rashtrapathi* (and the *Rajpal)* will be only ceremonial functionaries except on a few specified occasions when independently of the Parliament and the Cabinet he can exercise his power using his own judgement. To play hide and seek with constitutional powers when pressures and temptations may run high is to invite chaos or risk blunders difficult to be reversed by the Court. In short, the future belongs to a full-fledged parliamentary system which does not precariously depend on variable conventions. All Executive Power must vest in the Cabinet, as it is the constitutional reality.[10]

The area of power of the President must be restricted to choosing and summoning the Prime Minister to form a Government when he is chosen by a Party or combination of Parties commanding a majority of the members of the House, to dismiss the Ministry when it loses the confidence of the House or when a grave breach of conduct sufficient to subvert the Constitution or shake the faith of the People in their moral authority to govern the country. On these last conditions, a Constitution Bench of the Supreme Court must be asked to pronounce. The Court must have the jurisdiction to monitor even this process so that the rule of law will prevail even at the highest levels. To trust too much on fluid conventions borrowed from a foreign ethos is to throw the wildest hostage to fortune, especially when you come by people in the shape of *Rashtrapathis* or *Rajpals* whose appetite for uncontrolled power may well be fuelled—by the phrases of the Constitution. Safety lies in constitutional straight forwardness rather than in dependence upon Westminster vintage *praxis* on which, in a crisis, opinions may vary. Functionally speaking the Governor's Office must also be made a ceremonial device, power being in the hands of the Cabinet whether composed of one Party or a Coalition which commands a majority in the House. Even, here, in ascertaining a majority no secrecy within the Rashtrapati Bhavan nor the Raj Bhavan, no conspiracy or intrigue or juristic jugglery should be permitted, the Supreme Court being the sentinel to oversee the operations.

Maybe, a national debate is needed to crystalize, our thinking on these delicate 'maybes', by drafting and discussing concrete blue-prints. The fact that we have been shuffling along without any grave crisis up till now is no guarantee that the future is not fraught with dangerous potential. The Soviet saga testifies that treachery and history give no notice of coming catastrophe.

In a Federal System as ours, the election to the office of *Rashtrapathi* must not be exclusively confined to the members of Parliament and the State legislators. I would go further to say that even other important institutions should have a voice in the choice of the *Rashtrapati*. Likewise, when we consider the selection of the Judges of the Supreme Court of India, the federal stamp should not be omitted from the scheme. After all, the highest court lays down the law both for the Union and for the States and it is democratic propriety that, in

some form or other, the highest Court is not entirely the creation (or creature) of the Prime Minister (gently abetted at times by the Chief Justice), but is the product of a National Commission which gives some representation to the States as well. Even beyond the political power-wielders at the State and Central levels, others of outstanding statesmanship in public life must be included in the choice of Judges of the Supreme Court, the Election Commission, the Auditor General and the Union Public Service Commission. Whatever affects all must be chosen by all — such should be the democratic essence of the institutions of our Republic.

The President and the Freedom of Information

Freedom of Information is the oxygen of democracy, even as excessive official secrecy and over-broad confidentiality are the hide-outs of traitors to transparency in governance. Tyranny begins with asphyxiation of information on what concerns the public. This applies to functionaries in Government.

Argues Prof. Laski (and this applies to India too) :

> "When the Cabinet has been formed, consultation with the Crown is a continuous process which ceases only with its demise. *He has the right to know of vital proposals at a stage early enough to enable* him to argue upon them; he has the right to discuss their substance with the relevant ministers; and he has the right, where he takes objection to any course that is proposed, to have it referred back to the Cabinet for reconsideration".

This is the famous 'right to advise, the right to encourage, and the right to warn' of which Bagehot spoke some seventy years ago.

Mackintosh states :

> "King George was quite clear about his own position. He was entitled to *full information* and could, if he felt it was necessary, *express his views bluntly and strongly,* but there was never any question of denying the politicians right to make the *ultimate* decisions."

In *Samsher Singh's* case (AIR 1974 SC 2192) this facet has elicited

reinforcement with reference to our Constitution : The President's power to call for information is central to his function under the Constitution to persuade the Cabinet and to 'state all his objections to any proposed course of action and ... to reconsider the matter.' The demand for information is a feedback needed to fulfill his office as mentor or counseller exercising 'a sure and commanding influence' (William Paley). How can the President encourage or caution his Cabinet or require it to review its decision? Not by meditation but by information refined by reflection. Press rumours and Opposition channels and are not always reliable, sometimes even unsavoury sources. Moreover, official facts do not flow into the President's Secretariat as a natural stream; and the dignity of his office as also the authenticity of his knowledge desiderate the most unsullied communication. Complementary to the President's duty, the Constitution must device a medium and methodology to lend viability and authority to his institutional functionality. Who but the Prime Minister can be commanded by the Constitution to perform this high purpose based on British convention ? In short, article 78 (b) activises the *Rashtrapati,* vitalises his real presence as constitutional sentinel and invests his high office with a Westminster relevance. To deny *all the* (or any) *information* he seeks is to stultify the solemn scheme. Be it remembered that, when all is said and done, he too is elected by a distinguished electoral college and charged with a vast range of functions and powers and unspecified prerogatives, although none of these factors belittles the reality that the Rashtrapati reigns and the Cabinet rules. And in a narrow area of momentous import it is he who acts without his Cabinet's control or ken. We need constitutional clarity so that specific provisions may compel disclosures to President, parliamentarians and responsible men in public life.

Another gray area relates to assent to bills which has been earlier touched upon. In *Samsher Singh's* case the Supreme Court observed :

> "We have no doubt that de Smith's statement[11] regarding royal assent holds good for the President and Governor in India" :
>
> Refusal of the royal assent on the ground that the monarch strongly disapproved of a bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course - a

> highly improbable contingency or possibility if it was notorious that a bill had been passed in disregard to mandatory procedural requirement; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent."

If a bill has been passed even when Government has opposed it, the will of the House must be respected and assent automatically granted. Otherwise, in a minority government as now, the House can be stultified by the Cabinet advising against assent to a bill, ignoring the House and frustrating the vote in Parliament. These are not to be left to conventions, juristic ambiguity or Presidential proclivity. The Constitution must speak clearly, based on the proposition that the vote of the House cannot be baulked by Cabinet or President (or Governor).

Judiciary and Constitutional Reform

Constitutional review must surely turn the lens on that majestic institution which has steadily failed the nation with galloping speed and plural pathologies - *the Judicature* . The Bench and the Bar have become a barrier, a burden, a blackmail, a bluff and, above all, an obsolescent dinosaur with litigative prodigality and dilatory forensics which bankrupt *Bharat.* Only a revolutionary transformation, not cosmetic reformation can work. The orthodox robes are too much with us; the case for judicial alternatives, reduction in decks of review, simplification and streamlining of procedures, independence and accountability more dynamic and realistic, a perennial audit of the system, including the judges and lawyers, through a code of conduct by a broad-based, high-powered Commission with constitutional authority, are among the immediate tasks. Arrears, log-jams and long waits in docket disposal will vanish, huge waste in time and money due to court costs will die down, and illusory justice alienated from life and writs cornered by the rich will no longer be chronic incurables, *provided*, with dialectical daring and dynamic vision a *perestroika,* including re-structuring of processes and management techniques and a standing code of work ethic and a progressive judicature are fashioned with *constitutional sanction.* Concrete proposals for a constitutional chapter on the Judiciary may be worked out, *retaining the fundamentals in our Founding Deed* but freely

changing the forms and arts of justicing so as to reflect the lessons of experience gathered over the decadent decades.

In a real democracy the distance between the People and the Power Process must be the least and the participation in governance of the rural and urban folk the most. Such is the Gandhian vision of decentralised democracy sought to be actualised partially by the last two constitutional amendments attempted by late Shri Rajiv Gandhi. His speech in Parliament gives us the political essence of the desideratum. If our Republic is ever to be released from the stranglehold of the current corrupt political elitocracy and paper-logged bureaucracy, the vesting of Power in a radical grass-roots instrumentality is necessary. Mobilisation of India's human and material resources demands, as a component of national reconstruction, a new Project Panchayati Raj as a constitutional imperative.

His ideological fundamental is indisputable, especially in the light of power-squabbling, ever disintegrating and perennially proceeding from bad to worse. While speaking on the Sixty-Fifth Amendment Bill, then Prime Minister Rajiv Gandhi argued :

> "We seek through these Bills to vest power in the only place where power rightfully belongs in a democracy in the hands of the people."[12]

Expanding on this theme he added words pregnant with purpose :

> "Democracy in Parliament and in the State Legislatures remains fragile so long as the roots of our democracy do not reach down to the villages and mohallas where the people live. Our Constitution detailed the provisions for democracy in Parliament and in the State Legislatures. Therefore, democracy in these institutions has survived every vicissitude and flourished. However, our Constitution did not make democracy in local self-Government a constitutional obligation. And so democracy in the Panchayats and Nagarpalikas has withered at the roots.
>
> With these two Bills, we shall ensure that while India lives, democracy at the grass-roots lives. No longer will democracy in local self-Government be a passing political pastime. Through these Bills, democracy in local self-Government becomes solemn

constitutional obligation, an obligation that can neither be suborned nor flouted for reasons of expediency or indifference."

"We now bring forward a Bill which makes democratic decentralisation to the Nagarpalikas a keystone of the country's Constitutional arch."[13]

While India still lives in its villages, the urban gravitational pull continues unabated. To quote Rajivji :

"Already a quarter of our population lives in urban India. The proportion will rise to a third by the turn of the century and cross the half-way mark within a few decades thereafter. This major demographic trend needs not only to be recognised but also encouraged. What has gone wrong with our pattern of urbanization is not that there is too fast and furious a flood of people into towns and cities, as that the pattern of urbanization is skewed. It is the larger metropolitan cities that are attracting the bulk of those coming in from the rural areas. This severely strains the resources of the larger cities without conferring any real benefit on the rural areas from where the new entrants have come. What we need is a rational pattern of urbanization. We need to see small and larger towns growing in every district, drawing the bulk of their population from the surrounding rural hinterland. That way the talent and enterprise of the people will remain, to a large extent, within the district. Urbanization will be related to rural requirements. Urban settlements will cease to be isolated compartments."[14]

Here is a realistic statement. We need an instrument trained and disciplined to deal with public finance, which possesses the know-how of planned expenditure on prioritized local services, acquires the sources and the arts of raising revenues, and claims, as of right, its share in State resources and is free from nagging controls, teasing checks and tedious procedures.

Another thought

Ethnic autonomy, tribal justice, fuller cultural expression are some of the more important ideas of sub-nationalism neglected, by and large, by a totalitarian trend towards centralism. The Soviet syndrome is a staggering instance. Any new constitutional exercise calls for fresh designs in

Centre-State relations and re-drawing of financial and administrative distribution of powers. New parameters, seminal in their import and people-oriented in their content, are essential to inspire the constructive task of injecting new values and engineering new schemes which will transform the present Paramount Parchment into a People's Constitutional Process. Only then can we be worthy of the Preamble to the Constitution which declares :

> "We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens :
>
> Justice, social, economic and political".

Said Abraham Lincoln—I Quote him, and conclude :

> "This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it."

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50

Constitutional Reforms ?

H.R. Khanna

A Constitution is the basic law relating to the governnence of the country. It defines various organs of the State, enumerates their functions and demacrates their fields of operation. But a Constitution is more than that. It is the vehicle of a nation's progress. It has to reflect the best in the past traditions of the nation; it has also to provide a considered response to the needs of the present and to possess enough resilence to cope with the demands of the future. A Constitution at the same time has to be a living thing, living not for one or two generations but for succeeding generations of men and women. It is for that reason that the provisions of the Constitution are couched in general terms, for the great generalities of the Constitution have a content and significance that vary from age to age and have, at the same time, transcendental continuity about them.

The labour and experience of many generations of men mould the work of those entrusted with the task of framing the Constitution. The framing of the Constitution calls for the highest statecraft. Those entrusted with it have to realise the practical needs of the Government and have, at the same time, to keep in view the ideals which have inspired the nation. Not anointed priests but men with proven grasp of affairs, who have developed resilience and spaciousness of mind through seasoned and diversified experience, through study of history not only of their country but also of other countries, through calm contemplation of the present, through deep thinking and sensitive awareness of the inarticulate feelings of their fellowmen, have to be the persons whom destiny and

historical forces entrust with the task of drafting the Constitution. It is indeed a unique occasion in the history of a nation that a generation of men is called upon to frame the Constitution of a country. Such occasions do not recur and it becomes essential that those entrusted with the task should be conscious of their great role and the supreme importance of their assignment. On their wisdom and sagacity, their vision and foresight, their perspicacity and discernment, depend the mode of life and happiness of succeeding generations of men, women and children.

Fortunately for us, those entrusted with the task of framing the Constitution of India were aware of their historic role and the supreme importance of the assignment. At a time when politics signified an attachment to certain values, an adherence to certain convictions and willingness to suffer, if need be, for those values and convictions, the Constituent Assembly represented the best talent and the cream of those in politics in the country. And in the drafting of the Constitution they were assisted by a band of distinguished civil servants and jurists who combined within themselves great ability with a high sense of devotion and dedication. Any proposal to have a second look at the Constitution can be entertained only after deep reflection and serious consideration of the various pros and cons. No proposal for amendment of the Constitution should be slightly countenanced. A Constitution is different from the ordinary statutes which are designed to meet the fugitive exigencies of the hour. The statutes can be amended when the exigencies change. A Constitution states, or ought to state, not the rules for the passing hour but principles for an expanding future. This does not, however, mean that there is something absolute about the Constitution. A Constitution is a human product and like all mortal contrivances it cannot claim absolute perfection. The framers of Constitution are always aware that in their actual working, the Constitutions may run into difficulties in some fields. It is for that reason that there is provision for amendment of the Constitution and it is an integral part of it. Although we should not be averse to amending the Constitution with a view to eliminate and overcome the difficulties which might be experienced in its working during the course of years and make it subserve the nation's needs, we must also sound a note of caution that not every encounter with a difficulty should make us think of amending the Constitution. As it is we find that our Constitution has been amended much too often. There are two distinctive features of our Constitution. It is one of the lengthiest

Constitutions in the world and it has been subjected to, perhaps, the largest number of amendments. There was a time when one thought that Income Tax Act needed periodic dressing and face lift. There are other statutes like the Indian Panel Code which have stood the test of time and retained their pristine purity. Let us not disfigure our Constitution by too many amendments. There is an element of something sacrosanct about a Constitution. It would not be proper to defile it in a carpricious and wanton maner.

The Supreme court in the case of *Kesavanada Bharti* has laid down that the power of amendment as visualised in article 368 of the Constitution does not allow the Parliament to alter the basic structure or framework of the Constitution. Any proposal for the amendment of the Constitution must keep in view the afore said judgement.

Certain events have brought to the fore political and constitutional problems which, perhaps, were not foreseen at the time the Constitution was framed, but for which some solution and remedy have to be thought of. One of those problems relates to the role of the President and the extent to which he can act in the exercise of his discretion and subjectitve satisfaction if an occasion for this purpose were to arise. The framers of the Constitution assumed that no such occasion would arise. Recent events have shown that such an exigency cannot be ruled out altogether. Linked with that is the question whether in entrusting excessive powers to the President in this respect, are we not exposing him to an occasional barrage of criticism? Is it not, therefore, essential that the office of the President should be insulated from such controversies and thus made less vulnerable? To put it differently, is it not imperative in the existing atmosphere of iconoclasm to save the image of the institution of the President from being dragged into unseemly political wranglings? Another aspect of the question is whether it is not desirable that the President, however well-intentioned he may be, should not be subjected to such heavy burden and saddled with such onerous responsibility in contingencies wherein as the Constitution stands at present, he would willy nilly have to act single-handedly and without the aid of advisors. Such contingency can arise when there is no effective ministry or when the matter is such that the ministry itself becomes a party arrayed against another party. Question would also arise as to whether it would be safe to leave matters having vital bearing on the future of the country

in the hands of one individual. In deciding these matters we have to look not only to the recent developments or the present incumbent of the office of the President, we have also to take into account a variety of contingencies which may arise in future and also to consider a situation wherein the person holding the office of the President may not always be a wise and sagacious statesman but may be swayed by personal ambition or other extraneous considerations. We have also to think as to whether we can devise ways and means as may ensure the presence of some built-in safeguard against any gross miscalculation of judgement which might imperil the well-being of the people and the future of the country.

In the above context one may refer to a proposal made in the memorandum of 30 May, 1947 by the Constitutional Advisor at the time of the drafting of the Constitution for a Council of State of which the roles might be comparable more or less to that of the Privy Council vis-a-vis the monarch in the United Kingdom. Its advice was to be available whenever the President chose to obtain it in matters of national importance in which be was required to act in his discretion. The Union Constitution Committee at its meeting held on 8 and 9 June, 1947, decided in favour of the parliamentary type of government in which the President would have no special powers vested personally in him but would exercise all his functions, including dissolution of Lok Sabha, only on the advice of his ministers.

We may refer to some of the problems which might arise in this context. In view of article 74 normally the President has to act in accordance with the advice of his Council of Ministers. Question, however, would arise as to how far the President is bound by the advice of the Council of Ministers after a vote of no-confidence in that Council has been passed by Parliament and the said Council of Ministers has been asked to continue as Caretaker Government till the President makes an alternative arrangement. What is to happen if the President finds that no viable alternative government can be formed soon and the caretaker Government is to continue for some length of time? Would the President in such an event be bound by the advice of the caretaker Council of Ministers? Even if the President asks the Council of Ministers to reconsider the advice, there is nothing to prevent the caretaker Council of Ministers to reiterate the earlier advice after reconsideration. What if the advice relates to a matter of great political importance or is of controver-

sial character or is unfair to the other political parties or unduly favourable to the party which has lost the confidence of the Lok Sabha. Normally, it is assumed that the Prime Minister and the Council of Ministers who have lost the confidence of the Lok Sabha would act in accordance with usual democratic norms. The problem which needs our attention is what should be the course open to the President in case the Prime Minister and the Council of Ministers, who have lost the confidence of the Lok Sabha, take up an attitude which is blatantly unreasonable.

Another contingency may arise upon the death or resignation of the previous Prime Minister if there are two contenders for the office of the Prime Minister with somewhat evenly balanced number of members of Lok Sabha supporting each of them. Whom should the President in such an event invite first and, in case of dispute as to who has greater numerical support, how is he to resolve the controversy? Should he act on his own in the matter of choice of the Prime Minister?

Dissolution of Lok Sabha is another matter wherein the President may sometimes be called upon to take crucial decision and may have, while doing so in some eventualities, to act without the advice of Council of Ministers. Normally, the President would be bound by the advice of the Prime Minister and would have to dissolve the House if so advised by the Prime Minister, even after a vote of no confidence has been passed against the Council of Ministers. There may, however, be situations wherein the President, despite the advice of the Prime Minister who has lost the confidence of the Lok Sabha, has good reason to believe that an alternative viable government can be formed and in view of that the country should be spared the expense and burden of another election. The question is what course should the President adopt in such circumstances. Lastly, there may be a situation wherein there are two contenders for the office of the Prime Minister and each professes to have the majority with him. Supposing the President invites one of the contenders to form the government, but that person at the very first trial of strength fails to secure a vote of confidence of the Lok Sabha. What course should be adopted by the President if the said person advises the President to dissolve the Lok Sabha? Is the President bound to accept such advice without giving the rival contender another opportunity?

Question which we have also to consider is whether it is the provisions of the Constitution which should provide for various contigencies mentioned above and lay down guide-lines by which the President would be bound or whether such matters should be left to conventions which might be evolved during the working of the Constitution and in the functioning of the democratic apparatus. Another relevant question is whether in atempting to deal with the different contingencies and to make provisions for them in the Constitution, are we not introducing an element of rigidity in the Constitution which may not be very desirable and might at the same time prevent its growth and also rob it of its resilience to meet variety of situations? No one, we should remember, is so gifted as to be in a position to pierce through the visage of time and provide for every contingency which can or might arise in human affairs. It is for that reason, as already mentioned, that the provisions of the Constitution are couched in general terms so that they may be capable of being adapted to different situations.

Another suggestion which may be commended for consideration is the incorporation of a provision in the Constitution that the time lag between the dissolution of the Lok Sabha and the fresh election should in no case, exceed six weeks or two months. Delay in this respect poses a real danger for healthy democratic norms. It is not desirable to keep in seats of power for long periods those who do not enjoy the requisite confidence of elected representatives.

Stability at the Centre is another matter of vital importance. This question was not important in the past as the party in power normally had an absolute majority of the members. Recent events have shown that this position may not hold true in future. The danger which we are facing is of political instability and uncertainty. One major consequence of that would be weakening of the Central Government, and one cannot but shudder at this prospect. No serious peril can arise and no great harm can be done to the nation by the bungling, failures and weakening of the administration of some States. As against that, weakening of the Central Government can imperil our very existence as an independent nation. It can indeed pose a threat to our liberty and integrity and undermine the very foundations of the nation. It is well-known that one of the most important causes of the weakness of German Republic was the instability of the government which were formed during the years between the

end of the First World War and the rise to power of Hitler. The chaos resulting from political division was reflected in Reichstag wherein no political party obtained clear majority. There were 21 cabinets in fourteen years.

It may be worthwhile to know the scheme that has been devised in West Germany after the Second World War to meet that difficulty. The scheme synthesises the need for a stable government with a system of parliamentary democracy. Under that scheme it is not merely enough for the lower house to pass a vote of no-confidence against the existing government, it must also find a candidate who, in place of the Chancellor against whose government a vote of no-confidence has been passed, is in a position to form the government. Once, according to the scheme, a Chancellor has been elected, it is difficult to eliminate him during the term of the Bundestag (Federal Assembly). Neither a successful vote of censure nor an unsuccessful motion of confidence automatically forces the cabinet to resign. Only when the Bundestag can elect a new Chancellor must be old one step aside. This is quite difficult because the majority which might be forced against a government is frequently a negative one and is united more by dislike for the incumbent and not by any agreement on a substitute.

Some aspects of the remedy adopted in Germany are open to criticism. At the same time, it must be admited that, unlike the governments in Weimar Republic, the Bonn regime despite the holocaust of Second World War have been much more firmly established. Part of it was, of course, due to the influence of the First Chancellor, Konard Adenauer, whose imperious and austere personality dominated the formative years in West Germany after the Second World War; yet none can deny that the scheme indicated above has also not been without its impact.

Ideas have sometimes been set afloat of adopting the Presidential system as is in vogue under the Fifth Republic since 1958 in France. The suggestion for the said system was not initially well received by a good many of the French who thought that it was an attempt to introduce "Caesarism" under the grab of presidentialism. Their apprehensions in this respect were based upon the historical experiance relating to the fate of the Second French Republic when the Presidential Constitution was used by Prince Louis Napoleon to later emerge as Napoleon III.

The President of France under the Fifth Republic is elected for the traditional term of seven years. As against that Parliament is elected for a period of five years. The President is now free to dissolve the National Assembly as he sees fit except that he cannot do so within a year following the election after a dissolution. It is necessary before he dissolves the National Assembly that be must consult the Premier and the Presiding Officers of the two Houses. The President is not bound by their advice and is free to disregard the same. The President appoints the Prime Minister and upon the latter's proposal the other members of the Cabinet. Government is responsible to Parliament and can be overthrown by a vote of censure or vote of no-confidence. Sometimes the Prime Minister after deliberations by the cabinet many demand a vote of confidence from the National Assembly. If the National Assembly rejects the demand, the Government is forced to resign. The National Assembly may also take the initiative in bringing down the Government by means of a motion of censure. This, however, is not an easy affair. At least one-tenth of the members of the National Assembly must sign a motion to that effect and a vote can take place only after the lapse of 48 hours. A motion of censure is considered passed only if an absolute majority of all the members of the Assembly vote for it. Otherwise, the motion is deemed rejected. If the motion of censure is rejected, its signatories cannot introduce another motion in the course of the same session. Other signatories may, however, propose such a motion. One difference, it has to be borne in mind, is that if the Government seeks a vote a confidence, a simple majority of deputies present and voting is sufficient to bring down the Government. If, however, a vote of censure is moved against the Government, in that event an absolute majority of all members of the Assembly, present or not, is necessary to carry a motion of censure. This makes the adoption of a vote of censure extremely difficult.

The President under the Fifth Republic of France is now the real leader of the nation and cannot be removed during the seven-year term of office. Both the President and the Prime Minister are assisted in the discharge of their functions by a considerable staff. The presidential staff includes specialists in all fields like foreign affairs, interior, justice and finance.

One remarkable feature of the 1958 Constitution is that contained in article 23. According to this article, membership in the cabinet shall be

incompatible with a seat in Parliament as well as with any function of professional representation on a national level or any public employment or other professional activity. On account of this provision, a member of Parliament who enters the Government must give up his seat in either House. This provision is intended to remove any temptation to overthrow the Government with a view to secure for oneself a ministerial position. There is also no possibility of a former minister again resuming his old seat in Parliament because in the meanwhile that would have been occupied by a substitute who has to be designated under the electoral law of 1958. It can, therefore, be said that the threat of losing a parliamentary position as a price of membership of the Government is real and effective.

Reference has been made to some of the provisions of the Constitution of West Germany and France not with a view that we should adopt them, but with a view to create an awareness of the implication of those provisions so that the various pros and cons of the matter might be fully considered if and when any proposal for this purpose is mooted.

In the history of nations occasions can arise when it is not provisions of the Constitution which fail, it is the people or their representatives who fail the Constitution. One wonders if that is not true of us in India today. The success of a Constitution, if also needs to be mentioned, depends not so much on having well drafted and nobly worded provisions of the Constitution; it depends in the final analysis on the way those provisions are worked. There are few Constitutions in the world which when drafted were hailed as more liberal in character and as enshrining within themselves more cherished values than the Weimar Constitution of Germany drafted soon after the First World War. Yet the manner in which the said Constitutiton was worked created tremendous disillusionment amongst the people. Those who were called to work that Constitution failed to live up to its ideals. The political bickerings and internecine strifes made its normal working most difficult. Way was thus paved for the emergence and rise to power of Hitler and we all know what happened thereafter.

All this would show that whatever may be provisions of the Constitution, its ultimate success and effectiveness for public weal depends upon the persons who work them and the way those provisions

are worked. This necessarily postulates that the persons who are to work the system should be men of calibre, endowed with vision and possessed of catholicity of approach. They must also be attached to basic values which underline the various provisions of the Constitution. They must be imbued, if not fully at least in substantial measure, with the spirit and idealism which inspired the founding fathers to enshrine them in the Constitution. The underlying assumption of our Constitutiton, as of every Constitution, is that each succeeding generation must share the faith and allegiance to values which inspired the drafting of the various provisions of the Constitution. Once this basic condition is lacking, the working of the provisions of the Constitution is bound to run into rough weather.

Petty minds go ill with the governance of great countries. The edifice of nations and national institutions, we should remember, take long to build. Behind them is the story of sweat, blood and tears of untold suffering and sacrifice; yet they can be destroyed overnight by the banishment of principles or by the selfishness, petty-mindedness or folly of men. Eternal vigilance is the price of liberty and in the final analysis its only keepers are THE PEOPLE. Imbecility of men, history teaches us, always invites the impudence of power.

51

The Five Federal Flaws

A.G. Noorani

On 4 August, 1949, Pandit Hirday Nath Kunzru asked Dr. B.R. Ambedkar in the Constituent Assembly to clarify whether the provisions for President's rule would "enable the Central Government to intervene in provincial affairs for the sake of good Government of the provinces?" Dr. Ambedkar replied, "No. The Centre is not given that authority."

Pandit Kunzru persisted: "Or, only when there is such misgovernment in the province as to endanger the public peace?" Dr. Ambedkar replied categorically :

> "Only when the Government is not carried on in consonance with the provisions laid down for the constitutional Government of the provinces. Whether there is good Government or not in the provinces is not for the Centre to determine. I am quite clear on the point."

A day before, Dr. Ambedkar insisting that it was a federal polity which the Constitution would establish, observed:

> "The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter."

He put forth two important propositions. One is that the States —

> "are as sovereign in the field which is left to them by the Constitution as the Centre is in the field which is assigned to them."

The other, which he had enunciated earlier on 30 December, 1948, is that as Head of State in a parliamentary set-up "the position of the Governor is exactly the same as the position of the President."

That was the intent. The reality today is the very opposite. State Governments have been sacked by the Centre arbitrarily for partisan reasons and Governors are told how to exercise their powers as heads of State in the interests of the ruling party at the Centre. The States appear as supplicants before an extra-constitutional body, the Planning Commission. The Centre holds up approval of States' industrial projects and the President's assent to State Bills. Understandably State feel choked. They recall the halcyon days of the Nehru era when men like Dr. B.C. Roy and Pandit G.B. Pant could assert the States' rights. Their resentment at their present plight is as deep as their grievances are justified. Redress brooks no delay.

There are five important matters on which constitutional amendment is urgently required; not indeed to recast the polity, but only to restore it to what its founding fathers intended it to be. They are — the appointment and status of Governors; imposition of President's rule on the States; the status of the Planning Commission; the States' jurisdiction over industries and Central veto of State Bills.

These are the barest minimum. There are, doubtless, other matters like the sharing of the residuary powers and greater freedom to the States to raise loans or float bonds at home and, subject to carefully defined conditions, from abroad as well. The entire field of fiscal autonomy calls for review. However, as a first step, the five flaws in Indian federalism as practised today must be removed with all due despatch. Not one of them is particularly controversial. In the new clime of consensual politics reform should not be difficult.

The Sarkaria Report is a tepid document. Even so, it recommends constitutional amendment to make it obligatory for the Centre to consult the Chief Minister before appointing the Governor. That will not be enough. He must also enjoy a certain security of tenure by providing him constitutional protection against arbitrary dismissal. It is often overlooked that the Governor, whose role affects the working of parliamentary democracy in the country, is the only high constitutional authority which is deprived of such protection. The President, Judges of the

Supreme Court and High Courts, the CAG and the Chief Election Commissioner have it. Not so the Governor.

Ambedkar's Dicta

By now Dr. Ambedkar's dicta on the strict conditions precedent to the imposition of President's rule are well known. He lived to see the provisions abused. "This is a rape of the Constitution", he cried in the Rajya Sabha in 1953 when President's rule was imposed on PEPSU. Since then the offence has been perpetrated over 80 times.

The stark reality is that the expression used in article 356 is dangerously vague — "a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution". This was borrowed from the hated Section 93 of the Government of India Act, 1935.

The test, as the Joint Parliamentary Committee on the Bill said, is the *impossibility* of governance. The then Secretary of State for India, Sir Samuel Hoare, told the House of Commons on 13 March, 1935, he was "contemplating the last emergency, when the whole machinery or government has broken down". An identical expression "break-down of the constitutional machinery" — was used by Sir Alladi Krishnaswamy Ayyar in the Constituent Assembly on 13 August, 1949. This expression represents better the intent of the framers of the Constitution and should be substituted for the vague one which has been perverted beyond recall. Additionally, the President must be obligated to refer the Proclamation to the Supreme Court, with the grounds for the action, for an opinion as to its constitutional validity.

Fiscal Matters

The Constitution sets up the Finance Commission to assure the States of impartial financial transfers from the Union to the States. It acts as an umpire to determine distribution of the net proceeds of divisible taxes and the respective shares of the States and the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India. But it has been eclipsed by the Planning Commission which is the creature of a mere executive order. It recommends the

plan grants which are of discretionary nature and outstrip the assured transfers. At the least the Planning Commission's status and role should be laid down by statute and the Finance Commission should be completely depoliticised.

It is hard to believe today that "Industries" is very much a state subject (Entry 24 in State List). It is, however, subject to two exceptions. One is in regard to industries declared by Parliament by law to be "necessary for the purpose of defence or for the prosecution of war". The other is in regard to industries similarly declared as ones "the control of which by the Union is declared by Parliament by law to be expedient in the Public interest".

Parliament lost no time in enacting the Industries (Development and Regulation) Act, 1951. The First Schedule of this statute lists 38 items. They include things like zip fasteners, cigarettes and toilet preparations. Thus, the States' power to legislate on and to set up industries, even for these items of daily use, has been completely taken away. On this grievance, amendment of the Act alone will suffice. Related to this is the Centre's veto over State projects. There have been loud protests over Centre's discrimination against Opposition ruled states in clearing pending projects.

Finally, according to one tally made a year ago, as many as 74 State Bills were awaiting the President's assent; two of them, for seven years. The States' Progressive legislation has been held up by the Centre by abuse of its severely limited power of assent to State laws on matters in the Concurrent List which amend a central law.

None of the reforms suggested on these matters is radical. But they will help enormously in restoring life and vitality to the Indian federation.

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52

Reforming the System : Three Desirable Changes in India's Fundamental Law

Nani A. Palkhivala

Though I am convinced that the democratic presidential system — as it prevails in the United states of America and in France — would be better suited to India than the Westminster model which prevails today, I am equally convinced that the present time is not the opportune moment to introduce the change. The presidential system is no substitute for national character. It does not afford any alternative to vision, knowledge and moral standards in political life. Besides, the whole nation is today in such turmoil that an intelligent and dispassionate discussion without rancour is impossible either within or outside Parliament. When your house is on fire, you do not pause to consider whether the living-room should be converted into a bedroom.

However, there are three desirable changes in our fundamental laws which can be implemented without amending the Constitution. The expression "Constitutional law" comprises not only the Constitution but also other parliamentary laws which supplement the Constitution and are concerned with subjects that the constitutional in nature.

First, no, political party should be recognised by the Election Commission or by any other authority unless the party is willing to maintain audited accounts of all its receipts and expenditure. The greatest source of corruption in public life is the total immunity of political parties from accountability while the small baker, butcher and grocer are expected to keep accounts. It is but fair and equitable that political

parties should be disciplined by the same requirements of the law which apply to citizens at large. Such a change requires no constitutional amendments but can be effected merely by the addition of a section to the Representation of the People Act, 1951.

Secondly, it seems essential it introduce partial proportional representation in the Lok Sabha. Half of the Lok Sabha candidates should be elected on the basis of proportional representation, which is the system in force in several countries including Germany. In order to prevent the mushrooming of political parties and splinter groups, it should be provided that the benefit of proportional representation would be available only to those political parties which secure a certain percentage, say, five per cent, of the votes cast in a region. The advantage of proportional representation is that it would enable the voice of minorities, regional parties, and other significant segments of the public, to be heard in Parliament, and thus allay the feelings of frustration and discontent among them. Further, it would prevent a repetition of the 1971 mischief when the Congress party, which received only 43 percent of the votes, obtained more than two-thirds majority in Parliament and was thus enabled to deface the Constitution by passing the disgraceful Forty-Second Amendment Act.

Proportional representation in the Lok Sabha is permissible under article 81 of the Constitution which only requires "direct election". Therefore, the desired change can be accomplished by amending the Representation of the People Act.

Thirdly, some minimum qualifications should be prescribed for those who seek election to Parliament. This, again, can be done without amending the Constitution. Article 84 already provides that the qualifications for a person who seeks to stand for election to the Lok Sabha are:

(a) he must be a citizen of India,

(b) he must be 25 years old, and

(c) he must possess such qualifications as Parliament may, by law prescribe.

The first qualification is usually an accident of birth and the second is inevitably the result of the inexorable passage of time. Up to now, Parliament has prescribed only disqualifications. I advocate some posi-

tive qualifications for aspirants to a parliamentary career. When at any convocation you see degrees confered upon engineers, doctors, surgeons, lawyers and other professionals, you cannot fail to be struck by the grim irony of the situation where the one job for which you need no training or qualification whatsoever is the job of legislating for and governing the largest democracy on earth. You need years of training to attend to a boiler or to mind a machine, to supervise a shop-floor or to build a bridge, to argue a case in a law court or to operate upon a human body. But to steer the lives and destinies of more than 890 million of your fellow-men, you are not required to have any education or equipment at all!

Let us now come to those changes which would require an amendment of the Constitution, but would not affect its basic structure.

First, article 75 requires that a Minister at the Centre should be, or become within six months, a member of Parliament. An amendment should provide that while the existing provision would apply to the majority of ministers, a minority of ministers may be selected by the Prime Minister from outside Parliament, who would not be required to get into Parliament at any time. Even the Ministers who are not members of Parliament would have the right to address, and would be responsible to Parliament; and thus the principle of collective responsibility of the Cabinet to the legislature would not be impaired. In Japan, for example, which has a democratic Constitution on the Westminster model as we have, the majority of the Ministers are selected from the Diet, but it is open to the Prime Minister to select a minority of the ministers from outside. The advantage of such a system is that it enables the Prime Minister to have in his Cabinet some of the best talent available in the country.

There is a second reform which can be adopted as an alternative, or in addition, to the one referred to above. When a member of Parliament is nominated to the Cabinet, he should be required to resign his seat in Parliament. There are several advantages in having such a law. The Minister would then be able to concentrate on the task of governing the country, and his energies would not be dissipated in politicking and in discharging his time-consuming duties as a member. In France and other countries, a person has to resign from the legislature upon his appointment to the Cabinet, and this system has worked extremely well in those

countries. It is true that in France the Presidential System prevails but this particular feature is equally compatible with the Westminster model, because it does not derogate from the principle of the responsibility of the Council of Ministers of Parliament.

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53

The Indian Constitution : Has it Stood the Test of Time ?

Upendra Baxi

There are many ways of understanding the idea of a Constitution. A Constitution may be regarded as a moral autobiography of a nation registering civilisational accomplishments. Or, it may be seen as a charter for social transformation, giving the State at once an interventionist role while protecting individual freedom, equality and liberty. A Constitution may be seen simply as a blueprint for governance describing the form and functions of apparatuses of the state. Or, it may be regarded as a site of struggle; Marx and Engels described constitutions as "necessities of class struggle". Or, on a cynical view, constitutions may appear as political playthings of legislative majorities, often led by charismatic leaders, creating potential for constitutional dictatorship.

Plaything of Power

The Indian Constitution has often emerged as a plaything of political power. The small, but potent arsenal of anti-democratic provisions in the Constitution has indeed been deployed to reinforce this reality. The untrammeled power of declaration of emergency and the power to impose President's Rule in the States, provide notorious examples of the suppleness of the Constitution in the hands of politicians. And the arrogance of the power to amend the Constitution was manifest in Attorney General Niren De's argument in the *Kesvananda Bharati Case.* He argued that this power can be used to convert India from a federal to a unitary,

secular to theoretic, republican to monarchial state and that it was open to Parliament to repeal the Constitution and put a new one in its place.

The Supreme Court, quite wisely and well, applied brakes to the engine of the amendment power under article 368 through the limitations of basic structure doctrine, thus reducing the potential of the sovereign power of Parliament/executive to reduce Constitution from a plaything to nothing.

The demotion of the Constitution as a mere instrument of political power is matched by change in public diction. Ever since the emergency, the Indian Press has begun describing the constitution as Statute, marking the erasure of the idea of the Constitution as a basic organic law to which all powers are subordinate. Even cartoonists have celebrated this erasure: a censored cartoon during the emergency decipts a bookseller telling a customer who wished a copy of the Constitution: "Sir, we don't sell periodicals here!"

But outside the inbuilt undemocratic provisions of the Constitution, it has proved resilient against any aspiration to absolute power. The relentless requirement of periodic elections, backed by a constitutional right to adult suffrage (right to contest, right to vote) has thwarted the aspirations of many of potential tyranny since Independence. The Constitution delegitimates tyrannical power and has accustomed the Indian ruling classes to accumulate legitimation through elections. And whatever may be now said about the wisdom vires of the anti-defection provisions of the Tenth Schedule, it certainly seeks to contain anarchic pursuit of power which contradicts the very logic of party formation through which liberal democracies aspire to contrive "representation" of the people in the task of governance. Even if India may not have moved beyond "plebiscitary democracy" and may be locked into the syndrome of "authoritarian parliamentism," the Constitution has achieved the vindication of the principle that governance is just only with the consent of the ruled. Many a decolonised nation since the fiftees is still struggling to articulate this grand principle; in India it seems firmly anchored. In this, at least, the Constitution has indeed stood the test of time.

But if one may assign to constitutions the task of bestowing the managers of the State with refined democratic sensibilities, the record of accomplishments is surely a mixed one. Even so elaborately written a

text as the Indian Constitution needs a considerable number of conventions for its full democratic potential to be realised. A written Constitution, thus, needs always to be supplemented by an unwritten Constitution. Conventions, surely, have developed in the Indian political practice. But they are pre-eminently such as to disrupt the democratic character of the written text of the Constitution. Instead of the unwritten Constitution supplementing the written one, in India it almost seeks to subvert it.

Thus it has come to pass that practices of power in contemporary India stand singularly uninformed by the vision of liberal democracy enshrined in the Constitution. One has only to read the Sarkaria Commission Report on Union-State Relations, word by word, to perceive how the most minimum civility needed to be observed in these relations have been constantly subverted, even to the extent that the bills duly passed by State legislatures (which require the consent of the President) are inordinately, awaiting consent without any explanation! The uncivility of the power of the Union Executive becomes an instrument of injustice when we recall that quite a few of these legislations seek to ameliorate the impoverished masses of India, to which the directive principles summon vigorous State action. The arenas of uncivility have grown apace and crude central hegemony asserts itself in appointment and transfer of governors, 'puppet' status to Chief Ministers, cavalier handling of consultation processes in appointment of High Court judges, arbitrary distribution of disaster relief and poverty alleviation funds. The failure to observe a modicum of constitutional civility in Union-State relations through enunciation of conventions is at the root of the major breakdown of the federal scheme of the Constitution, the most tragic results of which are borne by the bodies and souls of Indian citizens in a considerably growing number of States.

Security and Corruption

The most powerful justification of a modern state is that it provides a minimum security to individuals against unjustified and unprovoked aggression, the state's moral title to monopolise the use of the force flows from this. But masses of impoverished citizens have no protection from predatory aggression, which gets aggravated in times (alas! all too common) of ethnic and communal strife. An average Indian exposed to violence has to endure it as fate. Whereas the Constitution makes the

State the custodian of the "weaker sections of society," regime sponsored violence against them has become so routine as to make constitutional power their nemesis.

The entire edifice of the Indian Constitution stands on a simple maxim: Public power may only be used for public ends and not for private gain. The legislative and the executive power of the State is provided in all its plenitude to further this central moral insight of the Constitution. But the observance of this dictum requires growth of certain political conventions and practices. These have simply not developed; for example, the uncomplicated requirement of asset disclosure by holders of public power, including the executive, legislatuure and judiciary has not found recognition (save in rarest of rare cases) through public policy or legislation. Even as the folklore and the fact of political corruption grow apace, and sickeningly so, a few ombudsmen in some States themselves remain sick institutions! And forty five years after independence there has been no consensus among practitioners of political power about an appropriate jurisdiction for a national ombudsman. In the height of the so-called Bofors controversy, all national parties in Parliament recodified the Prevention of Corruption Act in such ways as to prevent effective public and judicial invigilation of corruption in public services.

It should be unnecessary to multiply example of subversive conventions axiomatically, the Constitution stands against privatization of public power; elite consensus, however, seems ranged against this basic norm of constitutionalism. In this respect, the Constitution may be said to have failed to stand the test of time, even when we recall Dr. Ambedkar's statement that if our magnificent Constitution did not work it was not because the constitution was bad but men were vile.

The Indian Constitution's remarkable person manifests itself in its normative assault against the dominant institutions of the Civil society. It is in this respect that the Indian Constitution has been hailed as providing "a charter for social revolution." In a society marked only by hierachial equality in terms of caste, the Constitution proclaims each citizens to be free and equal. For a society almsot wholly patriarchal in character and temperament, the constitution prohibits the State from paractising gender-based discrimination, and since 1976, through the fundamental duties of citizens, imposes an obligation on us all to

renounce practices derogatory to women. While the Hindu society celebrates the fundamental distinction between "pollution" and "purity", article 17 of the Indian Constitituion prohibits untouchability and makes an imposition of any disability based on the ground of untouchability an offence. Through article 23, a right against exploitation, the Constitution prohibits bonded labour, begar and other forms of semi-servile labour, in a society yet to emerge from semifeudal relations of agararian production. Thus, in many vital respects, the Constitution declares a war on social practices and beliefs deeply engraved in the Indian culture and society.

It is clear that sonorous words written on a parchment do not necessarily transform social relations or economic structures. But, by the same token, without such radical enunciation of a constitutionally desired social order, impulses for radical restructuring of the society and state would be even further inhibited. The symbolic significance of a constitutional aspiration is immense. It also furnishes the basis of social criticism of the practices of politics. It urges a constant review of the working of the institution of the state in the light the basic goal values and ideas. The Constitution thus helps to defeudalise public discourse about stock power and allows momentous scope for vigorous articulation for direction of the Indiian future.

A remarkable social invention embodied in the Constitution of India is Part III enshrining fundamental rights of all Indian citizens. These basic rights can be summed up in three categories: political process rights (rights to personal liberty, rights to freedom of speech and expression and of media, the right of association and assembly, the right of free movement through out the territory of India), rights against exploitation (Articles 17, 23 and 24), and rights safeguarding cultural pluralism (right to freedom of consience and religion, right to conservation of languages and scripts, the right to manage and administer educational institutions of one's own choice).

These rights provide resources of individual citzens and minority' groups against the overweening power of the state. The rights safeguard political justice: that is, justice in relations of organized political community and the individual. The fundamental rights are overwhelmingly enforceable through the Supreme Court of India and the High Courts;

indeed, article 32, itself a fundamental right, guarantees every citizen and person a right to move the Supreme Court for the purposes of enforcement of fundamental rights. This fundamental right has been declared as the most fundamental of fundamental rights, not liable to curtailment in exercise of the amending power.

But, obviously, only those Indian citizens who can afford legal services, which are increasingly dear, may avail the fundamental rights. Part III, until the emergence of social action ligitation, had primarily become the preserve of the classes. The 1976 amendment to the Constitution, realising this, added a directive principle of state policy urging the state to ensuring that the operation of the legal system does not result in injustice on the ground of economic circumstance; it also imposed a duty of the state to provide legal services. This directive principle, like its cousins, has attracted only a moderate attention of the heavily preoccupied managers of the Indian state the legal services bill, passed a few years ago, is still awaiting implementation!

In general, the design of the Constitution has been such that critical entitlements of basic needs for the masses of Indian citizens have not been recognized as fundamental rights. Instead, they have been placed in largely unenforceable Part IV. After a little over three decades of dynamic tension over the fundamental right to property between Parliament and the Supreme Court, the Fortyfourth Amendment ultimately successfully deleted this right; but the right to work as a fundamental right has only been making guest appearance in the theatre of Indian politics.

Though the directive principles use the language of rights the needs of the Indial impoverished masses have not been recognised even as staturory rights. For example, the anti-poverty programme is an entirely discretionary activity of the executive, creating no rights whatsoever in the beneficiaries: similarly, the reservation in educational and employment institutions operate largely through statements of executive policy, without the benefit of a statutory code. Even where, by happy chance, propor legislations exist, they do so, by and large, to embellish India's socialist statute book. Everyone knows what a Herculean effort was needed by Bandhua Mukti Morcha and the Supreme Court of India to get the Bonded Labour Abolition Act somewhat implemented, we also know

the plight of juveniles in Indian jails, despite the redoubtable efforts of the intrepid Sheela Barse. The enforcement of minimum wages for agricultural workers is Lackadaisical: legislations seeking protection of child labour and of unorgonised workers languish for want of any strategy of enforcement. It is unnecessary to multiply examples.

The original design of the Constitution has indeed created dichotomy, which has accentuated over forty years, between rights of the masses and the right of the classes. The time has surely come to examine ways in which the minimum entitlements of the Indian masses could be more inmaginatively and effectively ensured through the available constitutional processes.

Judicial Activism

The Supreme Court of India and activist judges in High Courts, have indeed shown how a change can be brought about. The change was accomplished by a remarkable constitutional sensitivity with which some appellate judges responded to the horrowing plight of the vulnerable sections of the society. Dealing with a large number of letter pettitions, enlightened Justices have converted the needs of the impoverished into entitlements, the right to speedy trial arose out of a mass of languishing undertrials in the jails of Bihar, the right to livelihood was (even if ambivalently) generated by the Bombay Pavement Dwellers Case : compensation of violation of basic human rights was recognised in a series of public interest cases. The judicial process has proved, on the whole, far more sensitive than the legislative political process in India in terms of revitalising the original aspiration of the Indian constitution.

But as the experience of social action litigation now suggests, an activist judiciary can only initiate measures of protection of the rights of impoverished. The follow-up action has to emerge out of exertions of the executive and the legislature. This simply does not happen. What happens is that the courts' ability to pursue their own constitutionally catalyst approach stands progressively enfeebled by docket explosion. In such a situation, what emerged as heroic judicial activism, over time, merely becomes routinised and bureaucratised oversight from case to case on a lawless executive.

The Constitution contemplated a judiciary far more quiescent than we witness now; the Constitution envisaged a dynamic legislature, and a growth of people-oriented executive, which would translate its objectives into dynamic reality for the Indian masses. This, alas!, has simply not happened. If it is a ground of solace, let us acknowledge that the Constitution, in this vital respect, has not stood the test of time. but such an acknowledgement is itself an affront to sixty years of freedom strugle and over four decades of Independence.

Our tasks do not end but rather begin with such acknowledgement. And such beginning is scarcely to be made by the talk about a wholly new constitution or a presidential from of government. At the present junctuure, the ground for accommodation and consensus which generated the 1950 Constitution has simply given way. We have run out of a tradition which identified politics with selfless national service. Nor do we have the galaxy of talent which was fortunately available to us in the drafting of the Constitution.

It is possible, desirable, and necessary to recover the radical impulse of the constitution. Ways have to be found, as indicated thus far, to transform the most fundamental directive principles into enforceable rights; and to ensure deprivitization of public power. The sorry spectacle of implementing directive principles by effete declarations of policy (like health for all, potable drinking water for all, and comprehensive poverty eradication) must, surely, now yield to constitutional innovation in genuinely pro-poor ways.

The constitution was intended to be a charter of people oriented use of political power and not as a declaration of alibis for inaction. The quest for re-reading the radical potential of the Indian Constitution cannot be postponed any further if we as citizens are interested in preventing the demise of Constitutiional democratic order in India.

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54

Constitution of India — A Case for Review

A.T. Patil

Every Constitution reflects the social (including political, economic and religious) philosophy of the Nation and the way of life of its People. The Constitution also sets out rules of discipline and constitutes institutions and authorities invested with the powers derived from the people, clothed with the necessary sanctions to translate the national philosophy into action and to enforce the discipline to protect the People and their constitutionally declared way of life.

The basic political philosophy of the Indian Constitution is that of democracy. It provides for an institutional structure of the State in which the 'People' are 'sovereign'. Every state-action, policy and programme must be in conformity with the will of the 'People', irrespective of the form of government adopted by the State.

The two important forms of democratic government are :

(i) Parliamentary, and

(ii) Presidential.

In Parliamentary democracy, the Parliament consists of representatives of the 'People' elected generally by universal suffrage, for a specific period. The Parliament is a deliberative body which deliberates on every social problem and takes a decision for its solution. Such a decision is final and supreme. It cannot be questioned by any institution or authority. The ideal form of Parliamentary system of democracy is represented by the British government.

The Presidential form of democratic government has a different structure. The powers of the People are distributed among the three organs : Executive, Legislature and Judiciary. The Executive power of the people is vested in one individual elected by universal suffrage for a specific period. His executive power is not controlled even by the popularly elected House. The world looks to the American government for guidance in the Presidential system of democracy.

However, the American system is not the only Presidential system of democratic government. There are other Presidential systems in the world, varying in form and substance according to the will of the People of the particular states. In the French Presidential system the President can choose the Prime Minister, dissolve the Assembly, assume full powers and establish something like a dictatorship. The Assembly has been reduced to a secondary position and function. After experiments of a few constitutions and systems, this is an effort in France to create a strong government based on elections but not on parties. In the emerging nations in the world, there are Presidential systems unique in their own way. There are one-party systems also.

The variety of Presidential system appears to be due to the acceptance of 'distribution', 'dispersion' or 'separation' of political power. The contents of this separate power of the President may vary from State to State according to the perception of their People based on their independent experiences.

In case of the Parliamentary system, the question of separation of power does not arise. The entire political power is vested in the Parliament. Therefore, the Parliamentary system has generally an uniform pattern in which the Parliament is always supreme. In the British system, there is no distribution of power among the three conventional wings of the Government : Executive, Legislature and Judiciary. In Great Britain, the Monarch is the Executive head of the State, in theory. But, for all practical purposes, the Monarch is only a titular Head symbolising the nation's unity, integrity, pride and spirit. This arrangement is practically necessary and convenient for the State to conduct its activities in the name of the titular Head. It is useful and graceful to represent the State in all formal national and international events through this titular Head of State. The real executive political power vests in the Prime Minister and his Cabinet. But, the Prime Minister and

his Cabinet are responsible to the Parliament which has the right to information and final decision.

As regards the legislative powers, the Parliament is sovereign. No court of law can inquire into the validity of the law made by the Parliament. Even the House of Lords cannot question its validity. Interestingly, the highest Court of Appeal is the House of Lords which is the Upper House of the Parliament.

Thus, the entire power and authority of the State in Great Britain is vested in the Parliament. There is no other constitution to share the political power. The concentration of power of the People in this single institution of Parliament has solved all problems and disputes generally created by the system of separation of powers.

India adopted the Parliamentary system of democracy with some variation. We have the President, the Parliament and the Judiciary. The President, a single individual, is elected not by universal suffrage, but by indirect election for a period of five years (Art. 55-56). The Executive power of the Union is vested in him and is exercised by him either 'directly' or through officers subordinate to him in accordance the Constitution. The Supreme Command of the Defence Forces of the Union is vested in him (Art. 53). He has the power to grant Pardon, etc. (Art. 72). The President appoints the Prime Minister and other Ministers (Art. 75). The President in exercise of his functions, acts in accordance with the advice given by the Council of Ministers. But, he has the right to require the Council of Ministers to 'reconsider' such advice. Article 74 vests the Executive power of the Union in the Prime Minister and the Council of Ministers, in reality.

The Parliament consists of the President and the two Houses known as the Council of States (Rajya Sabha) and the House of Representatives (Lok Sabha). The members of Rajya Sabha are elected by indirect election. The members of Lok Sabha whose total number is not more than 545, are directly elected by universal suffrage, for five years (Art. 79-81). The Parliament is vested with the power to make laws including Money Bills (Art. 107, 109, 110) and Appropriation Bill (Art. 114). No tax is levied except by authority of law (Art. 265) and no money out of the Consolidated Fund is appropriated except in accordance with law (Art. 266). Subject matters of laws to be made by the Parliament and the State

Legislatures are enumerated in Lists in Seventh Schedule (Art. 245, 246). Residuary powers are vested in Parliament.

The Supreme Court of India (Art. 124) is a Court of Record (Art. 129) with certain original jurisdiction (Art. 131). It has appellate jurisdiction (Art. 132-134) on the certificate from the High Courts and also on its own special leave (Art. 136). The law declared by the Supreme Court is binding on all Courts in India (Art. 141). The Supreme Court is also vested with Advisory Jurisdiction (Art. 143). All authorities, civil and judicial are to act in aid of the Supreme Court (Art. 144). Courts are barred from inquiring into proceedings of Parliament (Art. 122).

Our Constitution has been in operation for more than 42 years. During this period, the nation has witnessed many events in relation to the aforesaid constitutional institutions and authorities, which have set the whole nation thinking about the efficacy and continuity of the Constitution in its present form and the need and direction of its review. A few instances are given below to indicate the shape of things to come.

1. There were public talks about the President's Constitutional power to suspend Constitution, declare Emergency, dismiss the Prime Minister as well as to dissolve the Parliament. There were also talks about the Supreme Court's jurisdiction to sit in judgement over the acts done and orders passed by the President and to summon him to appear before it. Nobody takes pub-talk more seriously than necessary; but, it indicates something which cannot be simply dismissed without giving a thought to it.
2. Although there has never been any instance of showing disrespect to the President, except perhaps at the time of his address to both Houses of Parliament, history has recorded events wherein the Governors of states were not only insulted, but abused, threatened and even manhandled.
3. The Parliament and the Houses of legislatures in the States have often seen the scenes of 'shouting brigades' halting the deliberations and bringing the business before the Houses to an abrupt end, members invading and occupying the wells of the Houses, destruction of papers, property and furniture, use of mikes and even footwears as weapons of attack and 'free-for-alls.'

4. Party system has collapsed. Two-party system which is the soul of a democratic system of government did not develop. In order to nurse his own negative ego and malice, any disgruntled person sets up his own party, without any positive foundation of basic political philosophy. Parties are becoming band-wagons for powers-broker and power-grabbers. The rush of opportunists flows in speculatively winning parties and ebbs in losing parties.
5. Money and muscle power are being freely used in elections to capture votes. In some areas, booth-capturing has become a profession and business. Electors are becoming prone to corruption. Doors are, thereby, being opened for anti-social and anti-national elements, criminals, smugglers, their associates and supporters to become the elected representatives of the people, to grab power, to corrupt the people and nation and to destroy the present constitutional structure of the State and ultimately the State itself. In the wake of all this, the Constitution appears to have, become meaningless.
6. The Judiciary has shown an attitude of distrust and disliking of the government and legislatures. It has also widened the scope of judicial control over them and at times obstructed the political process. Judiciary can no longer be said to have been unaffected with corruption. The structure of the Judiciary under the Constitution has belied the expectations of the people and frustrated their sense of justice.

In the light of these and other events and experiences the review of the Constitution has become inevitable. I have, therefore, to make the following suggestions in respect of only a few issues under the Constitution. These suggestions are not intended for being readily accepted since there is bound to be an honest difference of faith and opinion; but they are intended positively to set the process of thinking in motion.

1. Presidential system is not suitable to Indian conditions

No amount of argument in the abstract either for or against any such proposal shall be of any use. Every polity, meaning thereby the form or process of civil government, has its foundations on its own political culture which is the product of the political values of the 'People'. The end of the Second World War unleashed against imperialism a great wave of

aspiration for political freedom and a number of new nations were born as free democratic nations. But, over a period of time, many of these new nations landed under dictatorships of some form or other. It was the result of the political culture of the respective people which had no capacity to direct the use of the political power for democratic purposes. In the eyes of the democrats, it was a misuse of power. The history of our democracy has recorded the exit of some chief ministers of States as well as that of other ministers due to some sort of misuse of power amounting to corruption or misconduct or the like. These events are indications of our political culture. If in our democratic set up the persons entrusted with political power dare to misuse it, there is no guarantee or assurance that in a presidential system, the President with uncontrolled executive power for a specific period shall not misuse it. We have not developed the political culture suitable for presidential system of government. Hence, we have no alternative but to continue with the parliamentary system of Government.

2. President under Indian Constitution

In our parliamentary system of government it is necessary to have the office of the President. The President shall be a titular Head of State in whose name the state-actions shall be taken. He should be kept away from political controversies. He shall not be another Centre of political power. He shall have no executive or even advisory powers. He shall endorse the decisions of the government without any power to question them. But, non-controversial and non-offensive powers such as those conferred upon the President under the present Constitution may be given to the President.

But, when the parliamentary machinery fails due to any single party not getting the requisite strength in the Lok Sabha the President must be empowered to act. The President shall, in that event, invite the leaders of the Parties having a strength of at least ten percent of the total membership of the Lok Sabha, for consultations and with their consent, the President shall direct them to form a "National Government" on the basis of a definite basic programme settled amongst them beforehand. The decision of the President in this matter shall be final and should not be challenged by anybody. This experiment shall continue for some time, say for six months or one year. Thereafter, the President shall assess the

situation taking the Council of Ministers of the National government into confidence, and the President shall take a decision, in his sole discertion, to continue with the experiment or to dissolve the Lok Sabha and direct fresh elections.

3. The Parliament

The Parliament as the body of representatives of the people shall be supreme. The constitutional validity of its laws shall not be questioned by the Judiciary. A separate provision shall have to be made to test the constitutional validity of the acts of the Parliament. The Parliament shall, thus, be the sole centre of political power; and it shall have no conflict with the Executive and Judiciary who shall also have no conflict between them. As Jefferson had said : "The common sense of the common people is the greatest and the soundest force on earth." By this rule, 'a Statute like a jury verdict, must stand; regardless of how mistaken it may seem to judges or others.'

To justify this immense faith in the wisdom of common man, the Parliament must be so shaped that only the common men of common wisdom shall be elected to the Parliament; and the incidents of denigrating the Parliament shall be avoided. This requires proper shaping of the basic elements which go to constitute Parliament :

1. The Elector,
2. Political Parties,
3. Process of Election, and
4. Maintenance of discipline in the House.

The Elector: There is a public talk about restricting the right to vote on various grounds. It may deserve attention so long as it does not affect our faith in the wisdom of a common man and our commitment to democracy. A beggar who begs for his food can be easily purchased not only by a candidate in the election, but also by a foreign spy. In that light beggary is a danger to the nation. Poverty of a degree and class is also a similar danger. A known indicator of such a poverty is a want of lawful shelter with or without ostensible means of livelihood at a place where the person would have been entitled to the enrolled as a voter under the present law. Such persons can be easily purchased. Known criminals and persons

having criminal, anti-social or anti-national record are positive enemies of the society. This class includes gangsters, their associates, persons in power found to have misused power or persons found to have been otherwise corrupt and their associates. A provision can be made in the Constitution to bar persons falling in the aforesaid categories from being electors. This suggestion may be vigorously opposed by persons whose political standing depends upon the support and vote of people of these categories. Such opposition would inevitably be prompted by self-interest rather than by considerations of national interest. The basic thought underlying the right to vote is the ability of the elector to understand the meaning and import of that right and to act accordingly. The persons falling in the aforesaid categories are either ignorant of that right or exercise it against its spirit itself. Simultaneously it is necessary to make provisions in the Constitution for taking imperative measures to alleviate poverty, such as population control, productivity increase, equitable distribution of wealth, literacy growth, education and training in self-employment, etc. The basic idea is to make the elector fit for democratic culture.

Political Parties: Party system in Great Britain has taken generations to develop but, now it is well settled. Mendelson says "It is a matter of shifting tendency or degree on which the two great democratic people — the British and the American — lean in opposite directions. That they are committed to legislative, and we to judicial, supremacy may rest in part on differing political party structures. The British have 'responsible' parties; we do not. Similarly, Raymond Aron comments that where there is a multiplicity of parties and also divisions within each party, it becomes extremely difficult to make decisions. He writes : "British type was extremely simple. There are only two parties, and one party has a majority. The party with the majority has discipline. So the government formed by majority party is able to govern the nation for the term of the Parliament.... The second type is American system. Here also there are two parties, but they are without discipline. The key to the efficacy of American system is the election of the President, who is the executive by Universal suffrage, for four years...."

The success of the parliamentary democracy, therefore, rests on the system of two 'responsible' and 'disciplined' political parties. In India, we have a number of parties of which many are without basic foundations.

It is necessary to control their increasing number and mushrooming growth. I have the following suggestions to achieve this end :

(i) Each party must be directed to declare in clear term its basic political philosophy, policy and programme and special characteristic which distinguishes it from other parties, so as to enable the people to appreciate its distinctive appeal to the people and the nation.

(ii) Each party must be directed to declare every year its specific achievements in respect of its declared programme.

(iii) No group of persons with the same or similar political philosophy, policy and programme shall be recognised as a separate party.

(iv) The party which fails to get at least 10% of the membership of the House shall lose its recognition and its registration as a party shall be cancelled.

(v) All members elected on tickets of such a party which loses its recognition shall remain unattached.

(vi) The unattached members shall not be permitted to vote on a motion of no-confidence.

(vii) On other motions, their votes shall be recorded; but they shall not be counted for the purpose of decision of the House on the motion.

It is not necessary to comment further on the matter. But, these restrictions shall polarise the public opinion and reduce the number of parties to not more than three or four in the beginning. Gradually and slowly, the number shall decrease and the two-party system may develop and settle.

Candidates: The colossal poverty, consequent exploitation of the people, the division of the society along the lines of caste, religion, language and territory and existence of brutish attitude of the opportunists, deprives the society of its unity, integrity and spirit as a State. Its preservation and development are generally expected to be achieved through the people's representatives who are ultimately to implement the party's programme in the field to translate its philosophy into action. In the

selection of their candidates, the party has the first priority for the 'elective merit' of the candidates, rather than their commitment to the party's philosophy and society. The elective merit, for all practical purposes, means the candidate's ability to exploit the aforesaid factors in his constituency by use of any means including money, muscle, fraud, deceit etc. The parties have to rethink in the interest of the nation. Otherwise, these vices shall pervade the entire political fabric, and a number of criminals, anti-social and anti-national elements are bound to grab political power as people's representatives.

Provisions may be made in the Constitution to bar criminals, anti-social elements etc. as stated earlier, from being electors and candidates at the elections. The parties may be directed to submit lists of their probable candidates sufficiently in advance. The appropriate agency may collect and a committee of Rajya Sabha may examine their past record and inform the parties accordingly. The parties may, thereafter, revise their lists. The government may, then, publish the past record of these persons for the information of the public. This process may check the anti-social and corrupt persons from entering the fray of election.

The Election Process: Being essentially procedural in nature, this subject is principally in the province of legislation. The Constitution has sufficient protection for the law. As to the change in law, the emphasis should be on prevention of money, muscle, and other forms of corruption controlling the election process. Constitutional provisions may be made to impose drastic punishments including loss of electoral rights, on the wrong-doers.

Discipline in the House: Specific provisions may be made in the Constitution itself to facilitate the suspension of the membership as well as termination of the membership 'automatically' for the acts of indiscipline in the House. In case of serious indiscipline, together with the termination of his membership the guilty member must be automatically barred from exercising franchise and to contest any election at least for a period of seven years. Rules of Procedure and conduct of business in the House must be strictly enforced.

Political defection: Where during the tenure of the House, a party changes its policy or programme so as to conflict with the election

manifesto of the party, members of that party should not be bound by the change, so far as their representations in the House are concerned. In that case, if any member of that party raises a voice of dissent against his party in respect of that change of policy or programme and the party takes a disciplinary action against him expelling him from the party, it shall not be treated as a political defection entailing a consequential loss of membership of the House. He can still remain as an unattached member in the House. But, if a member rebels against his party otherwise for some other reasons, or abandons the party, his membership of the House should be automatically terminated. The concept of political defection cannot be applied to a member who is elected independent of any party ticket.

Judicial Review

Judicial Review or Judicial Supremacy is a special gift of American Judiciary to the world of constitutional governments. That its origin was highly "political" is a twice-told tale. But, the outside world has special interest in the logic and reason of its acceptance by the American people. Mendelson writes :

> "Our practice suggests an inarticulate faith that within the four corners of the written Constitution are to be found the answers to all special problems and the Courts have special competence to read what is written there. Observing this a foreign visitor long ago concluded that, if asked where he found the American aristocracy (the governing class) he would reply 'without hesitation ... that it occupies the judicial bench and bar'. Behind our open commitment to the fragmentation of power lurks a brooding remnant of distrust for popular government. This, perhaps, is the foundation of judicial review or what its detractors call judicial supremacy. Whatever the name, the essence is clear : the power of a court in the name of the Constitution to disturb the results of the political processes. This means concentration in a single agency — the one farthest removed from popular control — of authority to override all other organs of government."

This distrust for popular government in the minds of a few Founding Fathers of United States of America, and its reasons were visible at the time of framing the Constitution. Alexander Hamilton believed that "the

people... is a great beast." In the Constitutional Convention, Hamilton argued:

> "All communities divide themselves into few and many. The first are the rich and the well born, the other the mass of the people ... The people are turbulent and changing; they seldom judge or determine right. Give, therefore, to the first class a distinct and permanent share in the government."

This was, of course, not feasible. But, in search for protection of interests of "the rich and the well born", they discovered a special virtue in the non-elective branch of the national govt.

A special feature of their Constitution is the creation of two separate centres of political power: the President and the Congress (Parliament), both elected by the people and responsible to the people. This distribution of power creates occasions for one centre to encroach upon the sphere of authority of the other. These disputes are required to be resolved by an independent arbitrator. This is done by the Judiciary.

United States of America is a federation of States. Section 4 of Article IV of their Constitution guarantees to every State a Republican Form of Government. Every State has its own Constitution. The problems, therefore, arise as to what belongs to the Nation and what belongs to the States. These problems are required to be settled by the Federal Judiciary.

The old eighteenth century document of their Constitution speaks, for many purposes, in delphic terms and seldom provides obvious answers to the people's problems. The people have to find out what the Constitution is in relation to such problems. In their attempts, the people themselves imagined what their Constitution was, framed their propositions and put them forward as their Constitution. Thus, they conceived that it was unconstitutional to buy Louisiana from France or Florida from Spain, that it was unconstitutional to charter a Bank, etc. The solutions to such problems were sought from the Judiciary by its 'interpretation' of the Constitution. Every new generation is bound to pour its own wisdom in the Constitution which would need the necessary interpretation from the Judiciary.

In America, where the Judicial Supremacy was born and established, the Judges have maintained high degree of judicial quality and commanded respect from the people. Justice Holmes (1902-32), a skeptic of Judicial Review, speaking about its founder Chief Justice Marshall (1801-35) and his qualities of strong intellect, courage, justice and conviction reminded the audience that : "there fell to Marshall perhaps the greatest place that ever was filled by a judge," and thereby emphasized the fact that in the times of Marshall, to become a nation, America needed his human qualities and political principles which left an indelible impression on the American Constitutional history. The strong conviction of Justice Curtis (1851-57) forced him to resign following his dissent in *Dred Scott case.* The response of a vigorous mind to the 'pressing needs of the expansive society' by Justice Bradley (1870-92) and an essentially detached and constructive mind of Justice Brandeis (1916-39) were equally the ideals of the American Judges. These and other judicial qualities made the American people to accept and continue to accept the Judicial Supremacy in America.

Against this backdrop of the conditions, Constitution and judicial history of America, the case for Judicial Review in India is very weak. Under Indian conditions and Constitution, there is no distrust for popular government. It may be in the mind of the Judiciary or a small section of "the rich and the well born", but not in the mind of the masses. In fact, the masses desire the popular government to be strong enough to take firm decisions and maintain national discipline. They have full faith in popular government.

In India there is only one centre of power. It is the Parliament. The question of dispute or conflict of power cannot arise for the resolution by the Judiciary.

India is a Union of States. States are not independent republics. They have no independent Constitutions. Under a single Constitution of India, the powers of the Union and the States are specifically enumerated (Art. 245-255 read with arts. 73 & 162). The residuary powers are vested in the Parliament (Art. 248). Therefore, the question of interpretation of the extent of the sphere of authority of States and the Union may not arise for the decision of the Judiciary, by interpretation of the Constitution.

Indian Constitution is sufficiently expressive and the common man is not required to put forth his own imagination as to the meaning of the Constitution. There are, however, questions of conflict between the liberty of Individual and authority of the State. The protection of an individual against the state-action requires the interpretation of the Constitution, especially the Fundamental Rights and a few other provisions of the Constitution protecting the Individual.

As regards the Indian Judiciary, it is not necessary to comment. There were and are some of the finest judges of high judicial qualities. But, in the opinion of the people, the personal conduct of some of the judges has adversely affected the image of the Judiciary and it has developed a general attitude of opposition to the popular government thereby disturbing the political process.

These features of the Indian Constitution and conditions indicate that there is no scope for Judiciary to arrogate the power of Judicial Review and to exercise the Judicial Supremacy in our polity of parliamentary democracy. However, a few individuals in their wisdom read in the Constitution, particularly the Fundamental Rights, that the State-action to evict the footpath dwellers, unlawful settlers or squatters on public land etc. is unconstitutional, that the detention of smugglers, anti-social elements and criminals is unconstitutional, that a specific alignment of railroad or highway, construction of irrigation dam at a specific place, location of industry at a certain place etc. are all unconstitutional, that specific projects for environmental protection or certain projects for the amelioration of socio-economic conditions of weaker sections of the society are all unconstitutional and that the land tenure legislations or legislative acts on ceiling on holdings are all unconstitutional. The courts readily seize the cases, and stop the State-action or strike down the legislative acts under the pretext of reading and interpreting the Constitution, with an implied claim that the courts alone are competent to read and interpret the Constitution in the light of growing social demands. While doing so, they treat all issues, whether political, legal or constitutional, alike without making any distinction, perhaps due to want of standards for distinction, and thereby obstruct the political process.

Any Constitution is essentially a political document of which the language belongs to an age and a society of the past. "The pressing needs

of the expansive society" cannot be invariably spelt out literally from that language. A new life is required to be blown in those otherwise empty words. But, there are no standards for guidance to do that. Chief Judge Learned Hand speaking about the constitutional provisions for personal freeedom said : "Nothing which by utmost liberality can be called interpretation describes the process by which (the constitutional provisions) must be applied. Indeed, if law be a command for specific conduct, they are not law at all; they are cautionary warnings.... The answers to the questions which they raise demand the appraisal and balancing of human values which there are no scales to weigh." While dealing with the question of interpretation of 'religion', Justice Jackson observed :

> "It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian begins in education. Nor can we find guidance in any other legal source."

Where, therefore, the judges find themselves helpless to get a guidance for interpretation of Constitution, the arrogation of the power of Judicial Review by the Judiciary, resulting in the confusion of the issues for judicial review proper and the political or legal issues, and their Constitutional interpretation, may not be justified. If the Constitution is to be living instrument of government, "the breath of life must come from the community—not from the merely private bias or personal preference of a few 'independent' judges."

It is common knowledge that the way in which the Judiciary in India dealt with the political and legal issues, as aforesaid, invited public criticism that it is a class of aristocrats sitting in ivory towers far removed from the masses and blind to the legislative and executive perceptions of social, economic, religious and political issues. It is not necessary to evaluate such criticism. The fact remains that some such judicial decisions have caused upheavals in social and political fields and constrained the people to think of restraining the Judiciary from dealing with such issues.

In spite of everything that may be said in favour or against the system of judicial review, its necessity under the written Constitution cannot be ruled out. The question is only one of its scope, extent and forum.

There are bound to be disputes in society, which are required to be settled. These disputes may be grouped under separate categories :

1. *Disputes of law and facts involving personal rights and liabilities of private individuals* : These disputes are disposed of by application of law, without inviting any provisions of the Constitution to play any role.
2. *Constitutional disputes* : These are disputes involving the interpretation of the Constitution, such as, for instance,
   (i) disputes regarding the constitutional validity of the laws of the Parliament or legislatures and/or actions of the Executives or their administrative officers;
   (ii) inter-state disputes such as boundary disputes, river-water disputes, disputes regarding use and utilisation of natural resources, inter-state trade and commerce or disputes between the Union and the State or States;
   (iii) disputes between different constitutional institutions or authorities functioning under the Constitution.
3. *Political disputes* : These are disputes regarding actions taken by the Parliament or legislatures or the executives under the authority vested in them respectively under the Constitutional provisions, such as, for instance,
   (i) disputes arising out of and relating to actions and decisions regarding defence, security of State, law and order, etc.,
   (ii) disputes regarding socio-economic programmes, population control, enforcement of secularism, location of industries, implementation of education policy, development projects etc.,
4. *Disputes regarding Parliamentary Affairs* : These are disputes relating to the elections to and/or constitution of Parliamentary/legislative institutions created by or under authority of the Constitution, disputes regarding the powers and privileges of its/their members and/or officers, intra-party and inter-party disputes, including political defections, disputes relating to the disciplinary actions against members, disputes, regarding the business before the Houses of Parliament/legislatures and the

actions or decisions of the respective Houses, their members and/or officers taken to maintain discipline, dignity, decorum etc. of the respective Houses.

5. Miscellaneous disputes and disputes arising out of unforeseen contingent events such as, for instance, disputes arising out of natural or man-made calamities, riots, racial or communal violence etc.

It is possible that depending upon the factors involved in the disputes referred to above, a dispute may fall in more than one category.

For the purpose of resolving these disputes, my suggestions are as under:

1. Disputes falling under the first category shall be dealt with by the Courts of law (or law and equity, divorce jurisdiction and to some extent admiralty jurisdiction), with the present hierarchy. These courts shall have no jurisdiction over the disputes falling under other categories.
2. Disputes under the second category require judicial review. In a Parliamentary democracy, this review, properly so called, shall have to be done by the Parliament itself. This jurisdiction can be exercised by the Parliament through the Council of States (Rajya Sabha), being the Second Chamber of the Parliament. This system shall be similar to that of the House of Lords of Great Britain, which has been functioning as such for centuries. The Rajya Sabha may constitute its committee for this purpose, called "Judicial Committee." There may be as many such committees as may be required by the nature and load of work. This committee may consist of two jurists or men of law (other than the retired judges), two lay men, and one person acquainted with the particular subject involved in that particular dispute, all five persons being the members of the Rajya Sabha. If necessary, the committee may take assistance from assessors who may be non-members. All other details and modalities can be worked out. Similar arrangement may be made in the States. For that purpose, each State or in case of small States, a group of States, must have a Second Chamber for its/their legislatures. An appeal from the decision of the Judicial Committee in a State shall lie to the Judicial Committee of the Rajya Sabha.

3. Disputes of the third category shall be decided by a similar committee of the Rajya Sabha which may be called simply "Review Committee" or by any other name.
4. Disputes of the fourth category shall be dealt with by a similar committee of the Rajya Sabha which may be called "Disciplinary Committee" or by any other name.
5. Disputes of the fifth category shall be dealt with and disposed of by another committee of the Rajya Sabha which may be called "Inquisitorial Committee".

The rules of constitution and business of the Review Committee, Disciplinary Committee, and Inquisitorial Committee of the Rajya Sabha shall be similar to those of the Judicial Committee with necessary variations.

Thus, most of the Public disputes shall be decided by the Parliament through the committees of its elders. These decisions shall have the gravity and sanction of the Parliament which represents the people directly. This arrangement made by necessary Constitutional provisions, shall honourably end all disputes without loss of time in quibbles on words and phrases for which support is sought in age-old books of law reports. The anguish and distress of the litigant against the 'private bias and personal preference' of an 'independent' judge shall yield place to confidence and satisfaction in the work, approach and decision of the 'Committee of the Parliament'.

If this scheme is accepted, the face of Rajya Sabha will have to be changed. The persons of the best talent, wisdom and sagacity having ability to take decisions will have to be elected to Rajya Sabha. There shall be little scope for individual political rehabilitation in the face of National interest. Every Party shall be under constraint for some time. But, once the scheme reaches home, everything shall settle very smoothly to the great satisfaction of the Nation.

It is high time now to take some positive steps to review the Constitution. It is suggested that a committee of members of both Houses of Parliament and some representatives of State legislatures together with some outsiders having knowledge, understanding, experience and ability may be appointed to examine the provisions of the Constitution

and to draft the changes. The report of the committee may be published inviting suggestions from the Public. The new Parliament (Rajya Sabha and Lok Sabha jointly) after the next Lok Sabha election, shall constitute the New Constituent Assembly to consider and adopt the necessary amendments and structural changes in the Constitution.

55

A Case for a Fresh Constituent Assembly for a Gandhian Constitution

Ramjee Singh

Although Gandhi was proclaimed as the "architect of the Assembly" and of "India's political destiny", "leader of the people" and "Father of the Nation", multifarious forces and factors operated in favour of a final choice for Euro-American type of Constitution in clear preference to a Gandhian one. A half-hearted attempt was made and some superficial provisions were incorporated to prove their Gandhian credibility for public consumption. Evidence of this is clear because the so-called Gandhian ideas and principles found prominent expression mostly in Part III and Part IV of the Constitution — more in *non-justiciable, non-enforceable* Directive Principles of State Policy. The Gandhian Concept of *Rights,* implying Duties had never influenced the making of the Part III. The concept of Fundamental Duties was later introduced in the Constitution through the 42nd Constitutional Amendment (Part IV A) but it remains yet to be an integral and vital part of the Constitution. All Gandhian principles like Sarvodaya, Trusteeship economic order, political self-government and democratic decentralization, Panchayat Raj, Right to Work, Cow Protection, Prohibition, etc. find their places in this holy archives of the Constitution (Part IV) but there is hardly anything in the actual structure and form of the Constitution, which can be called Gandhian.

The Constituent Assembly opted for a Euro-American governmental structure by seeking to combine a parliamentary form of government with a federal organization. The Drafting Committee rejected the sug-

gestion of having village republics as the basis of the whole Constitution, although Gandhi had said: "in a free India we will have Panchayat Raj"[1]. Union Committee with Pt. Nehru and the Provincial Committee with Shri Patel as Chairmen recommended a directly elected parliamentary form of government within a predominantly federal pattern. A major cause of deviation from the Gandhian principles, was the differences between Gandhi and the Indian National Congress, especially the younger generation of intellectuals and the Socialist. Though the Congress continued to regard the Mahatma as the undisputed leader for pragmatic reasons, Gandhi's influence on Indian leaders gradually declined. The character of the Congress had been undergoing a great change with the emergence of leaders like C.R. Das, Motilal Nehru, Subhas Chandra Bose and the impact of the Socialist Party.

Hind Swaraj contained Gandhi's blueprint for the Indian Republic which was dismissed by Nehru as "being out of date"[2] as Gandhi severally criticised the British Parliamentary system[3], of which Nehru was very much fond of. According to Gandhi, violence logically leads to centralization and the esseuce of non-violence is decentralization."[4] Hence he wanted a system of self-sufficient, self-governing village communities as models of non-violent organisation.[5] In this structure, composed of innumerable villages, there will be ever-widening, never ascending circles, life will not be a pyramid with the apex sustained by the bottom. But it will be an oceanic circle whose centre will be the individual."[6] Gandhi did not think that a free India will function like the other countries twenty men sitting at the centre. It has to be worked from below by the people of every village.[7] Gandhi tried to fit his 'concentric circles' with the structural content of people's democracy and sovereignty at the grassroots, which he described as Panchayati Raj, a kind of cooperative commonwealth of reformed and reconstructed village communities.[8]

However, to most of the Indian politicians and especially the framers of the Constitution, this Gandhian model seemed neither politically nor economically practical. The Experts Committee of the Congress Working Committee in 1946 recommended a federal parliamentary form of government, thus going against the spirit of Freedom Movement which had envisaged Panchayats as substitutes for bureaucratic authori-tarianism.[9]

When his attention was drawn towards the omission of Panchayat set up in the structure of the Constitution in 1946, Gandhi wrote in *Harijan,*

> "It is certainly an omission calling for immediate attention if our independence is to reflect the people's voice. The greater the power of the Panchayats, the better for the people."[10]

During the general discussions on the Draft Constitution some members took note of these observations of Gandhi but decentralization was not the dominant theme of the national elite's thinking and the attitude of the Drafting Committee was almost hostile. While replying to the supporters of the Panchayat system, Dr. Ambedkar went to the length of saying that the love of the intellectual Indians for the village community was blind and baseless and was largely due to fulsome praise bestowed upon the village republics by Metcaffe. According to Ambedkar, "village republics have been the ruination of India". In his opinion, a village was nothing but "a sink of localism, a den of ignorance, narrow mindedness and communalism". He was happy that the Draft Committee had discarded the village as its unit.[11] Several members like Shri T. Prakasham, Prof. N.G. Ranga, Shri Mahavir Tyagi, Shri Arun Chandra Gupta, Pt. Thakur Das Bhargava, Shri H.V. Kamath pleaded for the cause of Panchayat system but their efforts could not go beyond putting it under the Directive Principles. The Balwantrai Mehta study Team brought new force to the concept of Panchayat which was further enforced by Shri Jaiprakash Narain, who believed that Panchayati Raj might become the base of the true participatory democracy, if certain conditions were fulfilled.

Hence there is a need to look at the Constitution, for ushering a democracy on the basis of Panchayats. At present, apart from large-scale electoral malpractices, the political parties have created many problems like instability, corruption and inefficiency. Panchayats have been relegated to the background. They have become the handmaid of State Government. Elections are held at the will of the Government. Only small powers are given to them and bureaucracy has its sway over them. Hence neither the people's initiative nor their adequate participation is possible. Even after 45 years of independence and provision in the Directive Principles, the Panchayats have not been able to become statutory bodies as yet. So the structure of the Constitution remains un-Gandhian.

Although the Indian Constitution can boast of its Fundamental Rights contained in Chapter III, like the Magna Carta (1215), the Petition of Rights (1628), the Bill of Rights (1689) in England, the Virginia Declaration of Rights (1776), the French Declaration of Rights (1789), the U.S. Constitution (5th Sep. 1789) with 10 amendments, it is largely frustrated in the absence of specific political and constitutional structure. Gandhi never dreamt of political freedom alone. To him social and economic emancipation were more important. But the economic and social rights were relegated to the Directive Principles of State Policy and made non-justiciable. So during the Debates of the Constituent Assembly, Shri Promatha Ranjan Thakur[12] wanted that greater importance should have been given to the economic rights and they should have been made justiciable. Another member Sri K.C. Sharma[13] wanted specific provisions for the enforcement of work for able-bodied citizens. Kazi Syed Karimuddin[14] wanted to make Directive Principles as Fundamental Principles of State Policy, which was strongly supported by Shri Naziruddin.[15] He compared the non-justiciable principles with resolutions made on New Year's Day which are broken on the very next day. Shri H.V. Kamath moved an amendment to substitute the word 'Fundamental' for the word the 'Directive'[16] in part IV of the Constitution. Prof. K.T. Shah also wanted to make it obligatory part of the State, which could be enforceable in the appropriate manner.[17] To him Directive Principles looked like a cheque on a bank payable when able in the absence of any mandatory direction to those who may have governance of the country hereafter"[18]. Hussain Imam[19] also held the same view. Infact, political freedom cannot exist in a vacuum. Hence it is said that political democracy without economic and social democracy is a half way house, if not a hoax. When the Constituent Assembly met for considering the Draft Constitution on November, 1948 with 315 articles and 8 Schedules, there were some criticisms that it was neither Indian nor a Gandhian Constitution. Maulana Hasrat Mohani said, "Look at the new Constitution drafted by Ambedkar. There is nothing new in it. He has mostly copied out either the Government of India Act, 1935 or, as admitted himself, has drawn from the Constitutions of other countries. A bit from here and a bit from there — it is a Pandora's Box."[19] Shri Damodar Swarup Seth expressed displeasure at the slavish imitation of the Constitution of America, Britain and many other foreign countries.[20] Shri Kamath wanted to know "what had been borrowed from the political

past of India and from the political and spiritual genius of the Indian people"[21] meaning that there was nothing Indian in it. Seth Govind Das wanted a Constitution "suited to the genius of our land"[22]. Shri Ram Narayan Singh said that the Constitution was not what was wanted by the country.[23] Shri P.S. Deshmukh, through his amendments, suggested to accomodate the aspirations of the common man especially the agriculturalists so that they could feel that "they were the real masters of the nation, and that their Raj and Kingdom were going to dawn."[24] Shri Arun Chandra Guha complained that in the whole Draft Constitution, there was no trace of Congress outlook, and no trace of Gandhian social and political outlook.[25] It protected the right to property and thereby had already got something, and remained silent about those who were dispossessed and who got nothing.[26] Shri T. Prakasham who had expected a Constitution of Free India that "will give food and cloth to the millions of our people and also give education and protection to all the people of the land"[27] was disappointed and he suggested that the Draft be so amended that it would really become Constitution for the benefit of the masses for whose sake the battles have been fought"[28]. According to Thakurdas Bhargava, the real soul of India was not represented by this Constitution.[29] Dakshayani Velayudhan deplored that decentralization was absent in it and termed it a tragedy that "a country like India with large population, great culture and teachings of the greatest man of the world would produce such a constitution which was foreign to the people."[30] Prof. N.G. Ranga openly said that the Draft Constitution did not appreciate the great service rendered by Gandhi and countless martyrs which virtually made the Constituent Assembly possible[31]. Mahavir Tyagi, who was highly dissatisfied, appealed to the members that they must examine the Draft from the point of view of Gandhi and should see to it that the Gandhian outlook did not vanish from the country so soon after his death.[32] Article 24 of the Draft (article 31 of the present Constitution) experienced a great ordeal. Smt. Renuka Ray pointed out lacuna with regard to the economic right of the common man[33]. Damodar Swarup Seth moved an amendment that private property and private enterprises were guaranteed to the extent they were consistent with the general interest of the Republic and its toiling masses[34]. He considered article 24 of the Draft as Magna Carta in the hands of capitalists of India. It had belied the expectation of the toiling masses for a *Ram Rajya* which was solemnly promised to them in the

Quit India Resolution[35]. Shri Shibban Lal Saksena also opposed the Draft as it was a negation of all that Gandhi and the Congress stood for[36]. He opposed compensation for acquisition of private property. Sarvashri Kishore Mohan Tripathi[37], Gopinath Singh[38], Lakshminarayan Sahu[39] had opposed it tooth and nail. However, articles 19(1)f and 31 have been deleted from Part III of the Constitution by the 44th Amendment Act in 1979.

Apart from lacking in economic radicalism, the very structure of Indian Constitution based on the system of Parliamentary Democracy and Party System, is un-Gandhian. There is at present, rule of the Party rather then rule of the people and even in the Party, a few party bosses and caucus control the Party. Hence Gandhiji had said, "The Western democracy is only so-called. It is diluted Facism and Nazism." Then the Fundamental Rights without Right to Work, Right to Education, Right to Health etc. become show pieces of capitalist democracy. Even Right to Life is meaningless without the Right to Livelihood.

Another great lapse in the Constitution of India, if judged from the Gandhian standpoint, is that initially it had emphasised more upon Rights without any mention of Duties. There can be no right without a parallel duty, no liberty without the supremacy of the law, no high destiny without self-denial. Every duty we omit, obscures some rights which should have secured. God always has an Angel of help for those who are willing to do their duty. Duty performed gives clearness and firmness to faith which strengthens our will and soul. On the other hand, duties like debt give more trouble the longer they remain undischarged. Therefore, Gandhiji said: *"The true source of rights is duty"*. According to him, a good citizen is one who masters himself in performing his duties first than to ask the State to give him due rights of belief and conduct. Although, a list of Fundamental Duties has been added to the Indian Constitution in Part IV A under article 51 A. It is neither justiceable nor comprehensive. Hence it is a camouflage and a show-piece like the Directives. In the blue-print of the Gandhian Constitution, S.N. Agrawal had listed the following duties: all citizens shall be faithful to the State specially in times of national emergencies and foreign aggression; every citizen shall promote public welfare by contributing to State funds in cash, kind or labour as required by law; and every citizen shall avoid, check and if necessary, resist exploitation of man by man.[40]

Thus it is evident that the Indian Constitution is not Gandhian in content or form. It is no denying the fact that it is under great stress and strain. The greater and greater demand for regional autonomy is rooted in the concentration of powers in the Union Government. Had India opted for a genuine decentralized political order based on Panchayati system with "concentric circle", most of the irritants would have been absorbed by the system. Today, as it appears, India is only a federal structure with a centralised scheme. Every State has been demanding greater share in finance and greater autonomy in administration. Too much centralisation leads to discontent as was the case in erstwhile U.S.S.R. and other East European countries.

The second most vital point is that Indian democracy is only so called. We must give economic democracy otherwise democracy as it is today will be a disintegrating feature. Today, there has been a growing demand for job reservations by the different sections of society. Muslims and Christions also have started demanding along with Scheduled Castes, Tribes and Backward Classes people. If we guarantee Right to Work in the Constitution, all this will be over and unnecessary and wasteful strife will cease. The root cause of most of the regional and naxal violence is also growing unemployment and inequality.

The last but not the least is our high priority about duties. No nation can march ahead without dedication to duties. Fundamental Duties, as they now exist in the Constitution, must be accorded proper place so as to infuse a spirit of duty and service.

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56

The Need for Review of Our Constitution

Malti Thapar

The Constitution of India is said to be inviolably the most sancrosanct. That is because it epitomises the ideals, the aspirations, the values, orientations of the people of India who have opted for the most secular, democratic and unifying political paradigm. It provides a compass to the people of India so that the ship of India's polity should not go amiss or deflectd from the ideals of liberty, equality and fraternity-the sheet anchor of our democratic culture. That it has withstood the various socio-political upheavals over the span of 42 years is a proof of its sanctity, viability and serviceability.

Yet, with all this unassailable hallowness, the framers of the Constitution of India have never designed it as the most infallable or immutable. They have imparted to it the traits of flexibility for they knew that the Constitution should be an instrument of political freedom, social transformation and economic reconstruction. They did visualise that, of course, with the passage of time there would be momentous changes in the economy, society and polity of India. And there did take place over the years, a metamorphosis in the socio-political structure of India necessitating no less than 71 amendments in the Constitution of India. These have detracted not even a wee, from the importance of our Fundamental Statute.

Of late, there has been a heated debate over the utility and the viability of the Constitution especially in the context of the roaring current of change — a current so powerful that it may overturn our

institutions, shift our values & shrivel our roots. The viability of our Constitution depends on the promise or peril of the accelerating changes taking place in the country. Hence, the political futurists differ on the question of framing of our Constitution dinovo-or of reviewing it here or there. Some of our political analysists opine that the Constitution is fast becoming irrelevant to the socio-political changes and that it has failed to safeguard those political ideals to which it is committed. In support of their contention, they avert vehemently that despite the avalance of amendments effected in the Constitution so far within a short span of 40 years or so, and which has made our Constitution obese, unweildy & cumbersome, there has occasioned in our country on a mammoth scale the virus of communalism, casteism & corruption. The country faces today the awesome spectre of growing animic behaviour resulting in violence, eruption of widespread protest against economic deprivation, low social status, threats to identity etc. The issue of Ram Janma Bhoomi-Babri Masjid, & Minorityism have not only rocked our polity but also thrive under the very nose of our Constitution. These have caused the emergence or new poles in our polity or economy with the result that groups or states are more concerned with their own development, of course, to the detriment of others. And then there has taken place the proliferation of demands contradictory or conflicting or the discrepancies between the demands of the people and the responses of the Government which have led to the process of 'vicious circle' or 'blockages'. The fact is that when the demands of the people outface the growing capabilities of the people, there is naturally felt the widespread frustration or restiveness amongst the people and this makes our politicians demand the aberogation of the present Constitution and the making of a new one. Thus, the burden of the agrument of these politicians has been that the present Constitution has failed to cope with forces of modernisation.

But I think that the arguments of these politicians are untenable as they are not based on facts. Our Constitution is still a document which is to be widely respected. The pity is that whenever our elected representatives or politicians fail us, we blame the system or the Constitution. We are always liable to blame the piano for bad music. Little do we realise that the cupidity of our politicians and our political parties for votebanks, their crass opportunism in the form of defections, divisive communalism, religious fundamentalism are mainly responsible for the present impasse and not our Constitution. The making of a new Constitution as

urged by these politicians would be nothing but an exercise in self-delusion.

But this also does not mean that our Constitution should not be reviewed. The experience of about four decades does tell us that our Constitution should undergo appropriate changes or mutations but certainly not at the cost of its basic structure. During the course of the working of the Constitution certain contradictions, conflicts or conundrums do develop or come to the surface as controversies regarding certain clauses in the Constitutions in the democratic society like ours are quite natural. The imposition of the President's rule in the States by the Centre, the appointment of Governors and their tenure, the appointment of the judges of the Supreme Court and High Courts, the controversy regarding article 356 and 370, the conflict between the Fundamental Rights and the Directive Principles of State Policy, etc. do necessitate a second look. Now, of late, we have seen that the demand for the creation of new States, the demand for more autonomy by the States, the devolution of financial powers between the Centre and the States, reforming the Electoral Laws, etc. are matters which deserve the attention of our constitutional Pundits. The electoral reforms are considered a pre-requisite to making our democracy more real and effective. Even in regard to judiciary, thinking has undergone much change. According to some of our politicians, the powers of judiciary need to be redefined as judiciary has grown to be a super-legislature. Similarly we find that the securlarism — the citadel of our democratic polity has also been under attack. It has given rise to the minority psychosis on the one hand and majority disturst or frustration on the other. Hence this basic concept of secularism also needs to be worked out in balanced perspective.

All these and a host of such other problems are natural in our democratic set-up. But democracy also stipulates that the human brain can also work out new political configurations and can help our polity to resolve such problems. But most of these problems, I think, are not there because the Constitution has failed us but because we have failed the Constitution. Hence my strong plea that in our Constitution, instead of of being drafted a new, vouchsafe mutations may be done so that it does not become an outdated compass.

57

A Note of Caution

Granville Austin

The Indian Constitution is 42 years old, and it is not a failure. It is put to use daily, if not hourly, as benchmark, touchstone, and cornerstone, whether in criticism or appeal.

Few, if any, quarrel with its end and the means it provides are debated in terms of these ends. One suspects that Indian citizens discuss their Constitution more avidly than any other people. There could be little more convincing evidence that the Constitution has become a centre-piece of Indian life.

We all know India is going through difficult times. But without being innocent or sentimental, let us look at the other side of the ledger.

> Adult suffrage, placed in the Constitution by the Framers to be the symbol of equality and to break the mould of traditional Indian society, has been heartily embraced by the people and has served its purposes, even if in ways not envisaged by the Framers.
>
> The courts — despite their shortcomings as proclaimed by bench, bar, and citizens — have prevailed over the Constitution's most dangerous invaders. The courts have gone a considerable distance toward giving India a free society.
>
> The legislatures are engaging more and more citizens in the democratic process and increasingly represent the rural and social-economic character of the country. They have, along with the courts, reversed challenges to democracy. Despite uproarious

occasions, they have enacted most of the legislation the nation needs.

Executives have included very able men and women in policy making and implementation. Indians *have* governed themselves while, like all democrats, rejoicing in pointing out the flaws in their government.

The very awakening among the have-nots, the propriety of which some have-mores deplore, testifies to the stirrings of "social revolution", one of the Constitution's grand goals.

These achievements during the very short span in which Indians have governed themselves are impressive milestones on the road to building a civil society.

Recently, fuelled by the turmoil of (democratic) elections, by major changes in political party configurations, by the discontents with the nation's economic and social conditions, and by the ghastly death of a young and dynamic political leader, the intelligentsia are proclaiming a constitutional crisis. The results of the recent elections, however, rather demonstrate citizens, dissatisfaction with politicians and bureaucrats — the government — not with the Constitution. Much beyond this, neither the elections nor public opinion sampling tells us.

In this crisis of self-confidence (among only some citizens, so far as can be accurately ascertained), there are calls for a major examination or an entire overhaul of the Constitution, whether through a constitutional commission or a new constituent assembly or both. There is talk of changing to a presidential system. Without entering into argument over the particulars of the various suggestions recently made or now current, there are significant broader considerations.

A "crisis", whether real or unreal and self-induced, is no time to desert one's first principles. For Indians, the Constitution is a remarkable statement of first principles. Better to muddle through, let anxieties wane, and then re-examine the situation and its origins more coolly. As General Sir William Slim once wrote, early news from a battle is never so good or so bad as first reports indicate.

Institutions can affect human behaviour, when they are thoughtfully constructed, which is why we have them. Yet this is true only up to

a point. They are unlikely to affect more deep-seated characteristics. When institutions seem to go wrong, we should look not only at them but at ourselves. As an American cartoon character discovered some years ago, "We have met the enemy and they is us!" And reconstructing institutions should be gone at carefully. As with surgery, the doctor operating upon the patient, or the institution may live, while the patient, the institution, may not recover.

Human beings like both to be governed well and to be let alone—so much so that the two for the citizen often seem synonymous. But good government is the citizenry's product, largely, and in democracies this derives from participation, from saying that good government "is my responsibility" and by action making it so. Pessimism and cynicism cripple good government if they produce apathy and result in non-participation.

Moreover, apathy's other face is indifference. And indifference is the cancer of liberty and democracy, because its other face is exploitation. The exploiters are free to exploit while the indifferent do not bear their civic responsibilities and withhold their participation in civic affairs. No society seems spared from this cause and effect relationship.

Democracy is an untidy business. We humans praise it and despair of it. We yearn for certainty and decorum. Yet in our variety, we can achieve only a modicum of either. So we must rise above our failings while, paradoxically, tolerating those we command. The fortunate among us have the democratic institution we have inherited, and if we reconsider them we could do so conscious of our own frailties.

In light of these broader considerations, admirers of the Indian Constitution, among whom the author includes himself, might ask themselves several questions about the extent to which the Constitution need be, or should be, amended and, if it is to be changed, how this should be done.

Would a constituent assembly elected by today's universal adult suffrage represent the hopes, fears, and wisdom of India better than did the Founding Fathers?

Would a constituent assembly elected today contain men and women of markedly higher ability and character than did the Assembly of 1946-1950? (Although it may not be relevant to India's situation, one

recalls that the American Constitutional Convention was elected on as narrow a franchise as the Constituent Assembly.)

Would adoption of some form of presidential system abate the factionalism in Indian politics that apparently causes such a system to be considered?

May not the changes in the electoral system presently being debated, if they are determined to be desirable, be made by legislation without amending the Constitution?

Might not extensive decentralisation, if that is desired, be achieved either through parliamentary legislation and executive practice and through constitutional amendment within the "basic structure doctrine", for the Constitution calls for a federal system? Might not a significant degree of decentralisation be achieved by political parties, within themselves, by substituting for their present 'central command' structures state-based parties along the line of the Democrat and Republican parties in the United States?

Might not the Rajya Sabha become a more 'federal' body, with equal, or nearly equal, representation for large and small states through a constitutional amendment, again, within the definitions of the 'basic structure' doctrine?

Are the provisions of the Fundamental Rights and other constitutional provisions the impediment to maximum feasible implementation of the Directive Principles or is the difficulty principally unimplemented legislation? Is implementation of the Directive Principles likely to be furthered through constitutional amendment?

Do the tacit conventions, regarding the powers of the President, the conduct of parliamentary affairs, and so on, which the Framers consciously did not write into the Constitution, lend themselves to detailed exposition in the Constitution—such that they provide for all exigencies and prevent 'unconstitutional behaviour'? Can any society, must Indian society, discipline itself entirely by written rules?

Are Indians unable to govern themselves with coalition governments, as many societies have done and are doing? If answer is thought to be yes, are the underlying causes of this condition remediable by constitutional change?

If citizens wish to take up such questions, and doubtless others, formally, would not a constitutional commission be the better forum?

The calling of a constituent assembly without thorough preparation likely would be interpreted popularly as scrapping the Constitution. Indians would have cut their moorings as the winds of change were blowing hard. Excellent conditions for the ship of state to founder. If there is to be a constituent assembly, likely it should be preceded by something like a constitutional commission, accompanied by extensive public education.

Indians have little reason to demean their achievements of forty years. Who has achieved so much against such odds! The instrument that has been so central to these achievements, the Constitution, should be changed, if at all, with caution and respect.

58

A Few Constitutional Questions

David Butler

The voters of India have presented the country with a hung Lok Sabha. Every Parliamentary democracy has broadly similar rules to deal with such a contingency. But each country has its own variants in constitutional provisions in statute law, or in political custom. India, like every other country, provides a unique case.

A few years ago, when Britain faced the possibility of a hung Parliament, I wrote a book, *Governing without a Majority,* in an attempt to clarify the local rules of the game for such an eventuality.

It is clear that on many points the most experienced observers disagree. On others, although the position is beyond dispute, it does not seem to be generally understood. Every scenario has its difficulties and there is often no one correct answer — only a least bad solution. For the President of India as for the Queen of England, a hung Parliament may offer a 'no win' situation.

Let me list ten questions and, in all humility, put forward the answers — or non-answers — that I have been given.

1. If the Government is re-elected with a clear majority does the Prime Minister still have to be reappointed and take a new oath ?

   In Britain, Mrs. Thatcher, when re-elected in the 1983 and 1987 general elections, merely continued in office. In India Pandit Nehru in 1953, 1957 and 1962, Smt. Gandhi in 1967 and

1971 and Shri Rajiv Gandhi in 1984, despite having their majorities confirmed by the electorate, resigned and were immediately recommissioned. It seems that by convention, if not by law, Prime Ministers always put themselves in the hands of the President.

2. If the Government is defeated at the polls, does the Prime Minister have to resign at once ?

   In Britain in 1970 and 1979 the Prime Minister went to the Queen to give up office within minutes of the opposition winning the seat that gave it a majority. In India in 1977 Smt. Gandhi resigned a day or so after the election result became plain and so did Shri Charan Singh in 1980. If victorious Prime Ministers feel obliged to resign, how much stronger is the requirement for one who has been worsted at the polls ? In Britain it is different. In 1974 Mr. Heath, defeated but not by a clear majority, waited four days to resign and in 1924 Mr. Baldwin, in similar circumstances, stayed on for five weeks until Parliament met and he lost a vote of confidence. In India, however, if a defeated Prime Minister resigns, he might be asked to stay on as caretaker, until a successor could be appointed.

3. If the Government were defeated but delayed resignation would the President be either required or allowed to do anything ?

   Under article 75 of the Constitution, the only relevant power of the President is the appointment of a Prime Minister. All his other powers (including the power under article 85 to summon Parliament) must be exercised on the advice of the Council of Ministers (article 74). Therefore, following an election, it seems that the President must sit tight and wait for the Prime Minister to come to him.

4. If the Prime Minister resigns, who does the President send for ?

   There is a widespread idea that he must summon the leader of the largest party, as defined by the Election Commission's granting of symbols to candidates. In most circumstances, this would certainly be the most prudent and uncontroversial course of action. However, the President's goal must obviously be to get a viable government, in command of a parliamentary majority,

into office as soon as possible. There exist good precedents to justify his sending for the leader of any formal or informal grouping that is assured of the active or tacit support of more than half the Lok Sabha.

5. Can the President give a conditional mandate to a possible Prime Minister ?

In Britain in 1963, aware of divisions in the Conservative Party, the Queen asked Lord Home to see if he could form a government. Lord Home established overnight that most of the senior members of the party would serve under him and reported this back to the Palace next day. The Queen then formally appointed him Prime Minister. There seems to be no Indian precedent for this approach. Once the President has chosen someone as Prime Minister, the nominee then, under the Constitution, appoints the other Ministers and seems under article 75 to be endowed with the sole effective power to decide on the summoning of Parliament and indeed, on dissolution. But the provisions of clause 2 of that article offers a loophole for the President to act unilaterally when he is not in a position to act on advice.

6. What precedents exist ?

In 1966 the President waited until Congress had chosen Smt. Gandhi as leader before asking her to be the Prime Minister. In 1977 the President called on Shri Morarji Desai, as the accepted leader of the Janata. The year 1979 provided the one really controversial decision. After Shri Y.B. Chavan, the leader of the opposition had said that he could not form a government, the President nominated Shri Charan Singh (who claimed erroneously, to be assured of a Lok Sabha majority) rather than Shri Jagjivan Ram (who might well have been able to carry on). In 1984 the President summoned Shri Rajiv Gandhi to succeed Smt. Indira Gandhi without waiting for any party endorsement.

At the state level there are several conflicting precedents. Sometimes Governors have chosen the largest party and sometimes the largest group. There seems no reason for the President to feel bound by state precedents any more than that he should be guided, in any mandatory way, by examples from overseas.

7. Does the fact that the old Lok Sabha has not been formally dissolved and could continue until its automatic end, make any difference ?

   Few people seem to realise that there is nothing unusual about the delay in dissolution. The Seventh Lok Sabha was not dissolved until four days after the voting for the Eighth Lok Sabha in 1984—and a similar pattern was followed in the 1950s and 1960s. The continued existence of the old Lok Sabha until the new one is ready to take office only means that in an emergency situation a legislature exists that could be convened for crisis action. But to conceive of it trying to exercise political power in conflict with what the newly elected members of Parliament would want is surely fanciful: the explosion of democratic outrage would be impossible to contain.

8. Does the Anti-Defection Law make a difference to the situation ?

   The Election Commission has made it plain that it considers all members of Parliament as committed to the party under whose label they stood from the moment of nomination (although some lawyers would dispute this). The speculation that successful candidates could switch parties in the interval between being elected and taking the oath seems ill-founded. Any defection after the election or during the government-forming process would lead to the forfeiture of seats unless at least a third of the party concerned joined in the split.

9. If the elections produce a totally confused result, could the Prime Minister ask for a new election without even meeting Parliament ?

   In theory, this seems possible. In practice, it has never happened in India or in any other democracy. In Greece, indeterminate voting results have led to a new election three months later. Britain and Ireland have seen elections six months or so apart. The indignation that would be provided by an immediate recontest (let alone the cost) would surely make such a course unthinkable.

How would the events actually develop with regard to these and other related constitutional issues is a question that takes us to political territory where an outsider should not venture. One can only observe the events taking their own course which may prove the most exciting in India's political history.

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59

Exercise of Power : What we Need to Remember

J. K. Mittal

There is no gainsaying the fact that the post-Constitution era has witnessed a gradual erosion of values we cherished and fought for. What we stood for and how did we erode it, may be gone into briefly in order to appreciate better the problems of abuse and misuse of power. It is, therefore, proposed to recapitulate the nation's history of her aspirations and their flouting by the vested interests.

The Value System

In ancient India, it was *dharma* which governed our social and political institutions. The king was the upholder of *dharma* and the trustee of the people's power. The fulfilment of one's duty, resulting into the enforcement of some other's right, was then the main thrust. Later, degeneration set in, and a well-knit, secure society became a disintegrated and warring mass of people. The inner rivalry for power as also petty interests and squabbles endangered their social and political security and paved the way for foreign invasions and conquests by Muslims. This phase of medieval India, with some variations, facilitated ultimately the British entry and the emergence of British rule in the country.

There is one distinguishing feature of the two sets of entrants - the former, by and large, settled in India and made her their home; the latter converted her into a subject colony for exploitation. That is why, the British advent brought in terrible misery through exploitation, ensured a systematic destruction of our cultural heritage and indigenous institu-

tions, and fostered social and political divisionism. The nation was set on the ruinous path and her first uprising in 1857 failed.[1]

The lull was soon over and the end of nineteenth and the beginning of the current century witnessed the emergence, rather revival, of a national movement to dislodge and throw the British out of India. The early leaders demanded self-governing institutions within the framework of British empire. However, a qualitative change in the leadership came with the appearance of Mahatma Gandhi on the Indian political scene. The aims, priorities and modes were now precisely spelt out.[2]

The new leadership demanded complete independence not as an end in itself but as a step to ensure social revolution and a strong and united India. Their moral, non-violent struggle was to revive and reinstate certain values rooted in *dharma* after the end of the alien rule. They confronted the British Government with the charge that it not only deprived Indians of their freedom but based itself on the exploitation of masses and ruined them economically, politically, culturally and spiritually, and declared that it was a crime against humanity and God to submit any longer to the British rule. Consequently, they asserted the inalienable right of the people to have freedom and equality as also a democratic and responsible government with a view to secure the blessings of liberty, ensure domestic tranquillity and promote general welfare. A set of fundamental rights and a programme for the development of peasantry and labour were, therefore, incorporated in the Karachi Resolution of 1931 — our first socialist manifesto.[3]

As a result of a sustained non-violent fight, there was tremendous awakening among the masses — mostly illiterate and poor but sensitive to the issues before them. The whole nation was on the move. This amazing development made the British nervous and they knew that the end had come. While leaving, they, however, struck the last blow to the integrity of the country by dividing the nation into two parts. Yet the unruffled leadership went ahead with its commitment to modernise India consistently with her cultural heritage.

The first task, already begun, was to lay down the fundamental law of the land. The solemn pledges of pre-Independence era found expression in the Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly. The resolution dealt with the fundamentals

commonly cherished and accepted by the people.[4] On these was built, after considerable debate, the magnificent edifice of the Constitution declaring national goals in its Preamble, assigning a place of pride to Fundamental Rights and Directive Principles as one integrated plan to bring about great reforms of social revolution, devising institutions of direct, responsible government to translate constitutional ideals into a reality, uniting the people into one mass electorate having universal adult suffrage, and providing for the direct representation of the voters in popular assemblies to discharge functions of considerable significance, creating an independent judiciary as a bastion of justice and rights, producing an amicable union of autonomous units, with a strong Centre in view of the country's peculiar needs, incorporating a restorative emergency frame with extraordinary powers to the Centre, and laying down a flexible amending process so as to adapt the Constitution in a variety of circumstances.[5]

The Preamble, the modified version of the Objectives Resolution, asserted people's sovereignty, spelt out the polity as sovereign, socialist, secular, democratic republic, laid down its objectives as justice, liberty, equality and fraternity, all with a view to *assuring the dignity of the individual and the unity and integrity of the nation.*[6]

A value system in tune with India's culture and thought and in view of her needs was thus prescribed by the leaders of independence movement.

Cautions and Guidelines

In order to uphold the value system, Dr. B.R. Ambedkar, Chairman of the Drafting Committee, issued cautions and guidelines in the Constituent Assembly as follows. He said that India would be a democratic country on 26 January, 1950 in the sense that from that day she would have a government of the people, by the people and for the people. The question was whether she would be able to maintain her democratic Constitution or lose it again. It was not that India did not know what democracy was. There was a time when she was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It was not that India did not know parliaments or parliamentary procedure. This democratic system she lost. The question

was, would she lose it a second time? It was quite possible in a country like India where democracy from its long disuse must be regarded as something quite new, there was danger of democracy giving place to dictatorship. It was quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there was a landslide, the danger of the second possibility becoming actuality was much greater.

Ambedkar pointed out that if people wished to maintain democracy not merely in form, but also in fact, what must they do. The first thing they must do was to hold fast to constitutional methods of achieving their social and economic objectives. It meant they must abandon the bloody methods of revolution.

The second thing people must do was not to lay their liberties at the feet of even a great man, or to trust him with powers enabling him to subvert their constitutions. There was nothing wrong in being grateful to great men who rendered life-long services to the country. But there were limits to gratefulness. No nation could be grateful at the cost of its liberty. This caution was more necessary in the case of India than in the case of any other country. For in India, *bhakti* or what might be called the path of devotion or hero-worship, played a part in politics unequalled in magnitude by the part it played in the politics of any other country and was a sure road to degradation and to eventual dictatorship.

The third thing people must do was not to be content with mere political democracy. They must make their political democracy a social democracy as well. Political democracy could not last unless there lay at the base of it social democracy. What did social democracy mean? It meant a way of life which recognized liberty, equality and fraternity as the principles of life. These principles were not to be treated as separate items. They formed a union of trinity in the sense that to divorce one from the other was to defeat the very purpose of democracy.[7]

Lastly, Dr. Ambedkar said that political powers must not be the monopoly of a few but must be shared by all the people including the backward and the depressed in order to maintain their hard won freedom and to continue their democratic structure. He added that independence was no doubt a matter of joy, but let them not forget that this independence had thrown on them great responsibilities. By independence, they lost the excuse of blaming the British for anything going wrong. If

hereafter things went wrong, they would have nobody to blame except themselves. There was great danger of things going wrong. Times were fast changing. People including those of India were moved by new ideologies. They were getting tired of government by the people. They were prepared to have government for the people and were indifferent whether it was government of the people and by the people. If they wished to preserve the Constitution in which they sought to enshrine the principle of government of the people, for the people[8] and by the people, let them resolve not to be tardy in the recognition of the evils, *e.g.*, social and economic disparties, that lay across their path and which induced people to prefer government for the people to government by the people, nor to be weak in their initiative to remove them. That was the only way to serve the country.[8]

Babasaheb thus laid emphasis on the preservation of independence and democracy through constitutional methods protection of liberties, realisation of social democracy and sharing of power by all. He impliedly expected politicians and people alike to be utmost honest and sincere in working out the nascent Republic.

In a similar vein, spoke Dr. Rajendra Prasad, President of the Constituent Assembly. After explaining salient features of the Constitution and justifying them in the context of India's history, he said that People, especially the rural, possessed intelligence and commonsense. They also had a culture which the sophisticated people of today might not appreciate, but which was solid. They were not literate and did not possess the mechanical skill of reading and writing. But they were able to take measures of their own interests and also of the interests of the country at large if things were explained to them. In fact, in some respects, they were even more intelligent and undoubtedly they would not only be able to pick up the technique of election, but would be able to cast their votes in an intelligent manner. This could not be said about others who might try to influence by slogans and by placing before them beautiful pictures of impractical programmes. Nevertheless, their sturdy commonsense would enable them to see things in the right perspective.

Besides, Dr. Prasad hoped that the government of the country as a whole, both at the Centre and in the states, would rest on the will of the people expressed from day to day through their representatives in the

legislatures and, occasionally directly by them at the time of the general elections.[9]

He further said that people had prepared a democratic Constitution. But successful working of democratic institutions required in those who would work them willingness to respect the view-points of others, capacity for compromise and accommodation. Many things which could be written in a Constitution were done by conventions. Let us hope that they would show those capacities and develop these conventions. Whatever the Constitution might or might not provide, the welfare of the country would depend upon the way it was administered. That would depend upon the persons who would administer it. It was a trite saying that a country would have only the government it deserved. The Constitution had provisions in it which appeared to some to be objectionable from one point or another. It must be admitted that the defects were inherent in the situation of the country and the people at large. If the elected representatives were capable and persons of character and integrity, they would be able to make the best even of a defective Constitution. If they lacked in these, the Constitution would not help the country. After all, a Constitution like a machine was a lifeless thing. It acquired life because of those who controlled and operated it. India needed at the juncture nothing more than a set of honest persons who would have the interest of the country before them. There was a fissiparous tendency arising out of various elements in our life such as communal, caste, language and provincial differences. It required persons of strong character and vision, persons who would not sacrifice the interest of the country at large for the sake of smaller groups and areas and who would rise over the prejudices born of these differences. He hoped that the country would throw up such persons in abundance. This could be said from the experience of the freedom struggle during which when leading persons were suddenly imprisoned, people arose from amongst the masses who were able to continue and conduct the campaigns with intelligence, initiative, capacity for organisation, which nobody suspected they possessed.

Let not those who served in the past, therefore, rest on their oars, saying that they had done their part and now came the time for them to enjoy the fruits of their labours. No such time would come to anyone really earnest about his work. In India the work that confronted all was even more difficult than the work which they had when engaged in the

struggle. They did not have then any conflicting claims to reconcile, no loaves and fishes to distribute, no powers to share. All these were available after independence and the temptations were really great. Let us hope they would have the wisdom and the strength to rise above them, and to serve the country which people succeeded in liberating.

Dr. Prasad added that Mahatma Gandhi stressed on the purety of the methods which had to be pursued for attaining our ends. Let us not forget that this teaching had eternal value and was not intended only for the period of stress and struggle but had as much authority and value today as it ever had before. There was a tendency to blame others for everything that went wrong and not to introspect and try to see if we had any share in it or not. It was very much easier to plan one's own actions and motives if one was inclined to do so than to appraise correctly the actions and motives of others. Let us only hope that all those whose good fortune it might be to work this Constitution in future would remember that it was a unique victory which the people achieved by the unique method taught to them by the Father of the Nation, and it was up to them to preserve and protect the independence they won and to make it really bear fruit for the man on the street. Let us launch on this new enterprise of running our independent republic with confidence, with truth and non-violence and above all with heart within and God overhead.[10]

Dr. Rajendra Prasad thus resposed confidence in the wisdom of the poor and illiterate masses who had risen to the occasion during independence movement and hoped that their representatives in the executives and legislatures would rest their decisions on the will of the people. He emphasised that the realisation of constitutional values depended on the presence of persons of vision, ability, capacity, integrity, honesty, character and selflessness, and hoped that there would be no dearth of such persons during the course of future political process in India. He felt sure that the good sense and wisdom would govern the functioning of political institutions and that healthy traditions and conventions would be established to work out the Constitution and to fill gaps left out in it. He cautioned against temptations and foul actions.[11]

Abuse and Misuse

After the commencement of the Constitution, the hopes of its architects that state functionaries would abide by the high standards of political

morality in implementing its philosophy, were belied by phenomenal growth of political corruption of varied type especially after Nehru departed from the political scene of India. Two examples would suffice-first, abuse and misuse of emergency power under articles 352 and 356;[12] and second, political defection, *i.e.,* the unprincipled floor-crossing which was nothing else but betrayal of electors. Both posed a serious threat to our nascent democracy and were motivated by the lure of money, position and power. The first has been dealt with by the Forty-fourth Amendment, 1976 and the latter by the Fifty-second Amendment, 1985.[13]

It is submitted that no amount of constituent and ordinary legislation would do unless people and politicians alike remind themselves constantly of, and practise, what Dr. Ambedkar and Dr. Prasad urged four decades back. Their words must echo in their minds and hearts. Only then power would be a trust of the people with the political functionaries of the state and exercised for the welfare of the nation.

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60

Crisis : Political, not Constitutional

D.L. Sheth

The talk about heralding a new Republic through an overhaul of the Constitution continues to be made in some influential political quarters. The proposal is again in the air. This time round, the idea is being pushed not by some motivated politicians but by responsible political commentators and newspapers columnists. It has, therefore, become necessary for all concerned citizens to take serious note of such a proposal, from whichever quarter it is floated.

Even in its present half-baked form, the proposal raises a series of issues which need to be thrashed out publicly. The crucial issue is; are radical constitutional changes called for to cope with the kind of political crisis the country is facing today? If so, is a new Constituent Assembly the right instrument for this purpose? How should such an Assembly be constituted and what specific purpose will it serve?

The bare outline of the proposal suggests that the Constituent Assembly should be formed either from among the members of Parliament or through a consensus among the major political parties, or through setting up a certain mechanism which combines both the considerations. Clearly, this is a dangerous line of thinking. It deserves to be seriously challenged.

A series of questions need to be pondered over so that a bad decision is not thrust on the nation in the name of 'stability' and 'progress'. Can Parliament which is elected through the polls, in which constitutional change was not even remotely an issue, be entrusted with making a new

Constitution? In this a task which can legitimately be performed by a few selected, so-called national leaders - albeit from all political parties - and a bunch of bureaucrats? Is this what is meant by 'healthy convention' for building a national consensus? Further, there is the question of how the states constituting the Indian Union will be represented in the Constituent Assembly. It is also not clear in the various proposals made whether what is being proposed is a review of the present Constitution in its entirety, with a view of giving us, the people of India, a new Constitution and a new Republic; or whether the new Constituent Assembly will have a specific and limited mandate to change a few, even if crucial, aspects of the Constitution to introduce the necessary changes in our electoral and party systems.

A Constituent Assembly which is not directly elected by the people for bringing about constitutional change can — and for which there is no provision in the Constitution — only be an infirm arrangement, lacking totally in legitimacy. The proposal, therefore, appears more like a knee-jerk response, in a style characteristic of our political elites, to the problems created by their own inept handling of democratic politics rather than by impediments in the Constitution. In no event can it be construed as a creative response — coming after proper reflection and deliberation — to the pressing need for further democratisation of our polity and equalisation of opportunities in our society.

It is obvious that the real provocation for floating the idea of a Constituent Assembly and even the formation of a National Government is the continuing prospect of having 'hung Parliament' and 'minority Governments'at the Centre. Such a situation appears threatening to our elite because they have yet not outgrown the mind-set of a one — party dominant system or a two — party system as an ideal for democracy. As the electoral process moves closer to the socio-cultural reality, which is multi-ethnic and plural, this mind-set become more and more out of phase with the future. The so called 'hung Parliament' is an outcome that can be expected of any normal election in a genuine multi-party system. The challenge before our political leaders is to learn how to have open coalitions and make them work, rather than devise artificially *ad hoc* constitutional arrangements to stall natural evolutionary changes in the representative system.

In fact, the crisis the nation faces today is, in a large part, the product of a political practice which has, over time — especially through the seventies and the eighties — severely undermined the federal, secular, egalitarian and human rights aspects of the Constitution. Governance today is perceived in terms of arbitrary use of executive powers of the Government. Legislative politics has been reduced to the pursuit of personalised power, and an arena of unprocessed conflicts occurring among social and religious groups. Legislatures have ceased to be institutional mechanisms processing demands and issues arising at the base of the society into a framework of policies.

The result is that the powerful forces of change that have emerged in the society through modernisation and industrialisation have not found a political channel of expression. Falling to elicit proper policy responses, these forces have burst out of the Parliamentary system into a variety of violent, direct action movements. These express in myriad forms of ethnic strife, insurgencies and political violence. These have not only engulfed civil society in a chronic state of turmoil but have denuded the State of its capacity to govern and have shown up its incapacity to perform its avowed role as an engine of economic growth and development and an agency to distribute the gains even handedly.

Admittedly, it is a serious situation requiring drastic solutions. But can an *ad hoc* Constituent Assembly provide the solution to the kind of political problems the country is facing today? The answer to this question begs further questions: Have these problems arisen and worsened because we have a bad Constitution? Will a new Constitution guarantee the emergence of new politics and a new set of politicians or will it bring the instrument of governance to the lowest common denominator of existence prevailing in the society today.

The Constitution, as it stands, now is both an instrument of governance and an agenda for social transformation. It seeks to impart a direction to governance and a substance to politics, so as to build a civil society. These expectations have gone away because the managers of our political system have shown scant regard for the principles enshrined in the Constitution especially its Directive Principles.

Rather than the Constitution having come in the way of good politics, politics as it has been practised by our leaders, has undermined

it's transformative potential. Worse, it has reinforced the *status quoist* elements which are unavoidably present in the Constitution. These elements, however, were never meant to be operationalised in terms of raw and arbitrary power invested in the States and its functionaries. The idea of governance embedded in the Constitution is of *democratic* governance which invests legitimate political authority — not raw power — in the State. To put it simply, when politics is pursued against the very grain of a democratic Constitution, what is needed is change in the conduct of politics, not in the Constitution. A Constitution can only lay out the structure of the institutions but it can be no means monitor the day-to-day conduct of institutions or determine their culture.

The experience so far suggests that constitutional changes are often made for narrow political ends and these have undermined the sanctity of the Constitution rather than serving the professed purpose of removing the so called constitutional impediments to 'progressive' policy making. For example, the Right to Property was removed from the Fundamental Rights as it was considered to be an impediment to achieving the egalitarian goals of the polity. The result is that only the poor peasants and the tribals have lost their lands to the State and are being routinely ousted from their homes and hearths in exchange for measly monetary compensation, while the rich in and around the urban areas continue to receive hefty sums as compensation. Similarly, introducing the term 'Socialist' in the Preamble to the Constitution has not advanced by an inch the cause of distributive justice. One cannot change the text, much less throw it away and get a new one, with every change in context. The change in the context is brought about through the very unfolding of the Text. Such a change, therefore, has to be managed, politically rather than by changing the text.

The present political situation calls for initiatives in an altogether different direction, namely of strengthening the political institutions which have been defiled by the politicians and the power elite.

This is however not to deny that certain specific amendments are needed in the Constitution for making the political institutions more accountable to the people and less to persons in power. But to think of a new Constitution is the surest way of opening the floodgates of destablisation, even dedemocratisation of the Indian polity. Whatever demo-

cratic practice survives today in the face of turmoil in the society is because the Constitution is functioning, however feebly. It is the only anchor to our democratic system to cut it off in panic with a view to replacing it by another, while looking in the eye of the storm will prove to be the most disingenious way of coping with the crisis. A new Constituent Assembly will raise a hornet's nest, opening up possibilities for the ugliest elements that have come to fore in the wake of the politics of *Mandal, Mandir* and *Masjid.* It is, for example, conceivable that will be made to incorporate elements of *Hindutva* into the new Constitution under the guise of Indian nationalism or to establish communally based entities into the very structure of governance in the guise of pluralism or nationalism. A new Constitution will most likely arrest the long-term secular changes that have come about in society, generating much greater social unrest and instability.

Like bad artisans, let us not quarrel with our tools, instead let us focus our attention on developing political skills to cope with the crisis which is political, not constitutional. Let the Directive Principles, rather than personality oriented politics guide the policies of the State, let jurisprudence be used for legally expanding the interpretative frame of democratic governance and social justice operate as correctives and countervailing forces, bringing the State within the ambit of civil society.

Above all, let us take the business of making social policies more seriously than we have done so far and align such a policy process with the objective forces of change on the ground. All these constitute an agenda for strengthening the practice of democratic politics which our democratic, change oriented Constitution promotes. What is needed is a public debate focussed on the issue of electoral and party system reforms. If necessary, a constitutional commission consisting of legal experts, politicians and citizens' groups can be formed for this purpose. It may lead the debate, hold hearings and prepare proposals for specific amendments to the Constitution. Rushing into a new Constituent Assembly, especially in present times, is to enter the space angels fear to tread.

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61

India : Amending for a New Constitutional Consensus

Mahendra Prasad Singh

In the immediate aftermath of its framing, the 1950 Indian Constitution was as much glorified for its symmetry and fine balance as for the accommodation with which a constitutional consensus was quickly engineered (Austin, 1966; Rau, 1966; Shiva Rau *et al.* (eds.), 1966, 1967, 1968). In retrospect, however, it appears that these panegyrics and approbatory evaluations were, though not undeserved, probably pre-mature. Since at least the 1970s, suggestions for structural changes began to trickle. By the mid-1980s, it turned into a deluge.

Part II of the Sarkaria Commission Report on Centre-State Relations (1987-1988) incorporating the demands and memoranda of state governments and various political parties is a striking evidence of this deluge. Pleas for the need to go in for a Second Republic have also been multiplying in the national and regional press.

Demands for constitutional restructuring have arisen under three inter-related contexts :

1. During the Emergency (1975-77) when centralization of executive power in Prime Minister Indira Gandhi led to a move within the Congress party for the introduction of the Presidential system in India;
2. During acute governmental instability in North Indian states in the late 1960s, and at the Centre in the late 1970s, and then

again between 1989 and 1991 when the plea for a presidential executive gained advocacy; and

3. Over the decade of the 1980s and beyond when powerful regional movements and parties launched agitations for a greater quantum of state autonomy and larger share of revenue resources. The politics of constitutional change has thus been related to both the horizontal separation of powers among the three organs of the government at the Centre and vertical division of powers between the Centre and the federating states. There has, indeed, been a fourth context in which politics of constitutional amendments have appeared. This is the context of interaction, sometime verging on confrontation, between the executive marshalling the parliamentary majority in support of its socio-economic policies or authoritarian centralization of governmental power in the executive, on the one hand, and the judiciary, on the other, swearing by the Constitution and the doctrine of unamendability or indestructibility of its "basic structure" (Baxi 1985). There has been a lull on this front for about a decade now. This is mainly because both the parliamentary and federal components of the party system have become more differentiated and federalized over the 1980s. The predominant party system of the past has now given way to a multi-party system since the 1989 Lok Sabha elections. The pattern, with minor internal structural modifications, remains unchanged in the mid-term elections in May-June 1991.

This paper argues against the presidential system but concurs with viable schemes of constitutional amendments for federalizing the predominantly parliamentary system that prevails in India today. Besides, it analyses the impact of the changing party systems and Prime Ministerial styles on the Indian federal system.

Presidential System

The arguments in favour of the presidential government in the contexts mentioned above have been seemingly similar but motivationally different. The presidential system was recommended during the Emergency for the professed objective of strengthening national authority and

implementing populist socio-economic policies. In the context of governmental instability, the main argument in favour of the presidential system has been its ability to guarantee a stable and, hopefully, purposive executive by freeing it from the necessity of ensuring a parliamentary majority, especially in legislatures without cohesive and disciplined political parties.[1] By making the tenure of both the President and Parliament constitutionally fixed, the presidential system would, so runs the argument, relieve the President from morbid preoccupation with the problem of ministerial instability and let him and his cabinet concentrate on administrative performance and economic development. Some additional points have also been made in the debate. A member of Parliament argued that another advantage that would accrue from the presidential system is "that no legislator, when he stands for election, would be expecting an office of profit under the Government, whereas at present all the legislators, who offer themselves for election have the hope and the right to become ministers resulting in a scramble for the seats of power" (Desai, 1979). Moreover, a presidential system "enables the President to have a cabinet of outstanding competence and integrity, since the choice is not restricted to Parliament" (Palkhivala, 1984, p. 242). Besides, as ministers in a presidential system "are not elected, they are not motivated to adopt cheap populist measures which are so costly to the country in the long run" (Palkhivala, 1984, p. 243).

There are, of course, many variants of presidentialism. Besides the first presidential system, namely, the U.S. "singular" executive, there are the "dual" French and "plural" Swiss executives, to say nothing of the authoritarian Latin American ones. But in the recent Indian debate it is the American presidential system that has most fervently been the point of reference. The debate is, however, older. The issue of parliamentary versus presidential government had been extensively discussed in our Constituent Assembly and settled in favour of the former (Austin, 1966, ch. 5). Paradoxically, both India and the U.S.A. were moved to opt for parliamentary or presidential system, respectively, for very much the same kinds of considerations. The first of these was the experience of suffering at the hands of an arbitrary colonial executive, and the desire to make it constitutional and limited. This was sought to be achieved by separation of powers and checks and balances within the governmental structure in the United States and by making it fully responsible to the legislature in India. Another consideration was the greater familiarity of these two

former British colonies with the British constitutional system, which led to the adoption by the United States of the presidential system patterned essentially after the Tudor monarchy in Great Britain,[2] and to the import of the parliamentary system in India modelled after the British constitution at the time of India's Independence. Both, of course, with some modifications necessitated by peculiarities of the U.S. and India, among them their big size and social and regional diversities. This accounted for the federal combination.

As I have argued elsewhere (Singh, 1979, and more elaborately 1980), there is nothing wrong in reappraising institutional choices made in the past in the light of practical experience, but hasty and unrealistic faith in an alternative institutional design may turn out to be futile. It may lead to a constitutional ambivalence and weakening of constitutional conventions. I wish to submit that there are good reasons for us to abide by the constitutional option exercised by the founding fathers of the Indian republic. First, the parliamentary system, in combination with federalism, is more suited to India's peculiar unity in diversity. For in contrast to a sort of *individual* presidential executive, the cabinet executive with *collective* responsibility can more adequately reflect the Indian diversities and provide the subcultural and regional elites, and indirectly the masses, with meaningful and visible participation in the national government. Though the trend of "presidentialization" of the office of the Prime Minister observed in other parliamentary systems is also noticeable in India, every Indian Prime Minister, with the possible exception of Smt. Indira Gandhi at the height of her power, had to contend with the probable political repercussions of the resignation of their powerful cabinet colleagues.

Second, the presidential system by imposing a premature "nationalization" of politics through the national electoral constituency of the President would extend the arena of political conflict from the Parliament to the hustings. Under the parliamentary system the explosive potentiality of controversial local or regional issue is partly quarantined by the numerous state and electoral constituency boundaries. Conversely, the "magnetic fields" of important national leaders often get into a jam created by local issues. Reconciliation of social conflicts within political parties and policy-making in the Parliament under the higher unity of the cabinet has an added advantage. Only the top party elites or

elected parliamentarians, commonly more moderate and accommodating than the rank and file party membership or the mass public, are brought into direct encounter on controversial issues in the institutional arenas of politics. This makes possible overarching elite cooperation across sharp subcultural or regional cleavages existing at mass levels. It is my argument that the cabinet system is more hospitable to such elite accommodation than the presidential system. Besides, it is also more stable than the convention system in which it is the Parliament that disbands the executive rather than being subject to dissolution by the executive.

Third, the presidential system, by giving the President more condensed executive power and pretence of a national constituency, facilitates executive aggrandisement and even authoritarianism. It is not accidental that variations on the presidential theme seem to be the preferred governmental form popular with contemporary military and non-military dictators in Latin America, Asia and Africa.

In a recent review of the debate on the presidential system in India, Noorani (1989) summarily also came to the conclusion that ". . . the solution to India's constitutional ills rests not in discarding its parliamentary system but in restoring and reforming it. Both stability and accountability can thereby be ensured" (p. 99). Among the measures suggested by Noorani were codification of the "established conventions of the system" (p. 99). He does not seem to realize that so far we do not have "established" conventions either in case of the President or the Governor. In behavioural terms, there is *practice* of constitutionalism so far as the Presidency is concerned. But with countering arguments by Dr. Rajendra Prasad and Giani Zail Singh, the two former Presidents (one of whom was also the President of the Constituent Assembly), one has to pause whether this practice can be raised to the level of *convention.* As for the Governor, divergent practices crowded in a rather limited time span and lacking any consistent crystallization and legitimacy over a decent length of time does not mean any convention at all. If Noorani meant the "established conventions" of the British system, he did not say so. Even if it is taken as an unstated premise predicated on the British experience, the British case is uncomplicated by the absence of federalism. Moreover in India, until at least 1989, it is the Governor's role at the state level that has caused more serious conflicts and more recurrent in-

stability. Indeed, as I would point out in a subsequent section of this paper, Canada's experience is more germane to India by virtue of the fact that both these countries combine parliamentary and federal principles in their governmental systems. Other reforms proposed by Noorani were an anti-defection law (already enacted by the Parliament in 1985), a "constructive" vote of no-confidence providing for the successor in the motion itself (as in the Basic Law of Federal Republic of Germany and the 1973 Constitution of Pakistan) and electoral and party reforms (Noorani, 1989, p. 99).

Palkhivala (1984, pp. 237-39) argued that a number of parliamentary reforms may be brought about without amending the Constitution; only statutory enactments or amendments would suffice. The items in the package proposed by Palkhivala include Election Commission's recognition of political parties being contingent on public auditing of party finances, partial proportional representation in the Lok Sabha to parties polling at least five per cent of votes in a region even though nationally they may be electorally negligible, some minimum qualifications for members of Parliament, and a constructive vote of no-confidence. A couple of parliamentary reforms needing constitutional amendment that Palkhivala (1984, pp. 239-40) recommended are :

1. The discretion of the Prime Minister to nominate a minority of ministers from outside the Parliament (as in Japan), and
2. The requirement that the MPs appointed as Ministers resign their seat in the Parliament (as in France). These two reforms are aimed at enlarging the catchment area of ministerial talent and freeing them from the compulsions of politicking. However, they would have the effect of compromising, in the latter case even destroying, some basic principles of the Westminster model of democratic government, i.e., parliamentary origin and accountability of the Prime Minister and his Council of Ministers with the ultimate sanction of the *political* part of the executive stemming from the mass electorate. What we really need here—and are coming increasingly to lack—is a politically neutral and competent breed of civil servants to supplant the quality of ministerial work.

To my mind, party and electoral reforms deserve to be placed

highest on the agenda of parliamentary reforms in India. A cohesive and disciplined system of parties is an essential component of the Westminster model we have adopted. Its absence accounts for the bane of the politics of defection and the resultant ministerial instability. Besides, the absence of democratically organized cadre-based parties with grass-roots organizations also explains the electoral volatility of recent years when states and regions have massively swung from one party to another in the brief span of five years or even less. Mass media and advertizing agencies or personalized mass appeals of some charismatic leaders have been atrophying grass-roots party work in electioneering and on a continuous basis between the mandates. As a result, most parties have ceased to be instruments of democratic link between the public and the government that are supposed to reconcile societal conflicts, ventilate public grievances, and hold the electorate in stabler patterns of party identification or support. Representative government is essentially party government. The end of effective political parties means the end of democracy itself. The high priority and urgency of party and electoral reforms cannot be exaggerated.

Federalization

The socio-cultural diversities of India were anticipated to be too strong to be easily homogenized by the operations of a parliamentary system of government and plurality electoral system in single-member constituencies.[3] That was why the Constituent Assembly decided to combine the parliamentary principle with a moderate dose of the federal principle. Indeed, India's highly centralized constitutional system itself has come under the clouds in the recent decades. To take the political system to a new dynamic equilibrium, we have to contemplate how the new consensus is to be generated. In much of India's history, political consensus resulted from the dialectics between a centrally cohesive imperial state allowing a large measure of isolationist autonomy to the civil society, mainly the sprawling domains of dominant castes and communities. In the Gandhian era political consensus was mainly the product of a hegemonic mass movement of national liberation from the British Raj. In the Nehru era, political consensus was the product of the predominant party system of Congress pluralism and hegemony. In the Indira Gandhi era, the organic political consensus of the preceding decades began to

erode but the semblance of a centralised hegemonic consensus was maintained under Congress predominance; Smt. Gandhi at the height of her political power often remained locked in confrontations with the Judiciary and populistic extra-parliamentary mass movements led by Ram Manohar Lohia and Jayaprakash Narayan.

Between the Ninth Lok Sabha elections in 1989 and the mid-term polls for tenth Lok Sabha in May-June 1991, India experimented with a multi-party system, electorally for the first time at the national level. Two unstable minority governments followed in quick succession in this time span. Both the National front coalition government and the Janata Dal (Socialist) government were propped up by the supplementary parliamentary support of some parties not joining the government : the Bharatiya Janata Party and left parties in cases of the former and the Congress in case of the latter. This "Short Parliament" underlined India's inability of "converting diversity into a governing principle" (Pai Panandiker, 1989, p. 3). If in the midst of all this, India did not fall apart, it was mainly because of a minimally compensating role of its Administrative State, largely a creation of the British colonial and post-colonial ruling elites.[4] But warding off disasters is not enough to keep India going. Effective governance and economic development were at standstill during the Ninth Lok Sabha.

As is evident from the Table, the basic contours of the parliamentary and electoral party systems, measured, respectively by seat-share and vote-share amount contesting parties, remains by and large unaltered by the mid-term polls for the Tenth Lok Sabha in May-June 1991. We are in with another 'hung' Parliament. And another minority government, this time formed by the Congress at the consensual sufferance of a fragmented opposition's parliamentary majority.[5] Moreover, there also continues the element of ungovernability marking the party system that is evident in the breakdown of the normal institutional processes of politics in some states or parts thereof under the pressures of ethnic fundamentalism and Naxalite class radicalism. Additionally, the menacing tides of growing criminalization of politics, political and administrative corruption, and electoral violence and malpractice remain unabated (Singh, 1990, pp. 815-816).

TABLE

Election Eve Party Position in Ninth (1989-91) & Tenth (1991-92) Lok Sabha

Parties	Elections			
	1989		1991*	
	% vote	% seat	% vote	% seat
Congress	39.5	37.2	36.7	42.9
Janata Dal	17.7	26.8	11.6	11.0
BJP	11.5	16.3	20.3	22.8
CPI	02.6	02.3	02.4	02.6
CPI-M	06.6	06.2	06.6	06.7
Other parties	15.7	08.47	21.1	11.2
Independents	05.2	02.2		

Notes : * Excludes countermanded and withheld results.

Sources : The 1989 election figures are from Butler-Lahiri-Roy (1991), Table 8-1, pp. 70-71. The 1991 figures are from the *Frontline*, 6-19 July 1991, p. 106.

In this backdrop, I believe what we really need as a long-term measure is to create multiple mechanisms for generating consensus in our deeply divided polity. One may delineate at least four major approaches to a new consensus in the post-Emergency era, leaving aside secessionist solutions or pleas for a completely new, second republic. Rajni Kothari (1976) has been pointing towards an alternative model which is essentially a plea for the renewal of the original model whose central theme "was the integration of social and regional diversities into a common framework on the basis of not an imposed mechanical unity but of eliciting a new solidarity in which the various diversities found meaning" (p. 41). In the series of institutional reforms suggested by Kothari, the most basic is the one proposing a federalized Parliament with a stronger second chamber giving equal and effective representation to all states, small and big (p. 106).[6]

A more conservative approach to the problem of federalizing India's predominantly parliamentary system is found in the Report of the Sarkaria Commission on Centre-State Relations.[7] Instead of dividing the parliamentary power more evenly between the popular and federal chambers, the Commission has recommended a series of advisory independent federal instrumentalities with constitutional status and regular secretariat, e.g., National Economic and Development Council, Inter-Governmental Council, Planning Commission, and Finance Commission. Besides, the Sarkaria Commission has also recommended some ways of expanding the divisible pool of revenue resources between the Centre and states. Moreover, it has also exhorted a reorientation on the part of federal functionaries and normative behaviour respecting state autonomy.[8]

A third approach to federalization of India's system of parliamentary paramountcy relates to the office of the Governor, probably the most contentious one in the recurrent centre-state confrontations.[9] The controversy has centred on the question whether the Governor is an agent of the Centre or of the State Government. The proposal for reform have ranged from an outright abolition of the office to restricting the administrative role of the Governor as the head of the Government under article 356 to genuine emergencies and promoting his parliamentary role as the head of the state comparable to the President within the framework of responsible federalism. But any proposal to arm the Governor with federally autonomous role snaps the Centre's link with state governments in the Parliamentary chain of responsibility over the states in times of emergency. The Canadian political scientist Douglas Verney (1990, p. 14) has put forward an ingenious way out of this dilemma (the avoidance of which is the major premise throughout the Sarkaria Commission Report) :

> "Might it not be desirable to appoint the President, a federal officer, as President of the Inter-State Council (with the Prime Minister chairing the Standing Committee)? The full President-in-Council could then act as a federal buffer between the Union cabinet and the Governors. President's Rule would initially be via the President-in-Council and not the Home Minister. The (federal) President in-Council might be able to pre-empt (parliamentary) misuse of the office of Governor by the party in power."

These reforms will have the effect of wedding a responsible parliamentary government with a responsible federalism.

Besides these measures of federalization via constitutional amendment, there is the crucial variable of the party system affecting the quantum of federalism in the actual working of a political system. The basic structure of the Indian Constitution has remained by and large the same since 1950. But the changing nature of the party system accounts for the varying degrees of centralization of peripheralization of the political system. The major landmarks here are the Pluralist Premiership of Pt. Nehru, the Patrimonial Premiership of Smt. Indira Gandhi, and the Federal Premierships of the post-1989 phase (Singh, 1990 and 1990d). In the era of multi-party systems at the national levels since 1989, the federal features of the Indian Constitution have come into a fuller and freer play to an extent hitherto never realized. This demands a new level of reconciliatory skill in the political leadership in a federal rather than merely pluralist party system and new institutional and procedural devices for generating ideological consensus and parliamentary cohesion for governing a polity of continental complexity. Lack of these pre-requisites account for governmental instability and ungovernability in the ill-fated Ninth Lok Sabha. As already mentioned, the Tenth Lok Sabha is structurally cast in the same mould with only minor changes. But a promising aspect of the new Lok Sabha is that the Congress, traditionally a party of governing temperament, has come forward to form the government. Despite its minority status, it has seriously addressed itself to the task of governance with its characteristic aplomb. Weary of electoral fatigue and politics of assassination, the fragmented opposition majority have been cautiously lending support to the government. Prime Minister, Shri P.V. Narasimha Rao, who took over the leadership in the Congress party following Shri Rajiv Gandhi's brutal assassination, seems to be particularly sensitive to the overriding need for a national consensus. Speaking on the first vote of confidence in his government in the Lok Sabha, he underlined the fact that even if the ruling party commanded 300 seats (instead of 241 in favour, 112 abstentions, and 111 against, about 14 short of absolute majority), it could not tackle the difficult problems that the country faced on the basis of majority alone.[10] The sooner India realized the better that the Westminster majoritarian model adopted in this country needs to be effectively converted into the Consensus Model *(a la* Arend

Lijphart, 1984) in which majoritarianism is moderated by various devices of autonomy, pluralism, and overarching elite accommodation.

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1. *See* "A Fresh Look at Our Constitution: Some Suggestions", an anonymous paper circulated during the Emergency (1975-1977): and Shri Vasant Sathe's paper "For a Directly Elected President" (1984), both reproduced in Appendices to Noorani (1989).
2. "In America", writes Huntington (1968, p.96), "... political institutions did not undergo revolutionary changes. Instead, the principal elements of the English sixteenth-century constitution were exported to the new world, took root there, and were given new life precisely at the time that they were being abandoned in the home country. They were essentially tudor and hence significantly medieval in character."
3. On hypothesized consequences of parliamentary and plurality electoral systems for the nature of the resultant party system, see Leon D. Epstein (1967, ch. 2) and Douglas Rae (1971).
4. I am indebted for this observation to Douglas Verney made in course of a conversation with me and Fracine Frankel at India International Centre, New Delhi, in late, January 1991.
5. In the wake of the 1991 mid-term Lok Sabha elections, the minority Congress government made an "open deal" with the BJP, sharing the Speakership between them and foiling the National Front-Left Front scheme of getting an opposition (rather than ruling party's) candidate elected as the Speaker of the Lok Sabha for the first time. Subsequently, the minority government survived the vote of confidence in the Lok Sabha through the tactical abstention of NF-LF, though the BJP, the main opposition party voted against the motion.
6. It is interesting to note here a parallel trend of federalization of Canada's predominantly parliamentary tradition. Canada, too, in 1867, like India in 1950, began with a parliamentary-federal combination in an unequal measure, and has since been fede-rlizing. Two major contemporary strands in this process are evident :

1. the "triple-E (elected, equal, and effective) Senate reforms; and,
2. the Meech Lake Accord. While the Senate reforms have been the *bete noire* of the Western provinces aimed at countervailing the Ontario-Quebec domination on the federal government and the two major national parties and the financial "empire" of the St. Lawrence Valley, the Meech Lake Accord, which still awaits full ratification by provinces was devised in 1987 to obtain Quebec's endorsement of the Canadian Constitution Act of 1982 by according Quebec the status of a "distinct society" as the sole French-speaking minority in a predominantly English-speaking nation. See Peter McCormick *et al* (1981) and Roger Gibbins *et al* (eds.) (1988).

   Directly elected in the "Presidential" and "Parliamentary" moulds respectively, the American and Australian Senates present contrasting cases. Separation of powers and direct or popular election has made the former the most powerful Second Chamber in the world. But in Australia "where the Senate is

popularly elected, the House of Representatives to which the cabinet is responsible is dominant" (Donald Smiley, 1980, p. 13).

7. There is a Canadian parallel to the Sarkaria Commission Report in the *Report of the Royal Commission on the Economic Union and Development Prospects for Canada* (1985), popularly known as the McDonald Commission Report after its chair, Donald McDonald. For a perceptive comparison of the Sarkaria and McDonald Reports, see Douglas Verney (1989).
8. It is unfortunate that the Sarkaria Commission Report has not received the attention either from the political elites or the academics it deserves. For a probing analysis showing that even this apparently conservative approach to federalizing India would make India far more substantially federal in governance than may appear from a surface view of the Report, see M.P. Singh, 1989.
9. Douglas Verney (1990) argues that even though the Indian governor is *sui generis* with no external comparable models, Canadian Lieutenant-Governors resembled their Indian counterparts in some respects. In early years of the Canadian federation Lieutenant-Governors were often used by the federal government to topple opposition provincial governments. This has become a thing of the past in Canada through democratic and federal institutionalization. So have also become fedral disallowance of a provincial act (the last instance occurred in 1943 over an Alberta statute) and reservation of a provincial bill for federal assent (the last recourse was made by the Lieutenant-Governor of Saskatchewan in 1961). Directly elected in the "Presidential" mould, the American State Governors are, of course, not at all comparable to the Indian State Governors.
10. *The Times of India* (New Delhi, Metro), 16 July, 1991, p.1.

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62

Revision of the Constitution : To Be or Not To Be

Zaheer M. Quraishi

The idea of total or partial revision of the Constitution of India appears to be fascinating at a time when organization theory and electronic technology have revolutionized the human perception of social and political problems all over the world. Issues of steering and control have acquired primacy over those of distribution and sharing. The sudden and far-reaching changes in the Soviet Union and eastern Europe as well as the technological skill of "overkill" demonstrated in the Gulf carnage stand testimony to the new climate. As a result some vital assumptions of political dialogue seem to have lose their relevance. This has emboldened many to question the basic principles of the Indian constitutional framework.

Do these global developments have any real impact on social and political life of India? It can be said that they might have left some impact on the 10% of the populace covered under the organized sector of Indian economy at the most. The ground realities in India have changed in the last four decades but not so much as to warrant a reorganization of polity. Change is the law of nature and no human society lacks dynamism to an extent that it becomes absolutely stagnant. India is no exception to it. But the socio-economic changes which are obtained in India in the last four and a half decades are not of a magnitude which may necessitate a constitutional overhauling.

A short inventory of political changes will help in taking stock of the

current state of political affairs. First of all, the decision of the constitutional architects to give right to vote to illiterate, poverty-stricken and backward-looking adults was "an act of faith and courage" — faith in their capacity to rise to the responsibilities of democracy and courage on the part of those who could continue to wield power on one excuse or the other. But it instantaneously shattered the national perspective of urban national elite and articulated numerous narrow focuses of rural India. The caste loyalties, against which all social reformers had launched campaigns, brought about social cleavages unforeseen by them.

Secondly, the Congress, which had united the cross-sections on a single-issue platform of independence, was transformed into a political party, entailing splits on the eve of elections. Although it continued to represent the national consensus, it was continually challenged by numerous political parties on the left and right which created the required balance for its survival. In 1967-71, Smt. Indira Gandhi transformed the perspective of Indian political scene from its nationalist moorings to "the promise of performance", through an ideological overtone. This brought about the first major cleavage between those adhering to nationalist political ethics of understanding and compromise to parliamentary ethics of manipulating her six-fold position — Chairmanship of Cabinet, Leadership of Lok Sabha, Leadership of the Congress, Accessibility to the President, Chairmanship of Chief Ministers' Conference and leadership of the people cemented by Independence Day Address from the ramparts of Red Fort.

The non-Congress parties cooperated in the Grand Alliance, in Janata Party and then under V.P. Singh Government, in a bid to keep the Congress out of power. But the Congress wielding 40% voters, continued to reappear as the major political force in the country. What is often described as "one party dominance" or "the Congress system" was essentially a 1+ n (1/n) party system in which the Congress remained the constant with numbers and sizes of other parties varying from time to time. Efforts were often made to unite "opposition" though an opposition of British type has no prospects in India where parties constituted a spectrum on the political scale from extreme left to extreme right. In fact the scenario is more akin to the Continental situation.

Thirdly, education has expanded in India including that in science

and technology. In view of the fact that bulk of educational expansion is through the medium of vernacular curriculum, linguistic regionalism has grown in thinking and living. Further, educational development has given rise to a middle class which tends to be formidable bulwark of constitutional democracy, leaving no institutional vacuum for army to take over.

In the fourth place, the Constitution was planted on a backward economy far from the degree of economic complacency required for it. A policy of socio-economic planning accompanied it in order to provide it the necessary economic basis. Normally, planning has a propensity to centralize decision-making in theory and fact. But in India, in view of other factors mentioned above, it aroused regional competitiveness, democratic pressure and decentralizing role of state cadres of All-India Services.

Finally, the change in outlook was by no means less pronounced. I remember when Sardar Patel launched his campaign of territorial integration by pursuasion, threat and force, an average Indian pitied the native rulers for abandoning their estates and power for "paltry" privy purses. Only two decades later, the same Indian suddenly woke up to find that these nincompoops had been drying up the national treasury by drawing "fat" allowances for extravaganza. Twenty five years later the vulgar display of wealth by a few is sickening for the many and arouses qualm and consternation among them.

The Mandal Commission addressed itself to this issue in a way. But the 'connection politics' in distribution of power, prestige and purses has created so many circles of favouritism within circles that it became counter-productive and instead of unifying society, created perhaps irreparable cleavages. Fatalism and religious obscurantism which were identified by erstwhile leaders as major impediments to modern India, have assumed militant and exhibitionist character. The unity of diversity has bred diversity of unity. There is no political consensus: no idea, resolution or suggestion, however, sound or well-intentioned, can pass unchallenged. Best of the intentions are questioned by one section of political opinion or the other. How can anyone open up the Pandora's box in such a state of affairs?

The constitutional architects had tied the undemocratic caste-

ridden and communal society in a wedlock of democratic and secular Constitution in the hope that the society would be democratized and secularized. For more than four decades "the uneasy marriage" has survived. Many a time its dissolution seemed imminent and voices had been raised of "cracks" in the Constitution, but the prospects of actual divorce did not come up on the agenda. The current debate gives out an impression that time has come to take up this item for consideration.

The architects had designed the Constitution is the initial enthusiasm at the advent of independence when political dissent was only marginal or trivial. Even then they failed to arrive at a consensus on the language policy so that the issue lingered on. There was an overwhelming support within and without the Assembly for all other principles incorporated in the Constitution. If any thing falsified their hopes, it was their assumption that all institutions created by them would identify the national goals of their conception and, therefore, function cohesively to achieve them. The judiciary at a very early date drew attention to many ambiguities and lacunae in their formulations. Conflicts also arose leading to disharmony between institutions like Governors and Speakers, so on and so forth. They are routine tiffs in a constitutional system and our Constitution has enough flexibility to cope with them.

History of constitutional amendments eloquently shows that whenever the Constitution was found equivocal about a principle, it was reiterated with courage and conviction. Even the large-scale amendments of 1957 and 1976 were in line with general thrust of constitutional democracy as conceived by its architects. In 1957, the commitment of the Congress to linguistic reorganization was asserted against the fear of fission that had temporarily gripped the national leadership after partition of the subcontinent. Propriety of a prolonged Lok Sabha to amend was certainly raised but not many disagreed with the direction of clarification inherent in the 42nd Amendment. The two amendments carried out by the Janata Government were more by way of retaliation to the Emergency than an expression of disgust to the Constitution.

The architects had designed the constitutional provisions after a prolonged debate. They had made it capable of meeting all kinds of political exigencies. Even the current political stalemate, if one likes to call it so, can be met within its parameters. The *formal* powers of the

British Monarch have been codified elaborately as the *constitutional* powers of the President. The actual principle of responsibility is also condified unambiguously. The two together with the amendment regarding the binding character of "aid and advice" are dynamic enough to resolve all kinds of party configurations in the Parliament. Therefore, "hung" parliament is a misnomer. The diversity of India is too complex to be subsumed under the British practice of Her Majesty's Local Opposition. The Parliament is bound to reflect the spectrum of political opinion and social differentiation obtaining in India.

The proposal for Presidential form of government is not new. It was made out by Shri K. T. Shah in the Assembly in 1947-49. Since then it has been raised several times without adding anything new to its substance. Only men of uncommon opinion might entertain the proposal. It would not be politically acceptable to bulk of the citizenry. In democratic theory, responsible government is regarded as an integral part of the theory of limited government. Many countries in Europe, Asia and Africa tried presidential form in a bid to combine stability and participation. But the experiments have often failed as Presidency has a strong propensity to deteriorate into arbitrary rule. The cases of Bangladesh and Sri Lanka are too close in time and space for us to risk it.

The USA is the only country where Presidency has worked according to the principle of democratic government. This is due to a peculiar constitutional balance in which Senate shares many executive powers of the President within the framework of an overall supremacy of the Supreme Court. The unique historical background of the new nation without medieval inhibitions contributed considerably to this exceptional balance. Otherwise, the constitutional movement which started with a general demand of "no taxation without representation" eventually settles down with the establishment of a responsible government. It is evident from the history of democracy that constitutionalism moves to enfranchise expanding constituents, while royal power is gradually transferred to a responsible head of government.

The proposal has, however, been vociferously put forward in course of the recent elections and, therefore, its significance should be judged in that context. In more than one way these elections are "unique", carrying no legacy of those of 1989, or any earlier ones. They can be characterized

as transitional. For one, they helped outer-formation of non-Congress parties including the crystallization of National Front/Left Front cohesion with a long-term tripartite politics taking shape. They were also transitional in view of the fact that violence, money power and absurdity of issues reached the saturation. This may mean either the end of violence, reduction in the role of black money and dissolutionment of absurd promises or all the three will get ascendency in future politics. The low turn-out of votes also places a question mark on the electoral process.

Therefore the strategic areas of reform/revision are, code of conduct of political parties and electoral system. If political parties wish to regain their declining prestige, they will have to self-regulate their behaviour. As far the electoral reforms are concerned, there can be two kinds of proposals — the adjustment in the light of hitherto gained experience and radical restructuring. Many amendments in Representation of Peoples Act have failed to make election a sober enterprise. The number of obscure aspirants motivated by self-publicity are increasing the size of ballot papers.

The Indian electorate now understand by and large the meaning and significance of electoral exercise and do no longer require private coaching by political parties. The process can be taken up by the Election Commission or some other subsidiary agency under its supervision. The candidates should be obliged to contribute a reasonable (as established by law) amount to the agency which should inform the voters about the contesting candidates and their symbols. This will immediately demobilize self-seeking candidates from cheap publicity they get at the cost of nominal deposits. Its only disadvantage is that black money will not get into circulation.

A radical restructuring is, however, more prudent. Once it is realized that ours is not a British type of dichotomous legislature, the first - past-the-poll system with single member constituencies appears to be anachronistic. The tripartite system demands that Parliament should have a fixed tenure, elected by multi-member constituencies from party lists on the basis of proportional representation. This will help develop realistic coalitional politics. This had been demanded by some political parties when they were not in a position to impress the electorate. Now

that the external formation of parties has crystallized, they are prone to revive their demand for it sooner rather than later.

There has been an objection against the suggested system for a long time which remains valid, or perhaps has become more valid under present conditions. It will breed casteism, communalism, linguism and other kinds of fissiparous aggregations. Yes, but the coalitional politics which it will breed is not only more realistic but shall ultimately rectify the irrational non-secular cleavages in society in course of time. A Parliament which reflects the polyarchal society in India more faithfully cannot be a handicap. It is bound to be more dynamic and stable. Above all, people, politics and economy in India will be saved of frequent mid-term polls so that their prestige is restored.

The proposal of the constitutional review is neither desirable nor feasible. The possibilities of the Constitution in handling diverse political situations has not been exhausted. It is not justified to lay blame on it for vulnerabilities of politicians and parties. The proposal is not feasible because in the wake of political disagreement as obtains in India, an alternative constitutional system cannot be steered through the amending process. The public opinion is by and large averse to it.

Instead, it is better to identify the lacunae in electoral system because it is the strategic area for improving political style. While no cracks have really appeared in the Constitution, political life has deteriorated both in the behaviour of politicians and parties. They can be effectively checked by electoral reforms.

63

The Indian Constitution — Does it Require a Second Look ?

Shyamla Pappu

After 42 years of the working of the Constitution, after the Constitution has gone through innumerable amendments, can we say with any degree of confidence that the Constitution has fulfilled the avowed purposes for which it was enacted, namely, the achievement of the goals of Secularism, Socialism, Equality and Justice? The answer, I am afraid, has to be in the negative. We are today less secular than we were when the Constitution was promulgated. Socialism is a distant dream, because the gap between the 'haves' and 'have nots' is ever increasing. The rich are getting richer and the poor are facing the pangs of spiraling prices and never-ending wants. In such a societal set up there can be no true equality. Justice seems to elude the people while cases pile up and citizens find no solution to their legal problems for years on end.

I propose to examine this question with particular reference to Fundamental Rights contained in Chapter III of the Constitution — by far the most significant and vital chapter in the whole Constitution. Have the Fundamental Rights, as enacted, amended and interpreted by Courts, advanced the aforesaid goals of the Constitution or has the progress been in the reverse direction?

It may, at this stage, be noted that the words 'Secularism', and 'Socialism' were incorporated into the Preamble of the Constitution by the 42nd Amendment in 1976 along with the words 'Integrity of the Nation' which were included in Part IV-A — a new Chapter which

prescribed Fundamental Duties of the citizens for the first time. It is relevant to see that the concepts of 'Socialism' and 'Secularism' have to be understood in the context of attaining 'Integrity of the Nation', so that the ultimate aim of the Socialist State namely, the elimination of inequality in income and status and standard of life can be achieved. A Secular State must and should keep religion apart from politics. Secularism, as is commonly understood, does not mean promotion of all religions; neither does it represent appeasement of minorities. Secularism is the underlying and ultimate faith enshrined in articles 14, 15 and 16 of the Constitution which mandate equality before the law and equal protection of the laws without considerations of religion, race, caste, sex, place of birth or residence. All are equal in the eyes of law and all must be treated equally.

To quote the words of P.B. Gajendragadkar, former and one of the most illustrious Chief Justices of India, "the State does not owe loyalty to any particular religion as such; it is not irreligious or anti-religious; it gives equal freedom from all religions and holds that the religion of all citizens has nothing to do in the matter of socio-economic problems". This is the message and essential characteristic of Secularism which is writ large in all the provisions of Indian Constitution.

If this be the true meaning, intent and spirit of the Constitution, how is it that religion and caste have entered the vitals of our society, politics, public and private life? Is it not a disgrace that the mention of a name brings forth the question "what is his/her caste? Is he/she a *Brahmin* or a *Kshatriya* or a *Vaishya* or a *Shudra*? Caste has taken a stranglehold on our thinking, nay our very being.

Political parties loudly and proudly say, "We are for a Scheduled Caste President/Vice President" as though there is nothing else to qualify a man except his being a Scheduled Caste person, even when the incumbent is endowed with not only extraordinary brilliance, scholarship and erudition but sterling qualities of head and heart. Worse still, caste considerations permeate all appointments, promotions, governmental favours. A person belonging to a particular caste promotes only his castemen. Merit is given the go by and only caste survives. Many a high caste Hindu clamours for a Scheduled Caste status and produces a false certificate purchased from unscrupulous officials.

This lopsided development is not without a reason. The makers of the Constitution gave a tilt in favour of Scheduled Castes and Scheduled Tribes, realising that the depressed classes had been denied opportunities for long years. The Constitution makers made reservation of seats in Parliament and Legislative Assemblies under articles 330 and 332, but only for 10 years (Art. 334). Successive Governments, unable to withstand the lure of votes, extended the period from 10 to 50 years (20 years in 1959, 30 years in 1969, 40 years in 1980 and 50 years in 1989). It remains to be seen whether there will be a strong and courageous Prime Minister who will do away with these reservations. If not, caste will continue to dominate. It can of course be argued that Scheduled Castes are not castes *strictu sensu* by the Supreme Court. But one must remember that what is notified by the President as Scheduled Castes under Article 341 is nothing but a conglomeration of castes, races or tribes which are deemed to be Scheduled Castes.

I hope my point is clear. According to me, there is nothing wrong with the framework of the Constitution. It is the action of consecutive governments that has created road-blocks in the evolution of the Secular Socialist State, thereby denying equality and justice to the people.

Let us look now at Article 15(4) and 16(4) which provide for reservations for the socially and educationally backward classes in educational institutions etc., and for any backward class of citizens in public employment, respectively. Any backward class of citizens has been understood by Courts to mean socially and educationally backward class of citizens. When the Constitution was originally drafted, there was no provision for reservation for backward classes. Class 16(4) which deals with reservations was introduced by the Select Committee headed by Dr. Ambedkar and numbered as Article 10(3). There was considerable debate on whether or not to retain the expression 'Backward Classes'. Speaker after speaker pleaded for the deletion of Article 10(3) which is presently Article 16(4). I reproduce some of the views expressed by the members of the Consti-tuent Assembly (Constituent Assembly Debates, 30, November 1948) :

> Sri Damodar Swarup Seth : "Sir, I beg to move that "Clause (3)" of Art. 10 be deleted". The reason for my submission is that though the Clause on the face of it appears to be just and reasonable, it is wrong in principle. Who will not believe it, Sir, that reservation of

posts or appointments in services for backward classes mean the very negation of efficiency and good government? Moreover, it is not easy to find a suitable criteria for testing the backwardness of a community or class. If this clause is accepted, it will give rise to casteism and favouritism which should have nothing to do in a Secular State".

Pandit Hriday Nath Kunzru made three valid points and said :

"In the first place the word 'Backward' is not defined anywhere in the Constitution. There is another Article in the Constitution namely, Art. 301 (present Art. 340) that provides for the appointment of a Commission to inquire into the conditions of the backward classes. But it is stated there that only these classes will come within the purview of the inquiry that are educationally or socially backward. There too, there is no enumeration or the class to which the enquiry will refer. This Article is even more indefinite".

"My second point is this. While granting protection to communities that have been left behind in the race of life, is it desirable that any special provisions laid down for them should operate indefinitely? Or is it desirable in the interest of backward classes or State that any special provisions made for these classes should be of limited duration?"

"My third argument is that the provision for reservation of seats for the minorities according to their population shall continue in force unchanged for ten years and no more. Now is it not desirable that a similar limitation should be laid down in Clause (3) of Article 10"?

Mr. Aziz Ahmed Khan said :

"Mr. President, I propose that in Clause 3, Art. 10, the word 'Backward' be omitted"... "Sir, I would like to submit that at the time the minority report was submitted to this House, the word "Backward" was not there and we had finally decided that it is unnecessary to include the word 'Backward'."

Shri Chandrika Ram (Bihar) :

"As it is, I find that people are wondering why the expression 'Backward Classes' has been put in this Article and why is it that Backward Class has not been properly defined"....

Shri T.T. Krishnamachari called it a 'Paradise for Lawyers' and Paradise it has been, not only for lawyers but for politicians as well. Commenting on the text of Article 10(3), he said :

> "Coming to the merits of Clause (3), my feeling is that this article is very loosely worded. That the word 'Backward' is liable to different interpretations is the fear of some of my friends.... I have no doubt it is going to be ultimately interpreted by the Supreme authority on some basis, caste, community, religion, literacy or economic status. So, I can not congratulate the Drafting Committee on putting this particular word in.... I cannot help feeling that this clause will lead to a lot of litigation".

But, Dr. Ambedkar persisted and Article 10(3) became Article 16(4). Posterity has shown how true their fears were; how just their apprehensions. Almost every thought, every word has been translated into reality.

Having dealt with the role of the founding fathers at considerable length, I would now like to deal with the interpretation given by the Courts. The Supreme Court, in several decisions declared that 'Caste' could be one of the relevant considerations for coming to the conclusion that a certain group or community is backward. State Governments that wished to promote certain castes, made caste as the sole criterion for determination of backwardness and consequently reservations were made solely on the basis of caste. Time and again these enumerations were struck down as being violative of Articles 15(4) and 16(4). We then saw the Mandal Commission Report which based its findings solely and squarely on the basis of caste and declared that 3743 castes, comprising 52% of the total population of India were backward. It was also emphatically argued that there could be no other basis for determination of backwardness. The Central Government accepted these recommendations. What followed is common knowledge. Student unrest, vandalism, destruction of public property, burning of public buses and buildings, immolations, carnages and obstruction of public streets and offices became the order of the day. Schools and colleges remained closed. Pendamonium prevailed.

In such a situation many High Courts entertained Writ Petitions filed against the acceptance of the Mandal Commission Report and

granted stay of its implementation. To secure uniformity in a matter of such national importance, the apex Court transferred to itself all the Writ Petitions and granted stay of implementation of the Report. Today, when this article goes into print, we are awaiting the judgement of the nine Judges of the Apex Court in the Mandal Case, hoping that their judgement will give us the light that is needed at this juncture.

Even after forty-two years of the functioning of the Constitution, we stand at the crossroads. Whether we have the presidential form of Government or the parliamentary form of Government the concerned President or Prime Minister must have the necessary courage and conviction to make India truly Secular. The policy of caste based reservations in public employment, which was accepted by the Maharaja of Mysore in 1918 and followed by the Government of Madras since 1927 was a policy of the British to 'Divide and Rule' India and to put down the fast rising upsurge of Independence. It was a device to break the intelligentsia of India into sections and segments. The British have gone but their shadow is still dividing us. We are clamouring for each other's blood. Let us not do it.

We have, today, to understand the spirit of the Constitution. No amendment will help if the spirit is lacking. I appeal to the law-makers, the parliamentarians, the interpreters of the Constitution, the judges and the lawyers, and the people of this great country to make the mention of caste in education and in public employment an offence. If the State wants reservation, in education and in public employment, let it be done in favour of the needy and the poor who from a *Class* and not a *Caste* by the adoption of any intelligible criterion.

It will be a great day indeed when articles 15(4) and 16(4) are either removed from the Statute Book by the Legislature or given an interpretation by the Courts which is truly secular. Otherwise, these provisions will continue to divide the Indian polity into 'forward' and 'backward' castes and give rise to divisive and fissiparous tendencies. Equally, other corresponding provisions in the rest of the Constitution providing for reservation should also be deleted. Then alone India will survive.

Part IX
Seminars and Symposia

SEMINAR ON CONSTITUTION OF INDIA IN PRECEPT AND PRACTICE HELD UNDER THE AEGIS OF PARLIAMENTARIANS GROUP FOR DR. B.R. AMBEDKAR BIRTH CENTENARY CELEBRATIONS, THE INDIAN PARLIAMENTARY GROUP AND THE BUREAU OF PARLIAMENTARY STUDIES AND TRAINING IN NEW DELHI ON 25-26 APRIL, 1992 — SYNOPSIS OF THE PROCEEDINGS

SHRI BUTASINGH *(M.P., Former Union Minister, Convenor, Parliamentarians Group for Dr. B.R. Ambedkar Birth Centenary Celebrations)* welcomed the participants and requested Hon. Speaker to give his inaugural address.

SHRI SHIVRAJ V. PATIL *(Speaker, Lok Sabha)* : Welcoming the delegates, said : This seminar is organised to offer our respect to the memory of Dr. B.R. Ambedkar who was a great jurist, a great politician, a great visionary and above all was a great human being full of compassion for those who are down-trodden and the destitudes. There are four subjects which we are going to discuss in this Seminar. As regards the first topic, that is the "Constitution of India as an instrument for economic growth and social justice", it deals with economic growth and social justice. The Preamble, the Directive Principles and the Fundamental Rights are very relevant with regard to secularism, socialism and social as well as economic conditions in our country. We now have a set of laws for us for doing social justice to the people living in the country. But we have yet to wipe out the stigma of untouchability and prevent atrocities on women, exploitation of children and agricultural workers. With the help of the process of planning in our country, the production from agriculture has gone up by three times, and because of that, it is possible for us to provide foodgrains to the people living in the country. But the industrial development has not given us enough strength as to come on par with the industries in other countries. Although we have not been able to provide education to the young children, yet as far as the development of techno-

logical and scientific expertise is concerned, we are supposed to be one of the three countries in the world. As far as the health is concerned, the smallpox, cholera and diseases like that are eradicated. We are battling with diseases like T.B., leprosy and cancer and the average age of the citizens of India has gone up from 24 to 58 years.

We have yet to solve our economic problems. There is lot of unemployment in the country. Employment Guarantee Scheme, Jawahar Rozgar Yojana and other schemes have really helped in the rural areas in providing employment to the uneducated ones. But the educated ones are still not finding jobs. It has also not been possible for us to control the population growth. The disparity between the richest and the poorest has grown.

The second topic deals with "Accountability vs. Stability'. Accountability is the principle which we have accepted by accepting the parliamentary system. This accountability should not be stretched to the farthest extreme which creates difficulties for us. There is nothing in our Constitution which can really provide stability to the Union Government or the State Government. The Government should be accountable at the same time, it should not be all the time unstable. There should be some reasonable stability. Suggestions are made that let us adopt the Presidential form of system and the stability will be provided to us. I do not think that it would work very smoothly in our country. In my opinion, the parliamentary system is more suited to our genius and the conditions in the country. It is possible to provide some modification in the Constitution which will give us reasonable stability.

"Constitution of India and national integration" is the third topic. The scheme of the Constitution itself provides for keeping the country united. Parliament itself is a sort of binding force. The judiciary *i.e.* the High Court and the Supreme Court also provide the mechanism for keeping the country united. The three lists given in the VII Schedule are also drafted in such a fashion that it can keep the country united. The administrative service, the defence forces, the Planning Commission, the National Integration Council and the National Development Council can also provide some uniting force. But in the present situation, the disruptive forces are going stronger and stronger. The weapons used by them are the religion, the languages spoken and the economic issues. There is an interference from outside also. The remedy lies in educating one and

all for national integration and creating a sort of ethos for that. Good administration and doing political, economic and social justice to one and all will contribute splendidly towards keeping the unity of this country and national integration very strong.

The fourth topic is "The Constitution of India in precept and practice". Much remains yet to be done in establishing economic and political democracy in the country. There are two things which have to be there in the Constitution to provide a mechanism for cooperation and coordination between different parts of the country and the Union Government.

The second most important thing is the question of planning. On the one hand the principles of market economy can help us to increase the production in industry, on the other hand they by themselves will not be helpful in many other areas and we shall have to depend on planning. Liberalisation is necessary. At the same time, planning is also necessary and the balancing of these two things is necessary. Unfortunately, planning is not mentioned in our Constitution. Can we have a chapter on planning, provide for the national level planning commission, state level planning commission and district level planning commission? The judiciary is over-burdened. The cases are piling up in the courts. If we have more courts, tribunals to deal with different areas of disputes, it can help us to some extent. It has also been suggested in the Directive Principles that legal aid should be given. It may not be possible to do it in the Constitution but something more concrete, if it is possible, is required to be done.

The Constitution is a law which has to be worked by the human beings. So, our approach should be to train ourselves to use the Constitution in the best possible manner. At the same time, we should see that if there are any lacunae, they should be removed.

SHRI K. VIJAYA BHASKARA REDDY *(The Minister of Law, Justice and Company Affairs)* delivering the key note address, said : The Constitution has stood the test of time. Although we have made as many as 69 amendments to the Constitution during the course of last forty two years. Yet we have not effected any changes altering the main features of the Constitution. It would not be correct to attribute any problems which we may have faced or may be facing, to deficiencies in the Constitution.

The Indian Constitution is first and foremost a social document. The majority of its provisions seek to further the goals of the social revolution by establishing conditions necessary for its achievement. In a number of areas affecting our lives, there seems to be a growing gap between what the Constitution proclaims and what is happening in reality. We need to strengthen the struggle for safeguarding the ideal of secularism enshrined in our Constitution. There should be a proper balance between rights and duties of the citizens. The Fundamental Duties are highly relevant today keeping in view the prevailing atmosphere of violence, terrorism and communalism. The Constitution-makers have meticulously defined the functions of various organs of the State. The Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. The functioning of our democracy depends upon the strength and independence of each of its organs.

SHRI H.R. BHARDWAJ *(Minister of State for Planning and Programme Implementation)* : Dr. Ambedkar was one of the principal architects of the Constitution of India. He was one of the giants of our freedom movement and his continuous dialogue with Mahatmaji during the freedom movement and later on, paved the way for giving us this so well-documented Constitution.

In our society thousands and lakhs of people were exploited for ages. All those who were privileged, wanted to cling to their status and all those who were exploited and weak were not allowed to raise their heads.

Fundamental Rights are sacrosanct. But in practice, where is the freedom to a man who is in a village? If we give him one acre of land outside the village, the next day he is dispossessed from his house. That is where one must look to the Fundamental Rights as well as the Directive Principles of State Policy together and read them harmoniously.

Several schemes are brought about for the Scheduled Castes, the Scheduled Tribes, the tribals and the backwards. But what happens? In the books, they are in actual possession of certain properties. But, in fact, somebody else is enjoying the fruit of that. So, how can we bring about social justice to reality unless we have radical changes in the system of administration of justice? If we want to do real social justice to the Backwards, Harijans, the Girijans, Tribals, then we have to give equal,

forceful legal protection to those sections of the society to stand on their own feet.

Our Constitution is the best written document in the world. The American concept of equality, fraternity and liberty is enshrined here. But without any commitment to democratic socialism and secularism, this 'Fundamental Rights' chapter has no meaning at all.

Most of the time, I find that there is a tendency to grab the power from the State. I am proud to say that the Prime Minister has made a beginning of off-loading certain schemes of the Centre to the States. The Chief Ministers, the District Councils, the Zila Parishads, Panchayat Parishads can handle the schemes of family planning and other social welfare programmes much easier.

When we allot a house site to a Harijan, we give it to them outside the village. What is the philosophy behind it? Why don't we give them in the middle of the village? We must start looking at the comprehensive society as a whole. The coming generations will take stock of what is given in the Fundamental Rights, Directive Principles etc.

DR. UMESHWAR PRASAD VERMA *(Chairman, Bihar Legislative Council)* : India after its independence was confronted with the challenges of utilising political freedom as a means for economic freedom and creating a new society in which justice — social and economic — would be given to all.

I feel that the Constitution in order to be an effective instrument of economic growth and social justice must also combine in itself institutional and motivational innovations which can subordinate personal gains to social welfare. This I would like to say could not be achieved.

The parliamentary system was also introduced in the hope that it will form a favourable instrument by which a large number of underprivileged class will be a social factor which can influence the economic policies and also ensure effective implementation of those policies. But the ethos, the idealism of the freedom struggle could not continue for a long time. The Parliamentary system, as it works in the country, favours the organised class against unorganised class and as it brought unfortunately a vast developing class of political operators who were not so much concerned about bringing social justice as they were concerned in

exploiting backwardness for their own political ends. Naturally, the conception of the Constitution could not actually be achieved and social justice and economic growth, could not be possible. It has not been achieved so far and cannot be achieved in future, unless we educate ourselves in the spirit of the Constitution.

SHRI SOLI J. SORABJEE *(Former Attorney General of India)* : If there is one single and tremendous contribution made by Dr. Ambedkar to the framing of the Constitution, it was part 3 of our Constitution which guarantees fundamental rights.

Dr. Ambedkar realised that in a country like India, majoritarian impulses have to be checked and the best instrument would be an independent judiciary. Over the years aberrations apart, the judiciary has by and large upheld, sustained laws regarding town planning, socio-economic development and so on. Wherever there have been problems and the problems which were created by the right of property in 1979, that fundamental right was deleted from the chapter of Fundamental Rights. Lack of Political will and various lapses at various levels of administration, and not the basic human rights of the people, have come in the way of socio-economic progress. Directive Principles are as important as fundamental rights.

Under-trial prisoners languish in jails for periods more than the maximum period of sentence they received on being found guilty and convicted. That is not a fair procedure. A man should not be deprived of a personal liberty for a period more than the period of conviction.

The right to life means the right to live with human dignity and the right to live with human dignity means at the barest food, clothing and shelter. So, there should be no difficulty in harmonising both Fundamental Rights and Directive Principles. Whereas freedom is our birth right, it is the duty of the Government to provide food to its citizens. Dr. B.R. Ambedkar himself realised that the chapter on Fundamental Rights has its own checks and balances. No Fundamental Right is absolute. There is a reasonable restriction.

SHRI S. MOHAN *(Judge, Supreme Court)* : Dr. Ambedkar fought endlessly against inequalities and gave us one of the finest documents in the world, namely the Constitution of India. Therefore, he and he alone is the founding father of the Constitution.

Some often ask us if it is an equal society and an egalitarian society why should we have reservation. It is because one third of the population were subjected to such tyranny, such humiliation. It will take years and years and generation and generation to free them. If really we are to usher in social justice in the true manner which was envisaged by that great man Dr. Ambedkar and by that greatest of all the human beings India has produced namely, Mahatma Gandhi, let us strive hard to make the vision of these great men sure.

SHRI ISHWAR SINGH *(Speaker, Haryana Legislative Assembly)* : The gulf between the rich and the poor in the country is very wide. The poor are deprived of facilities enjoyed by rich people. This difference should not be there. We shall have to bridge the gulf between the cities and the rural villages and small towns; between the rich and the poor which was the aim of our Constitution. It is only then that social justice can be combined with the economic justice. I cannot say that we have not done enough or our Constitution has not done enough. India has progressed but the progress has not been uniform in different States. The Scheduled Castes are nearly treated at par with other citizens. But a little difference still exists. If the economic conditions improve further, then even this difference will disappear.

SHRI BADR-UD-DIN TYABJI *(Former Ambassador)* : What is wrong in India has nothing to do with the Constitution. What is wrong is how we have implemented it. Therefore, why don't we stop introducing new legislation and review the old legislation to see where it has gone wrong? We are not able to implement what we profess and that is the thing that we have to do. We should make accountability one of the main factors of our political life.

SHRI PURUSHOTTAM GOYEL *(Chairman, Delhi Metropolitan Council)* : We find that the values of growth and social and economic justice find a relevant place in our Constitution through Fundamental Rights and through Directive Principles of State Policy. The Fundamental Rights guarantee the safety against the tyranny of a majority over minority so that nobody can invade the right of the minority. The Directive Principles are again complementary to Fundamental Rights and there is no conflict between the two. In case there is to be a conflict

oetween the two then Indians should opt for the second one because here individual freedom is not as important as the society concerned. Now, for the stability of these rights, it is mandatory, as Dr. Ambedkar had visioned about, and it can be treated as commandments. These have accountability to our electorate and they are the mirrors of Indian polity.

SHRIMATI SHYAMALA PAPPU *(Senior Advocate, Supreme Court)* : Our Constitution requires a change here and there but basically we have a very fine, most beautiful and most comprehensive document which covers every field of activity and every sector of the population in this country.

The Preamble is the spirit of the Constitution. Fundamental Rights and Directive Principles are there but the beacon light that is giving life and sustenance, to all these is the Preamble. The words 'socialist' and 'integrity of India' were not added in the Constitution in the beginning because everybody thought that the spirit of secularism permeates the Constitution and therefore, it is not necessary to use the word 'secular'. But by 1976, divisive forces had taken charge of the situation and the nation was getting fragmented. Integrity of the nation was a big issue and therefore, in the 42nd amendment, the words 'integrity of the Nation and secular, democratic Republic' were added.

I think the cleavages that we are facing today are because of the caste-ridden society in which we live. Baba Saheb Ambedkar wanted to destroy the castes. He had emphasised the fact that if there was one thing which was dividing India, it was castes, and today we have become so very caste-minded. I think we have to sit down today to search our hearts and decasteicise ourselves and we have to decasteicise our Constitution. Remember that in Article 16 of the Constitution, the word 'caste' has been used in a prohibitive sense. It says that just because one is living in a village, one is not to be discriminated against or just because one is a son of so and so, one is not to be discriminated against. It is a basic human right and it is a basic principle of human rights.

As regards national integration, the inter-State waters at any rate have to be declared as a national asset. Ganga Garland Scheme enunciated by Shri K.L. Rao should be given a practical shape.

The rich are becoming richer and the poor are becoming poorer. The cream of reservation is being taken away by the rich and well-to-do among the backward classes. It has to be looked into. We should provide for the have nots. As they progress, we must see that they do not get reservation. The reservation policy should be reviewed every five years. If this is how we will work the Constitution, article 14 will become a reality because articles 14, 15 and 16 talk not only about equality, but they also talk about making reservations for those who do not have enough.

PROF. R. K. NAYAK *(Indian Law Institute)*: Social and economic justice are the bedrock of our civilisation. Constitution of India very well talks of social, economic and political justice in the preamble of our Constitution. For oppressed and suppressed people, liberation means, not political liberty but the social and economic egalitarianism and anti-exploitative human order. There is negation of social justice if a person or a group of persons or minority or a class of people are kept under apartheid and subjugated to socio-economic disparities. Economic injustice, ancient and modern, is pervasively existing in India in its dreadful shape and form. Inequality and disparity in status and opportunity are pervasive in our national life. Harijans and Girijans are worst sufferers as they have little education. Untouchability and communal hierarchy and other violations of equal status are present freely in our social order.

Indian concept of social justice includes abolition of slavery and semi-slavery (bonded labour). Article 23 forbids traffic in human beings and forced labour. These are well-placed in the Constitution of India but they are not practised in reality. The story is similar for other social vices like caste and sex discrimination in our daily lives. While they are abolished in law but in practice they still persist and indignities still exist in various forms as national disgrace.

SHRI JIBA KANTA GOGOI *(Speaker, Assam Legislative Assembly)* : After 45 years of our independence, there is a wide gap in the economic conditions of people. The rich became richer and the poor became poorer. We must find out what are the reasons and why poor have become poorer and the rich richer. Constitutional safeguard has been given. The framers of the Constitution wanted equal development, equal progress, prosperity of all the people. So, I think some more provisions should be

made particularly for the economic development of the country and economic prosperity of the people. Some amendments should be brought forward to the present provisions also so that they can develop equally. Articles 302, 303, 304 should be reviewed because they were made some 45 years ago.

So far as social justice is concerned, in our Constitution, more than 30 articles are there. But instead of social justice, social injustice is there. Article 14 has given equality before law to everybody. In practice, we are not doing that. Similarly, article 15 is about prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. But, in practice, we are not doing that. So, regarding social justice, we should think in a new way so that we can give equality and equal status and safeguard the interests of the poorer sections and all sections of the people. Untouchability is still existing in our society. The downtrodden and the toiling masses are always looked down upon this way. So, there will be no social justice if the implementation part of it is not there. So, all the provisions which are existing in the statute book should be implemented. Also, in the Constitution, there should be some more provisions.

PROF. R.N. THAKUR *(Indian Institute of Public Administration)* : The Constitution is a model and a model is an ideal which every nation and its people strive hard to achieve. The Constitution has its limits in the sense that it is an instrument in the hands of main pillars of India's democracy — the Parliament, the Judiciary, the Executive.

We have a long way to go in the areas of social security, particularly old age security, unemployment, insurance, old age assistance, disabled persons allowance, blind persons allowance, housing — the cost of which is very much escalating, education — the cost of tuition in private schools, public schools, admission in Government institutions are frightening; health services, which is so poor.

In India, the resources are very limited, often untapped, underutilised. Even many of the basic services have still to be provided. Besides the regional issues, there are questions of distribution of power and resources between the Centre and the States and disruptive forces are raising their heads. So, ordering of priorities is very very important.

Conclusively an arrangement has to be evolved through a close-knit functioning of the Parliament, the Judiciary and the Executive through

the instrumentality of the Constitution to secure economic growth and social justice to the people who are the sovereign.

PROF. CHANDRESH P. THAKUR *(M.P., Rajya Sabha)* : We have had insufficient growth and during all these years of efforts for growth. We have inadvertently, aggravated inequalities of all the variety. And the time has come to think about the ways, how to redress it and how to accelerate growth and how to ensure better social justice.

The State in Indian condition has been envisaged as an instrument for economic growth as well as for accelerated social justice. Mere economic calculus, cold blooded economic variables will not ensure growth. We have had problems of inequality with agricultural vs. industry or one industry towards another industry. Then we have inter-regional inequality. We have resources producing States, but not resources using ones. We have had problems of inequality across social categories. Good words have come up to a point but to make them better requires a lot of hard work and some cold blooded decisions through the instrument of implementation.

There is nothing wrong in the Constitution, but when it comes to its implementation there are many a slips between the cup and the lip. Our problem in the development field, so far as the socio-economic growth criteria and all that is concerned, is that we still have a long way to cover so far as the basic needs are concerned; So long as basic things are not met, we have problems. The economic prosperity must be shared from the haves to the have nots and the social inequalities must be overcome.

Planning tries to promote growth with social justice. In all these years we have had a lot of good things but the fact that the Indian founding fathers did not think as seriously as they should have on the instrumentality of accountability, we have found ourselves in a situation where we have slipped in such areas where we are committed much more honestly.

SHRI SANGHPRIYA GAUTAM *(M.P., Rajya Sabha)* : The intention of the founding fathers of the Constitution has been reflected in the preamble of our Constitution. This has been further elaborated in the provisions relating to Fundamental Rights and Directive Principles of the State policy enshrined in the Constitution.

The thinking of the Government should be clear and its policy should also be clear. The rulers should adopt humanitarian attitude to the people.

We want the development of the individual along with the development of the country. Ours is an agricultural country. Our main natural resource is farming. 75 per cent of our population is dependent on agriculture. Therefore, we should accord priority to set up agro-based industries and cottage and small scale industries. Steps should be taken to make waste and virgin land as arable land. This will not only ensure development of the country, but it will also go a long way in development of the individual. Steps should also be taken to exploit minerals available in the country.

About Planning Commission, of course, there is no constitutional provision in regard to Planning Commission. But in order to ensure development of the country, Planning Commission should be there in the Centre as well as in the States. We should take steps to implement the various provisions of the Constitution instead of amending them. Unless the provisions of the Constitution are faithfully implemented, we cannot achieve our goal.

SHRI ANIL MUKHERJEE *(Deputy Speaker, West Bengal Legislative Assembly)* : The founding fathers of the Constitution have framed the Constitution in such a way that economic growth and social justice can be made for all. But the working of the Constitution has shown that the people like Tata and Dalmia or the industrialists who in 1947 had Rs. 5 crores, Rs. 7 crores or Rs. 10 crores etc. now after working of the Constitution for forty years have accumulated Rs. 4500 crores or so. It has to be checked.

Economic growth has no doubt taken place but we have taken foreign debts for nearly one lakh twenty five thousand crores. Unemployment has also increased in the country. Then, two lakh fifty thousand factories have been closed down in India during the last forty years.

Economic disparity in the country is continuing. The working of the Constitution is going on in such a way that it is resulting in poor becoming poorer and rich becoming richer. So, there are some inherent defects and we shall have to find out and remove those defects.

SHRI VASANT SATHE *(Former Union Minister)* Delivering his key-note address on "Accountability Vs. Stability" in our country, said : Stability in any system is an essential pre-requisite for accountability. So, stability is complementary to accountability and vice-versa.

During the independence struggle, we desired that India should be a united and a strong nation and take its rightful place in the world. So, this Constitution, spelt out that the first requirement is that we are a Sovereign State. The stability of this concept of nationhood is the foremost because if anything is done either to dilute or to disintegrate this nationhood, then the very first premise of our Constitution is lost. The time has come that we should take a fresh look at our Constitution to maintain and strengthen it because there are dangers of disintegration of this nationhood itself.

Our objective is that regional imbalances must be removed. There are agitations everywhere for smaller states. If Parliament appoints a small body to have a fresh look at the Constitution, then one of the things should be State's reorganisation. Reorganisation of States does not require constitutional amendment. States can be added or subtracted and no constitutional amendment is required.

Instability comes when internal dissentions are there and when people are feeling unhappy and agitated. While thinking in terms of larger number of States for balanced growth of our regions, we must also ensure stability at the national level and the best way to achieve that would be to have the Chief Executive of the country elected directly by the entire electorate. Our President is indirectly elected. Let the constitutional experts come together and have him directly elected. Let the Parliament remain under the French model—the President is elected by the people there. That gives stability. Then, the role of Parliament basically is to legislate and to act as a body of keeping vigilance over the executive. Today, in our country, Parliament has become a weak instrument because no single party has got a clear mandate and in the absence of a clear mandate, the policies and programmes cannot be implemented fully which hampers the growth of the country.

My proposal is to convert Parliament into Committee System. A Parliament of 545 people virtually becomes a talking shop nowadays more and more because of the TV. Everybody wants to enlarge his scope from Question Hour to Zero Hour. An ordinary Member hardly gets seven

or eight or ten minutes to speak on an important subject like Budget. In order to make the parliamentary system more effective, we have to convert it into committee system. In Parliament, people can express themselves on general issues affecting the country as a whole. The serious work of the legislative type will be done in the committees itself. This is as far as the question of stability is concerned.

The entire purpose of the Government is to be accountable to the people of India. But there seems to be something wrong with the system. We can bring about modifications in the Executive, the Legislature and the judiciary to make them more accountable to the people of India. The objective of the Government must be to create conditions and opportunities where individual citizens of that society will have scope to develop and achieve excellence in the field of his or her own choice. The job of the Government and of any Constitution is to see whether we have succeeded in creating these conditions in the country? I would like to submit that we did not make our system result-oriented.

Today, it has become fashionable for some to say that Nehru's philosophy has become irrelevant. On the contrary, if we carefully read Nehru, we would find that the whole world is coming to Nehru's path. What has failed in Soviet Union is State capitalism and not democratic socialism. The failure came because incentive and initiative of an individual citizen was taken away. But Nehru tried to marry both. He said that he would have public sector where infrastructure required to be built and private people would not be interested in investing and building dams like Bhakra Nangal and others. That is where the concept of public sector comes in. It has clearly been said in the Industrial Policy Resolution that these public sector units must run on business lines and must generate surplus for further growth and investment. But, our public sector people used only such sentence as the public sector's objective is to employ maximum number of people and make the unit totally uneconomic with the result we made our public sector units totally uneconomic and inefficient. So, we must introduce in our system ACA factors, Authority, Continuity and Accountability. This must be applied to our administrative system. We should convert Indian Administrative Service into Indian Development Service now. We must make our political system accountable. Accountability is judged only by results. We may have excellent economic policies, but if the political

system does not provide stability and tomorrow there is a grave danger of this country succumbing to the same fate as many of the Latin American countries. So, we must go in for stability with accountability.

SHRI NATWAR SINGH *(Former Union Minister)* : Every single elected member of Parliament signs and says that he has fought his Lok Sabha election with less than Rs. 1,50,000. A member of the Assembly signs and says that he has fought it with less than Rs. 50,000 whereas we spend much more and so, begin our legislative and parliamentary life on a wrong footing. This is a serious matter. These are the main things which are the root cause of the ills.

No law can make us honest if we want to be dishonest. The answer is to come from within. If there is no accountability, our institutions cannot function and an example has to be set by the Ministers, the MPs, the MLAs, the Chief Ministers, the Pradhans and by the Sarpanches.

We will be competitive, if there is excellence in all walks of life and the number one excellence is our character and our integrity. It is our responsibility and moral duty to see that we do not lower our standards.

When Goa can be a State and Pondicherry can be a Lt. Governor State, why not Jharkhand? We have State of Madhya Pradesh which is larger than a country called France. If we have to ensure stability in this country, then it is absolutely imperative that we must apply our minds to the basic issue, that is can India remain as it is in today's world?

Sub-nationalism is bound to grow in the country and the answer is not suppression but to get along with it. So, a time has come for the Parliament to seriously discuss as to how do we deal with the problem because if we do not deal with the problem we will not have internal stability and if we do not have internal stability, the accountability will be meaningless.

SHRI HARI SHANKER BHABHRA *(Speaker, Rajasthan Legislative Assembly)* : An elected representative of the people is directly accountable to the electorate. One of the participants has stated that a contradiction has arisen between accountability and stability because whenever an elected representative defects to some other political parties for his own personal considerations, it destabilises the Government in power and renders it incapable of functioning properly to stand upto the

aspirations of the electorate. Anti-defection law has been enacted to ensure the stability of the Government. However, the question remains whether the stability of the Government or the accountability of the elected representatives is of prime concern.

At the time of elections, every political party comes out with a manifesto underlining the programmes and policies proposed for implementation in case that party is voted to power. If that party goes against its avowed line of action, is it not the right of its members not to continue as a member of that party. Unfortunately, anti-defection law does not take care of this aspect of the problem. It allows defection with the condition of certain number of members who opt for such step. At present, it is one third of the total strength of the party representatives which makes them eligible to defect from their party.

In democracy, all organs of democracy are accountable to the people. Even Constitution has been prepared to fulfill the aspirations of the people and no Government has been allowed to act in a dictatorial fashion in the name of mere stability. Similarly, now-a-days certain awkward situations are being witnessed in our assemblies and our Parliament. Just for accountability sake, all these things can not be allowed. Instead, a balance should be maintained between stability and accountability.

The present multi-party system also causes instability. We should, therefore, take steps to minimise the number of parties participating in the election process like U.K. and U.S.A., we can opt for two party system in our country.

To strike a balance between stability and accountability, we need to bring about an improvement in our political structure to give material shape to the spirit of the Constitution. It also needs amendment of the existing election laws. It will ensure proper representation of the people. To achieve that end, we can adopt the List System of Germany in our country.

SHRI SHAIKH HASSAN HAROON *(Speaker, Goa Legislative Assembly)* : The founding fathers of our Constitution opted for the parliamentary form of Government for the country rather than the Presidential form. We see that till they do not split on any major political issue, this type of Government continues. The Constitution expects them to be collectively responsible and accountable for their actions to the

legislature. Irrespective of their differences, the parties in power try to maintain stable equilibrium, but if they are not cohesive, then they lose the stability and fall apart.

All weaker Governments having no sizeable majority suffer from indecisiveness and face crisis in the Parliament and in the Assembly on various issues, and we have seen many a time how this led to fall of Governments. Therefore, in this changing world, we cannot afford to have a hung parliament or a hung Assembly.

As the country is facing grave danger, both within the country and outside, the time has come to examine this entire issue threadbare because the stability of the Government and its accountability are very paramount. It has, therefore, to be examined whether the Constitution could be amended to fit in our ethos, our system etc. I do not mean to say that presidential form of Government should be adopted. But something should be done, such as amending the Constitution, if necessary, because of the changing times.

Modalities have to be worked out to elect the Prime Minister or the Chief Minister and also a modality should be introduced for bringing out a no confidence against the Prime Minister or the Chief Minister with special majority. It is only then that the accountability and the stability of the Government, as well as of the country will continue.

SHRI D. SRIPADA RAO *(Speaker, Andhra Pradesh Legislative Assembly)* : Most well-versed feel that substantial majority of the political party which forms the Government, would provide stable Government. But it is not always true. The Janata Party Government formed in 1977 could not provide a stable Government whereas the present Congress Government despite being short of few seats to majority strength has tackled the delicate politico, socio and economic situations, quite successfully and making efforts to take country out of hood.

The Parliamentary system, having successfully operated in India for the last four decades, fits very well with the system. Political commentators have suggested that presidential model, similar to that of U.S.A. or West Germany would augur well in providing stability because the Government functions its full term without being responsible to Parliament. The Presidential model, at times, might pave way for

dictatorship. Such instances are notable in the countries of Asia and Africa.

Stability of the Government without being accountable to people through elected bodies is quite futile and systematic accountability without being stable in accomplishment of desired objectives is also quite irrelevant. Therefore, a delicate balance is to be maintained so as to achieve the cherished goal and the remedy is to educate people for national integration. If we follow the principle enunciated by our Constitution makers, we can achieve stability and accountability.

MR. JUSTICE H.R. KHANNA *(Former Judge, Supreme Court)* : Stability and accountability, both are imperative for a nation. Stability is a national need while accountability is a democratic requirement. We have to synthesise the two at a time.

The founding fathers of our Constitution opted for Parliamentary system. They were aware that this system would undoubtedly give us less stability, but at the same time it would give us greater accountability. The Presidential system, undoubtedly would give greater stability, but our experience in most of the Asian and African countries has been that no President has gone out of office as a result of elections. Only natural death or coup has resulted in the displacement of the President. As against that, it is only through the Parliamentary system that in 1977 Mrs. Gandhi as a result of elections was thrown out of power because of some of the things that happened during the Emergency, and it was again in a Parliamentary system that Mrs. Gandhi was again returned to power as a result of elections. One looks in vain for such peaceful transfer of power in countries which have had Presidential system.

The postulate of every Constitution is that those who are actually called upon to work the Constitution must share the same faith and allegiance to values that actually inspired the founding fathers in incorporating those provisions. For working the Constitution we need a code of constitutional morality.

SHRI SHARAD DIGHE *(M.P., Lok Sabha)* : Our founding fathers had taken the decision of adopting parliamentary democracy very consciously and after great deliberations. This was done not merely because of the nearness of the British Constitution but this decision was taken

consciously in the light of the advantages and the disadvantages of the stability versus responsibility or accountability.

Unfortunately, after certain years, when instability was seen in certain States or in the Centre, many people from India started thinking in terms of Presidential system. From a distance, it appears that the American Presidential system is far better. There, the President at least continues for a fixed period and there is great stability. But all the reports show that it is only a stability of years for the President but as far as the Government is concerned, it is very much unstable because the Congress is elected after every two years and one-third of the Senate is elected after every two years and many times, the President and the Legislature belong to different political parties and lot of confrontation goes on throughout the career of the President. Therefore, we should never have the wrong decision of falling into the trap of the presidential system, considering all these things.

Then, sometimes, other proposals are made, about the list system. List system is not suitable for such a country where illiterate people vote only on symbols. So, the list and the presidential systems are not applicable in such a vast country at all.

There should never be two centres of power. Sometimes it is suggested that let the Executive Head be elected. That is not good for the administration; that is not good for the democracy at all. It will change the whole basic structure of our Constitution. A very ideal Constitution is there which is responsible to the masses. If there are elections after two or three years, it does not matter. But, between stability and accountability, we should always prefer accountability. That is more important from the democratic point of view. We should never think of changing this Parliamentary system of Government. That will be the end of the basic democracy in this country.

MR. JUSTICE B.N. MISRA *(Chief Justice, Sikkim High Court)* : I do not think accountability and stability are mutually exclusive. Anyway, accountability perhaps may ultimately lead to stability and it has been considered as a part and parcel of the parliamentary form of Government, where there is collective responsibility of the Council of Ministers and accountability of the Executive to the Parliament. If this principle of accountability is now considered — after 42 years of the Constitution in

force — as the reason for lack of stability, then, perhaps time has come for us to ponder and consider whether it is the Constitution which has failed us or it is us who have failed our Constitution. The three institutions — the Parliament, the Executive and the Judiciary — perhaps are equally responsible for the state of affairs which exists today.

Stability at the Centre is as important as stability at the State level. In fact, stability in the States, perhaps may result in the stability at the Centre. Stability, perhaps, is the result of factors other than accountability. Legislation should be undertaken on what needs to be amended in the field of electoral reforms. Many Hon. Members of Parliament have mentioned more than once about muscle power and money power. Some legislation should be there or this must be obliterated altogether. States should take up the responsibility of funding the election expenses. That burden should not be placed on the individual candidate or party.

In a multi-party system, we must devise ways and means of confining the parties to two or three. This perhaps needs examination as to how the electoral process may be reformed by suitable legislation so that it may not be necessary to amend the Constitution for the purpose of securing stability.

SHRI ANIL MUKHERJEE *(Deputy Speaker, West Bengal Legislative Assembly)* : In a parliamentary system of democracy, party system is very very essential. A question was raised here whether the multi-party system functions properly. In West Bengal, we will see that near about nine Left parties combined and are ruling from 1977 to 1992. There was no defection; there was no instability. Ministerial stability was there for 14 years. But in some States we find that though one-party rule was there, there was a ministerial instability. Recently, at the Centre also, the Ministerial instability of this type was there. We have seen that during the last few years, there was a quick succession of elections held. Upto the time of Pandit Jawaharlal Nehru — till 1967 — there was no Ministerial instability. There was mono-party rule in all the States. Gradually, when different regional parties arose, they sent representatives to the Parliament and the one-party rule come to an end. As a result of that, this type of having a different parties combination at the Centre with their different-parties in the State gave rise to the question of instability.

Stability depends on the principles of the political parties. If a party is an organised party, if a party has a great concept, then there will be no defection. When there is a party loosely-knit, that party has no political basis, then the question of defection arises. If we make the people politically educated, if they are politically conscious, then they will reject the members who defect in order to get ministership. We have provided a provision in the Anti-Defection Law for defection also. On the other hand, if we make a law stating that any one who defects a party or changes the party, will not be a member, then the defection can be stopped.

As far as accountability is concerned, in a Parliamentary Democracy, it is the responsibility of the Government. The Executive or the Ministers are responsible to the legislature. This is the concept. How will that be realised? It can be realised by adopting Committee system. More and more committees should be there as they are there in Great Britain. If the Government is not stable, then the Committee cannot be able to function. If the Government is stable, then the answerability or the accountability can be achieved.

PROF. P.M. BAKSHI *(Director, Indian Law Institute)* : Article 75 (3) of the Constitution says "The Council of Ministers shall be collectively responsible to the House of the people". When we introduced this article, we made an irrevocable choice in favour of the aspect of stability. It does not mean that an unstable Government was favoured. But if there is such a situation, we preferred accountability. But I would submit that the choice was made much long before the Constitution. We want democracy and the essence of democracy is accountability. There are three kinds of accountability contemplated by the Constitution. The first is that the Government is responsible to the House of people. The second is that the House of the People are accountable to the people. But then to whom are the people accountable? That is a big question. The people are accountable to their own conscience and if the people fail themselves, I do not think that any Constitution can save them. We have to evolve a kind of Constitutional ethics of good conduct.

The Seminar then adjourned.

[Shri Buta Singh in the Chair]

SHRI L. K. ADVANI *(M.P., Leader of Opposition in Lok Sabha)* : In good old days this country had no multiplicity of modes of transport and perhaps that was the reason that there were a number of separate states in India. However, the concept of national and cultural integrity has been the basic tenet of this country through the ages.

After independence of the country, the founding fathers of our Constitution had used the words, 'union of States' for the Indian republic. They wanted to make it clear that though India was to be a federation but it was not the result of an agreement by the States to join a federation. Drafting Committee, the Constitution Assembly and Dr. Ambedkar were of the view that the federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole. This thing has been made clear at the very outset rather than to leave it to speculation or to dispute. It is in this way that while accepting the federal structure for this country, the framers of the Constitution had maintained its unitary character. It has given rise to certain problems. However, it is evident that all the articles of the Constitution equally stress the point of national unity. It is in line with this philosophy that here in India we have accepted single citizenship from the very outset. Jammu and Kashmir is the only exception and I hope that it will be a temporary arrangement and that State will be properly merged with the Indian Union like all other erstwhile States.

The very purpose of adopting single citizenship was to stress the national integration as we have seen unity amidst diversity. In pre-partition days, we used this phrase but with a stress on unity. That has been the basic spirit behind our struggle for freedom.

Provision of single judiciary has been made by the framers of the Constitution only in the context of national integrity. It has also contributed a lot to strengthen national integration.

Even the Directive Principles as laid down in the Constitution provide for uniform civil code. If it is properly implemented, it will further strengthen our national unity.

It is also clear that a common All India Civil Service to man important posts in the country has made its significant contribution to

strengthen national unity. However, during the last 45 years, there has been a major change with the reorganisation of States on linguistic grounds. Though it is a fact that the entire country is one integral whole, recognition of linguistic reorganisation of States has developed separate nationalities in the country. This aspect of the problem should be taken care of because the thesis of homeland is as dangerous as was the two nation theory which led to the partition of the country in 1947. Even in pre-independence days we had resisted it but partition of the country could not be checked. Even today if this multi-nation-State theory is accepted by the country, it will not only pose a threat of further division but also cause disintegration of the country.

The entire country is one integral whole and States have no separate existence. However, when we see that States have to look to the Central Government to mobilise funds to raise their basic infrastructure, it needs certain remedial measures. The present situation is not a healthy sign particularly for the national integrity. Therefore, a radical change is required to be made in the present Constitution of the country. This exercise should be done to ensure proper sharing of national resources between the States and the Centre. We should see to it that optimum resources are provided to the States.

Our national unity has not been properly strengthened because we have not taken suitable steps to take democracy to the grass root level. Strengthening of local self Government will contribute a lot in this regard. To make a provision in this regard, a commission of the Constitution could be created.

Basic criteria of the reorganisation of States was language, and now a proper time has come for a fresh reorganisation of States on the basis of development of the country and a separate State organisation commission should be constituted for this purpose, because at present a number of States in the country are very large and unwieldy. Such States should be reorganised into smaller States to ensure their rapid development. It will minimise their administrative problems.

With a view to strengthen our national unity and integrity we should see to it that all the people of the country are involved in the election process of the Chief Executive of the country. There may be certain problems in it but a hurried decision should not be taken in this

matter and to discuss it thread bare, we should constitute a commission of the Constitution.

Our Constitution, in its present form, has nothing to threaten the integrity of this country. All the menaces like terrorism, violence, subversion, and communal disharmony etc. do not have their roots in the Constitution because it has been reasonably well designed. The fault lies in the implementation and the implementing authorities and agencies. To cure this situation, all the implementing individuals should cast a glance on their conduct and character. Even if any amendment is required to be made in the Constitution, it should be on the basis of general consensus. The views of Dr. Rajendra Prasad should be taken into consideration while making a decision in this regard. It will contribute a lot to strengthen our national unity.

SHRI A.K. SEN *(Former Union Minister)* : The Constitution of India laid down the foundation for an integrated India. The forces of disruption and divisionists are not due to any provisions of the Constitution but they are really aimed at subverting the Constitution.

Politically we have been divided all throughout the history. But foreign invaders could not conquer and eradicate our spiritual bond, the heritage of a common legacy, which was built up through the centuries by different streams of thought and culture. This spirit inspired the founding fathers to forge our Constitution and important provisions, pointed to that end, namely one common citizen. In India, there is no Hindu citizen or Muslim citizen or women citizen or male citizen. Everyone is the same and they cannot be discriminated against, culturally, linguistically or otherwise so long as they subscribe their loyalty to the common pool of Indianhood.

The Preamble of our Constitution lays stress on our equality, fraternity and unity. Therefore, so far as the Constitution is concerned, there is hardly any need to think of any amendment. It is a very strong Constitution. It gives a federal Constitution with a strong Centre and a viable State structure. However to combat the fissiparous and divisive forces presently active all over the country, we need not devise further provisions in the Constitution but we should face this menace by producing people with intellect, honesty, integrity and leadership which can fight these forces and mobilise the people as a solid front against them.

SHRI BADR-UD-DIN TYABJI *(Former Ambassador)* : I entirely agree that our Constitution is a fair and workable one and the fault lies in the working of it. If the Constitution is not working properly, that is due to pseudo-secularism. It should be clarified here in what way it could be made more secular or if you agree with the Constitution whether it should aim for secularism in the operation of the affairs of the nation.

I feel that the party like BJP should contribute something for building up India. It is not going to be very easy. We all want unity. We have to get the diverse country together. We have a basis on which we can have consensus and an agreement. It can be done only on the basis of participation and representation of all the elements which are there in the governance of the country.

MR. JUSTICE H.R. KHANNA *(Former Judge, Supreme Court)* : People sometimes come under the notion that there is some kind of a conflict between secularism and religion. This is wholly a misconceived notion. Religion operates on a spiritual plane; it has something to do with one's belief and faith. Secularism operates on a temporal plane. It postulates that no one shall be discriminated against because he belongs to one particular religion or ethnic group, a linguistic group. I personally believe that more a person is a devout Hindu or a devout Muslim or a devout Sikh or a devout Christian, the greatest should be his allegiance to the country because there is no antithesis between the two. I also believe that despite of the variances in the external and rituals of the different religions, they run through all the religions. If you understand one religion you would understand all religions.

Today, we find that while there may be some kind of verbal faith in the provisions of the Constitution, our allegiance on the practical plane to the values enshrined behind those provisions is wholly lacking. The success of the Constitution in the long run depends upon the way it is actually worked.

It is most imperative that the judges should actually reflect an image of the highest integrity; judiciary has neither power of the purse nor that of the sword; its greatest asset is the faith and confidence of the people. Once that faith and confidence get eroded, the judiciary's image is bound to suffer.

States should have more financial powers. It is a mistake to suppose that a strong Centre cannot operate with strong States. We have to ensure that the States are equally strong. At the same time, we have also to ensure that there is more of administrative power to the States and the States have also in turn to ensure that they give more powers to the local bodies.

As regards article 356 earlier it was used more sparingly. But subsequently after 1975 the use of this article has increased many times more. Obviously there has been something wrong in this article.

SHRI GULAM SARVAR *(Speaker, Bihar Legislative Assembly)* : Our country is a unique example of unity in diversity. People speak different languages, follow different religions, have their own distinct cultures. Yet deep down these diversities there is a certain kind of unity among them.

Secularism is the salient feature of Indian Constitution which has gained strength from national unity. There is no state religion. People of all religion have equal right to practise their religion.

Cultural and educational rights of the minorities have been protected by the Constitution. They have the right to establish and administer educational institutions. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority.

If a part of the population desires that their children should be instructed through the medium of mother tongue at primary stage, the President is empowered to issue directions in this regard. Article 350A provides for this facility.

It is almost known to everybody that article 370 gives a special status to Jammu and Kashmir but perhaps very few people are aware that certain special provisions exist with respect to the States of Maharashtra and Gujarat, Nagaland, Assam and Manipur also. Article 371, 371A, 371B, 371C and 371D respectively are in force in these States.

The Constitution does not make any discrimination against any body on the basis of caste, creed and religion. The Constitution has provided equal opportunity to all. If these Constitutional guarantees and rights have not been implemented, our Constitution or the founding

fathers cannot be blamed for it. It is our duty, it is the duty of political parties and the leaders to implement them.

SHRI M.R. JAMATIA* *(Deputy Speaker, Tripura Legislative Assembly)* Paying homage to Dr. B.R. Ambedkar for the great role he played at the time of framing of our Constitution said : Dr. Ambedkar was of the view though the right to equality had been accepted in political sphere, the principle of equality on social and economic spheres had not been recognised. That contradiction should be removed as soon as possible. His view point is quite relevant in the context of the present state of India's national integration. Despite all efforts of the Central and State Governments to keep India united, some extremists, divisive and separatist elements have been continuing their subversive activities to destabilise our beloved land. The subversive activities of the extremists have been concentrated mainly in three states now, namely Kashmir, Punjab and Assam.

We think that the problem cannot be solved only militarily. Democratic process should be started and appropriate steps should be taken for bringing back confidence among the people and attract them to the mainstream so that the terrorists can be completely isolated. At the same time, a clear and emphatic no should be uttered to those who are demanding annulment of Article 370 of the constitution which provides for separate constitution for Jammu & Kashmir, its own elected administrators, its own judiciary, its own public service commission etc. for otherwise the Kashmir problem will further aggravate. Again, we shall fail in performing our duties if we do not hold high the principle of secularism as has been enshrined in our constitution.

The founding fathers of our constitution were fully alive to the fact that for keeping India strong, united and integrated, social, economic and political justice must be made available to all her people. The framers of the Constitution were also vigilant that if economic justice cannot be given to all her citizens, India cannot remain a strong and united country. The Constitution and its founders made adequate provisions for solving the problem. It is the responsibility of the people at the helm of affairs to abide by the directives of the constitution and take steps for extending justice-social, economic and political to all its citizens and this alone will

* From a written text of the speech which could not be delivered due to paucity of time.

turn 95% of the people into patriots who, in their turn, will successfully combat the extremist challenge and join their hands with the rulers to make India stronger, unified and integrated.

SHRIMATI MALINI BHATTACHARYA *(M.P., Lok Sabha)* : It has been said that the right to secede is not there in our Constitution. The right to secession has been omitted because our Constitution admits the composite nature of Indian society and culture. So, unless this equality — not just equality for individuals, but equality for different linguistic groups, different communities is made a reality, unless this is implemented, even if there is no right of secession in our Constitution. The question of secession will continue to hang fire.

So far as Centre-State relations is concerned, the relationship both at the domestic level and at the Centre-State level should be more of a relationship of interaction, relationship of equality. Centre can only become stronger by allowing the States to develop, to have financial rights, financial strength, the strength that the States require for their own development.

Article 356 is agitating quite a few political parties. My own Party is demanding either scrapping of article 356 or radical modification of article 356 so that it cannot be used arbitrarily and in any way that the Government at the Centre likes.

The Constitution recognises right of an individual to be instructed through the medium of mother-tongue. Unless these rights are guaranteed, the inclusion of one or two languages in the VIII schedule will not solve the problem entirely. This is a question which we have to ponder.

It has been said that the boundaries of the States should be redrawn. The Constitution, of course, provides for this. But when people say that there can be re-constitution and breaking of States into smaller units, what exactly do they mean? If such States are formed can we ensure that the most deprived sections of the local people would benefit from such re-constitution? The whole question is implementation of equality in real terms, economic equality as well as political equality. There are, of course, certain gaps in the Constitution which we should think of filling up like the right to work. Should it or should it not be included as a basic right within the Constitution? If we are serious about the uniform civil code, then that civil code should not be imposed from above. It should

come from within the communities themselves. The communities themselves — their legal experts, leaders of the community must discuss and deliberate how these discriminations within the personal laws may be removed.

SHRI SHAHABUDDIN SYED *(M.P., Lok Sabha)* offering his tributes to Dr. B.R. Ambedkar said: A time has come to review the Constitution in the light of our experience of 42 years as an independent nation. There should be a constitutional commission — perhaps an informal commission to begin with or a formal body appointed by the Parliament — to go into the various ideas that are projected and articulated at seminars like this. The entire purpose of the Constitution is to work out a framework for the harmonised interaction, not only of individuals at a certain level but also of the social groups at the appropriate level. We have failed in the working of our Constitution, because we have not been able to bring about the spirit of social justice and that expresses itself in the maldistribution of income and the widening of disparities between one region and another. These disparities have to be curbed deliberately by national endeavour in order to achieve national integration.

Our secularism, whatever it might connote, does not mean non-recognition of religion. It only means that a State has no religion, a State is equi-distant with respect to all religions, a State treates all religions equally. Are we truly, in practice, giving equality to all religions? If all religions are to have equality, then all temples, all mosques, all churches, all gurudwaras must be absolutely secure of the threat of the masses. Therefore, in practice, we have not been able to achieve the equality of religions.

The Constitution provides about the right of every child to have his primary education through his mother tongue. But in case of Urdu speaking population in some States one primary school exists for as many as five lakhs of students. This is a farce.

Similarly in public employment, all social groups are not equitably represented in the structure of public employment. To achieve national integration, we must have equitable representation of all social groups in public services, in whatever the State has to offer.

The map of India should be re-organised, so that there are no giants and pigmies. But there should be something comparable about the size

in terms of area, in terms of population and in terms of national endowments and incomes among the various States.

There is an ethnic upsurge all over the World. There is a certain legitimacy to these aspirations and you cannot coerce them by taking help from laws or the Constitution. Therefore, they have to be recognised and assigned a due place in the scheme of things, in the arrangement within the nation, if we are to preserve our integrity as a nation, territorially and emotionally.

SHRI P.K. KYNDIAH *(Speaker, Legislative Assembly, Meghalaya)* : Our Constitution is being tested today. For the last 42 years, this Constitution has been amended a number of times in order to be attuned with the change of times. If we do not want to allow preponderence of politics over our social and economic objectives, then there should not be any scope for political parties operating on the basis of religion. Because, once we allow it, there is no end to it.

India is a vast sea of humanity. We have a society which is multi-lingual, multi-ethnic, multi-religious. But regional disparity should not be allowed to pose a danger to the entire fabric of the nation. It is high time that we apply our mind as to whether we can incorporate in the Constitution three tier system. The tribal population in India is quite huge and it is time that tribals also should feel a sense of sharing in the national pride. Their children are not getting even an opportunity to learn their language, their mother tongue. The time has come now to seriously consider the need to meet the aspirations of the small people in India so that they can feel to be at par with the rest of the population. That will bring them to the mainstream of our national life.

PROF. RITA VERMA *(M.P., Lok Sabha)* : As regards our unified diversity we are all like different colours of a colourful fabric. Equality for different linguistic groups means their assimilation to a composite Indian culture. Equality of religion does not mean more equality for some and less for others. The constitutional provision are directed towards strengthening the national integration process. It has served somewhat. But the recent emergence of new factors are overwhelming it. We have to strengthen our old institutions like the judiciary, the legislature, the executive and the Press; but, equally important is the need to create new institutions; and for all practical purposes, we should grapple with new realities.

SHRI S. CHATTERJEE : With reference to the human aspect of the unity, brotherhood and national integration of the country, the teachings, sufferings and works of Mahatma Gandhi should not be forgotten as they are still very relevant in the prevailing atmosphere of violence, terrorism and communalism.

SHRI SIMON D'SOUZA : Our Constitution flows from the sovereign people of India in their corporate capacity. It implies that the people of India are not merely an aggregate or a collectivity but a Nation with corporate capacity. National integration and unity are basic to our existence. It is through a secular attitude that we the Nation can practice fraternity much quicker and better to achieve real progress in social, economic and political fields. Toleration is a characteristic feature of India's culture and heritage which finds its expression through the lofty and noble ideas of Justice, Liberty, Equality and Fraternity in particular enshrined in our Constitution. But in spite of this, separationist forces are raising their ugly heads from time to time. There is no doubt that until and unless these are curbed with a firm determination, they may upset the integrity of our country. With a view to reduce racial, religious and provincial hatred; inter-region, inter-State, inter-caste marriages must be encouraged. The true meaning of secular, non-sectarian outlook has to be imbibed on the minds of the elderly as well as the younger generations irrespective of whatever religious or socio-cultural practices they adopt for themselves. Every citizen of this country must feel that he is an Indian first and Indian last.

SHRI G. GOGOI *(Speaker, Assam Legislative Assembly)* : The question of disintegration comes only when there is a failure of administration and failure of the administrative system. Only when there is some agitation, we lay stress on these problems. But before that, nobody tries to nip the problem at the budding stage itself. We should take care of this.

So far as National Integration Council is concerned it is a necessity as per the Constitution. But it is only an advisory body. Its decisions are not enforceable by law. If you want to make it effective, then some provisions should be made, Constitution should be amended, if necessary.

SHRI CHAMPALAL JAIN *(M.L.A., Rajasthan Legislative Assembly)* : Our country is the land of sages, saints and persons like Mahatma

Gandhi and if every citizen takes a vow to live and die for this country, then no power on earth can break this great country having such an ancient culture and civilization. There is no infirmity in our Constitution and no secessionist force can disintegrate it.

SHRI ISHWAR SINGH *(Speaker, Haryana Vidhan Sabha)* : Our Constitution contains all those features which require to ensure the unity and integrity of the country. People of every religion and faith live in this great country. There is no contradiction among the various religions.

Our Constitution is a self-contained document. States have been given financial autonomy. But we must have a strong centre.

The All India Services, the Planning Commission and all such bodies also provide the mechanism for keeping the country united.

SHRI A. DHARMA RAO *(Deputy Speaker, A.P. Assembly)* : The subject of national integration is uppermost in the mind of every citizen of India now-a-days. It is for this cause that the two great leaders, Mahatma Gandhi and Indira Gandhi became martyrs.

We can proudly proclaim that our Constitution is the best fundamental law that suited to the country in the given conditions and circumstances especially in the context of unity and integration. The Constitution is unitary in structure but federal in spirit. I feel that India is one nation and one State. There is a strong fabric of unity in the diversity of Indians. I feel that the scheme and provisions of the Constitution are good enough to maintain the unity, development and emotional integrity of the country.

PROF. C.P. THAKUR *(M.P., Rajya Sabha)* : It is time to think whether we committed an error of judgement in creating linguistic States. And if there was some sort of an error of judgement, that must be corrected. The decision to separate the national Parliament election from State elections should also be reviewed so that the balance between the Centre and the State legislature is not ruptured. The question of regional imbalance should be given serious thought. There is also need for retaining the delicate balance between the executive, the legislature, the judiciary and the civil services.

Some of the federal integrating institutions like the University Grants Commission, Planning Commission and the National Development Council etc. are not working today with the same vigour and contentment for which they were created. There is need to replace them if they cannot be repaired, and if they can be repaired and reformed, that must be done with some urgency.

Today, we find that national consciousness is being replaced by a variety of sub-national consciousness. The wisdom of the political leaders and their commitment is on test today. We should gather courage and arrange ourselves to persuade in such a way that we are able to knit this fractured society.

MR. CHAIRMAN : Shri Buta Singh) : If we look at the precept, we shall find that no other Constitution in the world carries better humanitarian precept than Indian Constitution does. The foremost precept is the Preamble of the Constitution.

There is no doubt that our Constitution provides for uniform administration of justice, but when we see the justice in social, economic or political field, we feel that the spirit which was there during the freedom struggle is now missing. The objective of achieving justice will not be achieved by giving reservation on a few posts. There are 71 per cent people belonging to backward sections in the country today, but their share in class I services is only 11 per cent. It cannot be called social justice.

Next to services comes trade and commerce. 15 per cent of people are controlling 97 per cent of commerce and trade in the country. The rest 85 per cent have only 3 per cent of trade and commerce. It can not be called social justice. No Government official is practically answerable for the implementation of the reservation policy. In a number of Statutory Corporations, element of reservation has not been introduced at all. Had this provision been backed by legal sanction, there would have been no reason for any Corporation not to introduce the element of reservation. There would have been a social justice in the real sense, had land reforms been implemented in letter and spirit. But in many States, even proper legislation has not been enacted to implement the land reforms.

Our Constitution provides that the citizens will have the freedom to propagate the religion of their choice and offer worship accordingly. The

result of this freedom has been that instead of uniting the people, the religion is being misused to disunite them. Even small developmental works like construction of a road cannot be undertaken if in the process a corner of a mosque, temple or a gurudwara has to be removed. Therefore, this liberty has been more misused than putting it to a better use.

If language had been accepted as the base for the formation of the Punjab State and all Punjabi speaking people had formed its part, the people of a particular community would not have got an opportunity to resort to terrorism. Whatever is happening in Punjab is not good for the unity and integrity of the country. I am totally opposed to it.

The people of North-East are self-respecting lot. They do not know the intricacies of law. They want that there should be the least interference in their day to day life. They also want that all the seven States of the region should be given full autonomy under the Constitution.

The decision was taken by Shri Rajiv Gandhi to decentralise the power by giving more powers to local bodies and Panchayats. It was a revolutionary step in Parliament to this effect. But it is unfortunate that the same is in the dol-drums now.

The cultural and linguistic heritage of our country is a matter of pride for us. But today linguistic heritage is being misused in States like Karnataka and Maharashtra where non-Kannads and non-Maharashtrians are being denied jobs. We should shun this tendency and then only shall we be serving our motherland in real sense. India is one and we have to enrich, develop it.

SHRI P. UPENDRA *(Former Union Minister)* : The Constitution has been well-drafted. But, since then, several distortions had taken place in the working of the Constitution. These distortions, in my view, are more prominent in the field of Centre-State relations. And unless we rectify those distortions as soon as possible, I am afraid, we may have to face the same situation in this country as the mighty Soviet Union has faced and Yugoslavia is facing. India had in the past four decades tried to, at the instance of the Centre, enrich the federal polity with strong unitary overtones. I also do not differ with the Chairman when he says that we want a strong Centre. But how a strong Centre can be there without strong States.

In a federal or quasi-federal polity like India, sharing of powers and resources between the Union and States on an equitable basis is essential. But in actual practice the ascendency of the Union and the States has been carried forward far beyond the original ideas in the Constitution by the politics of the Centre.

The second distortion which took place in my view is in the use of the office of the Governor, or misuse of the office of the Governor and article 356. The Sarkaria Commission had made specific recommendations in regard to article 356. The Governors are being used and were being used as the agents of the Centre. We have seen the result also in various States how the elected State Governments were dismissed by the Governor. In spite of the passage of four to five years, the recommendations of the Sarkaria Commission have not been implemented. At least the agreed recommendations of the Sarkaria Commission must be implemented forthwith.

Another distortion that has taken place is in regard to the legislative powers of both the Union and the States. There has been erosion of the powers of the States by a grasping Centre. States have been reduced to a State of dependence and mendicancy.

Even in regard to All-India Services, there has been some distortion because the disciplinary powers have been kept with the Centre. Many times it has been found that those who did not carry out the orders of the State Governments, they have been accommodated by the Centre. As a result, they have been flouting the orders of the State Governments with impunity.

Article 268 provides for an Inter-State Council. After four decades, it has ultimately been constituted. This should be the demand of this Seminar that the Inter-State Council must start functioning with the objectives which have been envisaged. States have been denied their rightful share in regard to financial powers. In regard to clearance of projects submitted by the States, for decades together these are lying with the Centre for no reason. Even for cutting a tree or removing a graveyard, State Governments have to come to Centre. This was not the concept which was envisaged in the Constitution. This is pure distortion of the Constitution. Why should there be so many centrally sponsored schemes? That is also another thing which is not envisaged in the Constitution.

What steps have we taken to impose the system of panchayati raj on various States? It is not envisaged in the Constitution. There should be a constitutional provision made and powers given to the States.

Then comes the delay in giving approval to various legislations passed by the State Legislatures. Why should these Bills lie with the Centre for so many years? That also has to be looked into.

We should recommend setting up of a constitutional committee to go into all these distortions and to remove the gap between the precept and practice as far as Constitution is concerned to rectify these things. I plead that we must have some follow up of this Conference also.

SHRI SOLI J. SORABJI *(Former Attorney General)* : The Constitution is the paramount law for the country. It states really the basic framework and the structure. Therefore founding fathers emphasised that there are many things which cannot be put in the Constitution but they will have to be developed and evolved by conventions.

As regards Centre-State relations, much of the distortion that has occurred and in fact, much of the alienation which we find in certain States is because of the imbalance or rather the faulty implementation of these provisions. Article 356 is the most abused provision of the Constitution. We have to resort to it in order to help the State itself.

Often it is the Governor's Report which is also responsible for the President's rule, which is the basis. Founders wanted to appoint people like academicians, people of eminence in the field of education, learning, various other things as governors. In the beginning, the Raj Bhawan occupants did measure upto their expectations. Later on, we have none but partisan politicians to be in the seat. Therefore, if these conventions have not been evolved; the time has come now to think about what to do about them. It has to be left to the sense of the people who work it.

Regarding removal of the Governor, it was the belief that they would not be removed except for the grave violation of the Constitution. This belief has been belied. The actual experience is that if they do not carry out the dictates or the desire of the Centre, they are removed with less ceremony and with less dignity than a class IV employee of the Government service. Now the time has come to expressly incorporate the grounds of removal of the Governor in the Constitution itself. Article 356

should be amended to make the Governor's report mandatory along with the President's report.

Ours is a Constitution which is unique in the sense that for a breach of Fundamental Rights, a citizen can directly go to the Supreme Court. Today the citizens' rights in the Supreme Court have not been adjudicated upon for years. What was to be an expeditious remedy has become really a teasing illusion. It is high time that for enforcement of Fundamental Rights, for guaranteeing of the Constitutional rights and remedies, there should be a separate constitutional wing which will deal with this aspect alone.

In the Phillipines Constitution, there is a provision that if the case reaches the highest court and it is not disposed off within two years, the court will kindly record the reasons and inform the Parliament and the people as to why it is not so. We should also think on these lines. We should not get the idea that the Constitution needs to be thrown overboard. It requires a little touching here and there.

SHRI D. SRIPAD RAO *(Speaker, Andhra Pradesh Legislative Assembly)*: The Constitution of India reflects a philosophy of liberal democracy as is evident from the inclusion of Fundamental Rights in Part III and its inviolability, justifiability and enforceability through the independence of judiciary and the process of judicial review. The concept of Secularism was added to the Preamble through the 42nd Amendment Act, 1976. It strengthens our commitment to the cause of secular approach. However, it is found that the communal and casteist parties are trying to deface the secular concept. There is need for clearly defining secular parties so as to determine a recognizable criterion between a secular party and a non-secular party.

Unity and integrity is another laudable ideal of India's philosophical framework. However, it is disappointing to note that the forces of communalism are now bent upon disturbing the unity and integrity of the country. In fact, such forces have been instrumental for the rise of the forces of balkanization with particular reference to Punjab, Kashmir and Assam. We should, therefore, demand initiating a stringent policy measure to check the communal forces and the casteist political parties.

Promulgation of ordinance under article 213 is a measure to meet certain institutions to be tackled when Parliament or State legislature is not in session. However, there is a need to check such promulgations of ordinances which undermine the Legislature and the democratic process.

Today anti-social elements are not only entering politics but also getting elected to the legislative forums by virtue of their muscle power resulting in the increasing incidence of violence. Stringent measures are required to check the rise of such viciferous elements. There is also a need to initiate a few reforms to inject judicial accountability and also to enhance the credibility of the judicial system.

With a view to check the increasing frequency of political defections on narrow and selfish political grounds in the country, 52nd Constitution Amendment Act requires further modifications because its misuse is continued in a few States of India. The Sarkaria Commission has suggested a few reforms to herald a healthy cooperative federalism in India. In view of the rise of unforseen challenges, there is a need to consider a few Constitutional provisions in view of the prevalence of a gap between the precept and practice.

SHRI HARCHARAN SINGH AJNALA *(Speaker, Punjab Vidhan Sabha)* : The Constitution contains all the guiding principles but the key lies in its implementation. Our Constitution is a self-contained document. But we have not been able to implement it properly. We should constitute a committee to review the Constitution and ascertain the reasons for the failure of its implementation.

The big States should be reconstituted to make smaller States so as to ensure the effective administration of the big States. We should also ensure effective participation of people in day to day administration.

Additional facilities should be provided to the people belonging to Scheduled Castes and Scheduled Tribes communities by implementing the policy of reservation more effectively. It should also be ensured that once a person has enjoyed the benefits of reservation and improved his economic condition, he should not continue to enjoy these benefits any longer.

States should also be given more autonomy for ensuring better Centre-State relations.

SHRI YUDHISTHIR DAS *(Speaker, Orissa Legislative Assembly)* : There is no denial that we have made significant achievement in many areas but still we find ourselves in the midst of a crisis. Fifty per cent of our population are living below the poverty line. Our promise to secure to every citizen the access to adequate means of livelihood remains a distant dream. The distance between the rich and poor is increasing. Our promise to provide free and compulsory education for all our children upto the age of fourteen years within a period of ten years from the commencement of the Constitution remains largely unrealised even after forty years of the commencement of the Constitution. The situation has on the other hand, worsened by the kind of education we provide to our children in different types of schools. Clearly, the standard of education in these schools is not uniform. It is time to prescribe uniform syllabus and one type of schools in order to provide equal opportunity to all children, rich or poor.

Continuance of English as the official language beyond fifteen years after the commencement of the Constitution not only contravenes the Constitutional commitment but allows English language to enjoy the pride of place in our public life. Gandhiji had always pleaded that mother tongue should be given the pride of place in our Education System. The present status that English enjoys in our Education system does not enhance our national prestige.

Reservation in legislatures is extended every ten years. Should it be extended like this ad infinitum? Same is the case with reservation in services. It does not make sense to have reservation in Services on caste basis alone in disregard of economic criteria, if we want the backward classes to benefit. Similarly, it is senseless to extend reservation in services to the children of affluent families simply because they belong to Scheduled Caste or Scheduled Tribe. A time-bound programme for economic upliftment of the backward classes should be drawn up and implemented with all seriousness to bring about a parity among different sections. Steps should also be taken to amend the Constitution to incorporate the provision of de-notification to identify and integrate beneficiaries belonging to Scheduled Caste and Scheduled Tribe from the reserve category to general category when, on assessment, they are found at par with members of other advanced communities. A statutory provision to create a Fund on the line of National Renewal Fund, which may be termed as Social Integration Fund of India, from which allocation

for social upliftment and other social development activities be made and the transaction be made directly accountable to the legislative and parliamentary fora. Provisions should be made to integrate all statutory commissions, such as Women Commission, Scheduled Caste and Scheduled Tribe Commission and Minorities Commission under one statutory umbrella Commission to be known as Human Rights Commission. This would enable us for an integrated approach to our social and ethnic problems.

SHRI BRIJ MOHAN MISHRA *(Speaker, Madhya Pradesh Legislative Assembly)* : We have adopted federal constitution with the unitary features. Though India has been a country of many castes, communities, religions, it has been known as one nation since vedic era. We have been cherishing the principle of unity in diversity.

Article 356 of the Constitution has been misused many times. States have been brought under President Rule for as many as 88 times during the last four decades under this provision of the Constitution. This has given rise to many controversies and the separatist elements have also raised their ugly heads due to it. As a matter of fact, power and position of the States of the Union have been devalued and their position has been made even worse than municipalities and panchayats.

As far as the question of removal of judges is concerned, I do not want to go in details. When a judge himself is involved in misdeeds, the deterioration of judicial system could be well imagined. Now-a-days it is very easy to get stay orders from the judiciary on the Speaker's decisions taken under the anti-defection law. This has generated a lot of controversy between the judiciary and the legislature on the one hand and between the Executive and the judiciary on the other. Truly speaking, no organ of the Constitution is supreme. Nor can any organ claim supermacy over others. It is the Constitution which is the supreme. We should respect judiciary. Now-a-days the Executive, the Judiciary and the Legislatures all have deviated from their paths. They have failed to live up to the hopes and the aspirations of the people. I think it is not the Constitution which should be blamed for this state of affairs. Even an unwritten Constitution can do well. If need be, we can make suitable changes in our Constitution as our Constitution is an elastic Constitution. But amendments alone can't serve our purpose. It is the bonafide of our intention and meaningful policies which will bring good to the people. If

our policies are not good, we cannot do good to the people, no matter our Constitution is, howsoever good. If our policies are good, even a bad Constitution will deliver the goods.

SHRI J.K. MITTAL *(Indian Law Institute)* : Anybody who reads the debates of the Constituent Assembly would appreciate as to why the policy of loose federation of the Cabinet Mission was reversed because it could not fulfill the aspirations of the people of the country. The leaders of the Indian freedom movement favoured a strong Centre for the country. However, we have to see that the powers given to the Centre are not misused and some part of control mechanism acts, etc. should be evolved.

We have come across hundreds and thousands of socialism since the commencement of the Constitution, but till today we do not know what exactly is meant by socialism. Today we have entered into a process of liberalisation but then, are we going to have State control? State regulatory control of all the goods, can it be there? Development models for this country are needed. In a country of mass population like India it is not easy to talk of capitalist model. Market economy means it will lead to many phases in the country. The aspirations of villages have to be seen. It is very difficult, because today we cannot contain the youth, we cannot contain the people and therefore the success of the State would depend on the delivery of goods, on the delivery of services to the people at large and if the State fails then of course it can be taken that the country would be deemed.

My first suggestion is that we must capitalise the youth of this country and use the researchers coming from the university. We have a big task force in the universities, in the schools, in research institutions and many other institutions and this is the time when we must harness the quality of the youth. We must train them and create a task force for development, especially of rural India. It is very important because unless we narrow down the gap between the urban India and the rural India till then perhaps we will not achieve development and curb migration.

SHRI ANIL MUKHERJEE *(Deputy Speaker, West Bengal Legislative Assembly)* : Today we see in Delhi, politicians speaking about national

integration and tomorrow we will find them in Ayodhya speaking in a different language. This is the big interrogation as to why this sort of separatist, secessionist and parochial movement and communal riot is going on in India. Is it the fault of the Constitution or is it the fault of the people about which we shall have to think over it. The influential forces and the vested interests are trying to destabilise India. They want to make India as in Russia.

Dr. Ambedkar had said that the Constitution is just like a lamp. A lamp can remove darkness, a lamp can burn a house. The application of the constitutional provisions will generate bad and good things. It depends upon the operators of the Constitution. The Constitution has provided us everything. Constitution wants that India should be a socialist country. But in practice what we are doing now? We are introducing market economy. We are going to invite foreigners. That means in precept we want scientific socialism, but today in practice we are deviating from the precept of the Constitution and making the country a capitalist one. We are going completely against the socialism.

I do not say the American Constitution is the ideal. But it has a presidential form of Government, where all the States are autonomous and powerful. Is there any weak Centre at America? It is definitely not. If the decentralisation is made up to the Panchayat level by amending the Constitution, as suggested by various speakers, that would help economic development. Mr. Upendra has said regarding articles 356 and 352. Many speakers have said regarding the amendment of that provision because in working of the democracy, in working of the Centre-State relations and for making a strong Centre, the use of article 356 or its modification or the power of the Governors or appointment, all these questions, which were raised, should be looked into and more and more power, specially the economic power, to the States is to be given so that they would not go to the Centre with a bowl for begging for development of their own State.

PROF. R. K. BARIK *(Indian Institute of Public Administration)* : Dr. Ambedkar succeeded to give a weapon to low castes to fight against Brahminism and upper castes in the form of Indian Constitution.

The chapter on Fundamental Rights in the Indian Constitution is crucial to the lower strata of the society to fight for justice, equality and

for liberty. The right to equality is a weapon for their political and social rights. It is basically a people's document. But the rights and their dignity is being attacked by the political parties and by the Indian capatalists. Is the present political system going to protect our democracy? Without democracy, there is no Constitution. Moreover, opening of our economy to multi-national corporations and the liberalisation policy is going to affect basically the lower classes and lower castes for whom Dr. Ambedkar fought throughout his life. Without reservation, the lower classes cannot protect their rights. Therefore, unless the constitutional provision of reservation is implemented properly and unless the democratic system survives, the lower classes and the poor people will suffer and it will be a disrespect to the Father of Indian Constitution, Dr. Ambedkar.

DR. JOSEPH VERGHESE *(Advocate, Supreme Court)* : The three Armed Forces under our Constitution are under the direct control of the President. And the way the Army is being used in some States, especially in Assam, is not correct.

Right to equality without the context of social justice has no meaning. That is why, the Courts interpreted Right to Equality in terms of protective discrimination. To the extent of frustration it has created in implementation, it would have been much better if those provisions should not have been there.

So far as the State Re-organisation is concerned, it has bungled. The case of Jharkhand is a glaring example of such bungling. If Bihar and Madhya Pradesh are divided on the ground of language, why was the tribal land cut into three or four pieces? The same thing has happened in the western sector also. Similar is the case in Maharashtra. So too in Madhya Pradesh and Rajasthan. In all these four States, if you cut the tribal areas together, there is no reason why one and the same tribe has been cut into four and given to four different States. So, the double standard used against these people has been totally unconstitutional. Government should take over all those areas as Union Territories and then have the feasibility of establishing a State.

They talk of two nation theory because of non-understanding of the lower strata of the people. The Hindus, Muslims and Christians had Mandirs, Masjids and Churchs together in the South. Muslims, Christians or Hindus never had the problem of communal riots in down South.

Without understanding this, they are distorting the historical aspect of it.

Surguja district of Madhya Pradesh is today, under the grip of famine. 90 per cent of the tribals who are living there have faith in Christianity. The condition the Government of Madhya Pradesh have imposed to save them from famine is that, they will give food only if the tribal convert themselves to other religion from Christianity. That is the kind of secularism the State of Madhya Pradesh is practising.

SHRI R.K. NAYAK *(Indian Law Institute)* : India is a multi-racial, multi-lingual and multi-religious land. The Indian Constitution, as social document, has worked amidst this diversity and there has been unity through it. However, there are certain fissiparous and disruptive tendencies today which tend to undermine the solidarity of our people.

Certain vested interest seem to be directly or indirectly behind every manifestation of communal disharmony and behind every caste consciousness act in India. If we are all earnest about creating an egalitarian and a just society, it is high time that we realised the ambition of living as one nation. Education should be geared up from the primary to the university levels for creating an egalitarian society in India. Caste and social distinctions should be allowed to be forgotten.

Religious instructions should be made compulsory in schools and colleges. In this matter of religious instruction, the emphasis might be on secularism and secularism itself being the tolerance of all religions.

Our love for one language has been geared to disunity. There are people who are opposed to a single language for India and that single language is only Hindi which has been travelling throughout the length and breadth of the country. In this regard, some hard decision has to be taken by the Government.

The presence of a large number of hungry, homeless, sick, miserable and downtrodden people is a great challenge to the unity of our nation. The imbalance in the economic development existing between the extremely poor and the backward areas creates unhealthy rivalries among States. So, communalism, regionalism, linguism and narrow-mindedness are the evils that corrode the very vitals of our nation. Without

national discipline and a national ethos, national integration in the country may not be possible in reality.

MR. CHAIRMAN summing up the proceedings said : The discussions at the Seminar threw light on the diverse aspects of the functioning of our Constitution. This Seminar has certainly made us more aware of the problems and prospects of the working of our Constitution. During the last four decades, the Constitution has enabled us to address the myriad problems confronting us — political, economic and social. It has been an instrument for economic growth and social justice. While we all agree that much has been achieved in this regard since Independence, we are also unanimous when we say that, much more remains to be done.

The Constitution of our country is a product of the cumulative wisdom of the giants of our freedom struggle. It is not a static concept. No Constitution, like human beings, is perfect and the Indian Constitution is no exception to this general rule. It is up to us, the practitioners of the Constitution, to make it a vibrant and viable blueprint to cope with the challenges of the time. As Shri Shivraj Patilji said in his inaugural address, the nation would do well to follow Dr. Ambedkar's advice in many matters relating to the fundamental law of the country and the restructuring of the society. The common grounds where we have found almost a consensus were that the Constitution of India is a very good document, a product of deep and profound thoughts which went into the concept of drafting and adopting in the Constituent Assembly. The founding fathers of the Constitution were national leaders who led the freedom struggle as well as a socio-economic uplift movement and were visionaries, farsighted and statesmen. The basic features embedded in the Constitution are in keeping with the Indian ethos and the ancient values and they need no changes. But, the implementation of the Constitution needs to be done in keeping with its letter and spirit. However, there are some areas where changes in the Constitution may be called for. A suggestion for having a National Commission to consider this matter and make recommendations needs serious consideration at all levels. I will request the Hon. Speaker to carefully consider the points that have emerged out of the Seminar and take necessary action at his level.

SHRI YUDHISTHIR DAS *(Speaker, Orissa Legislative Assembly)* : I am very thankful to the participants who have spoken on the 'Constitution of India in Precept and Practice'. I also thank the Chairman for conducting the proceedings of the Seminar patiently and diligently and I also owe a lot of thanks to the Officers and the Staff of the Lok Sabha and the Rajya Sabha who have assisted in making this Seminar a success.

SHRI SHARAD DIGHE *(M.P., Lok Sabha)* : I extend hearty vote of thanks to not only Parliamentary Group for Dr. B.R. Ambedkar Birth Centenary Celebrations and to the Indian Parliamentary Group and the Bureau of Parliamentary Studies and Training but particularly to Shri Buta Singhji for having taken this initiative and having organised this Seminar at this juncture. We are also thankful to Hon. Speaker of Lok Sabha for having joined and made this Seminar a success. I must also thank the Secretary-General and his colleagues for having given us the background papers on the subject and having made all arrangements which facilitated us to participate in the Seminar.

I wish that such seminars would be held in different parts of the country.

SHRI C.K. JAIN *(Secretary-General, Lok Sabha)* : On behalf of our colleagues in Lok Sabha and Rajya Sabha Secretariats and on my behalf, I wish to thank all the participants and express our heartfelt gratitude to inspire us throughout to assist them in making this Seminar a reality. I also take this opportunity of expressing our gratitude to the Hon. Speaker, Hon. Deputy Chairman, Rajya Sabha, Hon. Deputy Speaker, Lok Sabha, all the Hon. keynote Speakers, Hon. Ministers, Parliamentarians, State Presiding Officers, Judges, Lawyers, Journalists and other Academicians and also all our honoured guests including our former colleagues who took the trouble of coming to attend this Seminar and make it a successful and useful one.

I also thank the Press who has given a good coverage to the Seminar.

(The Seminar Concluded.)

SYNOPSIS OF THE PROCEEDINGS OF THE SEMINAR ON "INDIAN CONSTITUTION - A CASE FOR REVIEW" HELD ON 31ST AUGUST, 1991 UNDER THE JOINT AUSPICES OF THE DELHI METROPOLITAN COUNCIL AND THE BUREAU OF LEGISLATIVE STUDIES

(Shri K.N. Seth, Director, BLS, in the Chair)

SHRI PURSHOTTAM GOYEL *(Chairman, Metropolitan Council, Delhi)* welcomed the distinguished participants and requested Shri Shivraj V. Patil, Speaker, Lok Sabha to inaugurate the Seminar.

SHRI SHIVRAJ V. PATIL *(Speaker, Lok Sabha)* :The topic which has been selected is "Constitution — A Case for Review". This means Constitution has to be amended. That is something which has to be done very carefully and if we have to amend the Constitution, the jurists, the Parliament-arians and ultimately, the people should be consulted.

The Preamble of the Constitution is a very important part of the Constitution and is a very good preamble but we should have emphasised the cultural aspects of the country also in the Preamble. It should be mentioned in the Preamble that cultural aspect is also important and we would like to protect and develop national and international culture.

One of the most important chapters of our Constitution relates to the fundamental rights at the international level also. All the fundamental rights which are mentioned in this chapter are important and they should continue to be enjoyed by the citizens in India. We have mentioned in our Constitution that we have a right to life. The citizen of India will not be deprived of his life without following due process of law. But this is not sufficient. Right to life also means right to food, right to work, right to education, right to shelter, and right to medicare. It should be seen that these rights are enjoyed by all the citizens. Therefore, the time has come

now to include these rights in the chapter of fundamental rights. If these basic and primary rights are not given to the citizens, we are not really doing justice to all. This aspect has to be considered whether it can be done or not? If it has to be done how it can be done?

Our Constitution speaks about duties to protect our Constitution, national flag and respect national anthem and national flag, to follow the noble ideals and protect sovereignty, unity and national integrity etc. These are the duties to the society as a whole. These are very good duties and they should remain in the Constitution. As rights and duties go together, the concept of duty has to be accepted. If we do not do our duty, it will not be possible for the State to provide all the rights to the citizens. Only when we accept the concept of duty, it would be possible to do real justice to all against the State, against the organisations and against the individuals. So I believe in the ideas that this concept as given in the Constitution has to be examined more carefully in a very clear manner, so as to see that each one of us while asking for the rights should do his duty also.

In the Parliamentary system, it is the accountability which is more important. The executive is accountable to the elected representatives of the people in the Legislature. Under the American Constitution, the executive is accountable to the people and to the Senate. No Confidence Motion can be moved against the President of America. Only the impeachment Motion can be moved and that too for personal wrongs and not for wrong policies. So, under the American Constitution, the President's authority is stable for four years. In French model, President is elected by more than 50 per cent of the voters and he is quite stable over there for seven years as he cannot be removed by the National Assembly. President in France is not totally accountable but he is very stable.

In Great Britain, Canada and in Australia, the emphasis is more on accountability than stability. Though there are many other devices also which can be considered to provide for stability without removing the accountability, we must find something which can be our own for solving our problems.

The question of decentralisation is very important. In the Directive Principles of our Constitution, it is mentioned that there should be Panchayati Raj. The elections to the Parliament are held every five years, but elections to Gram Panchayats are not held regularly. We have

to provide for decentralisation in the Constitution itself to ensure democracy at grass-root level.

The coordination between the Central Executive and the State Executive is very important. Is there anything in the Constitution which provides for that? The National Development Council and the National Integration Council are there, but there are not constitutional bodies. The State Council is provided in the Constitution, but it is not solving the problems. So, we have to carefully study this aspect.

There was a time when more importance was attached to Planning, but now we are not attaching that importance to Planning and saying that market forces should be allowed to play their role in order to bring about prosperity. But in developing countries, where natural resources are very scarce we should have minimal facilities for common masses. If in our country, the society is to be built, then rural planning will have to be taken up first to bring a colossal change in the entire fabric of our country. Therefore, the concept of rural planning needs top priority. We have not mentioned the planning in our Constitution. Even Planning Commission has no constitutional authority. Micro-level and detailed planning has to be provided in those areas which are outlined in the Constitution. Is it possible to incorporate planning in our Constitution? That is a problem which needs attention.

The judiciary has done a splendid job. Even today, people have faith in judiciary and judiciary should be protected. But is not judiciary overburdened today? Every year, we are passing laws by State Legislatures and the Central Legislature in big numbers and then asking the court to decide and interpret those laws. Will it not be too much a burden? We can have a wing of judiciary — a constitutional wing — at all levels dealing with various matters. Tribunals, Courts or call them anything, but that hierachy can certainly help in lessening the burden of the judiciary.

The question today is who should amend the Constitution? Now there are judicial decisions that basic structure of the Constitution cannot be amended. When Parliament passes the amendment, it becomes the Constituent Assembly, and the Constitution provides for amendment. But supposing we want to make drastic changes, should it be by Parliament or separate Constituent Assembly? Now this is very important question. Sovereignty of Parliament can be exercised when it is acceptable to the people. So, it should be considered that the Constitution

should be amended by the existing Parliament or by the Constituent Assembly or by making a reference to the people? Our Constitution is dependent on the basic spiritual-cultural ethos of the country and it has helped in solving many of our problems. If the changes are taking place in technology, science, administrative methods, in the views of the people and their philosophy, is it not necessary to have a fundamental law which will cater to the requirements in all these fields? So, this is one of the finest Constitutions in the world and yet there is a judicious scope for amending the Constitution.

SHRI MARKANDEY SINGH *(Lt. Governor, Delhi)* : It is the value system, it is the scale of values to which the people of a country and the people in politics have to stick and follow besides working out any constitutional provisions. It is in the context of this spirit that we encounter difficulties. The Hon'ble Speaker has also enlightened us about the spirit of the Indian Constitution and about the frame-work which is necessary for a Parliamentary system which leads to an inescapable conclusion that it is the man behind the Constitution for whose betterment the Constitution is framed and aims at. It is the man who works the Constitution and consequently it is also the man who is responsible, and it is his bonafides and want of it which contributes to the success or failure of the Constitution itself. Whether we would like to have an amended Constitution or only a Constitution of a limited size so that the laws and policies are evolved; this we should delibrate upon.

Coming to the Presidential system, we can claim to have seen the fate of the Presidential system in Bangladesh, Burma and in Sri Lanka. Once there is concentration of power, there is always a force which drives in the opposite direction. The stronger the power of concentration, the stronger is the force which drives to the opposite direction. Therefore, there has to be some kind of adjustment in the federal structure so that the States remain viable and are not crushed.

SHRI VASANT SATHE *(Former Union Minister)* : If we look at our Constitution, we shall come to know about the factual position. Let us have a look at it from the beginning. If we look at the Act of 1952, we shall come to know to what is the real power under the Constitution. The President is elected under the Constitution and from there starts the Parliamentary democracy.

Now let us come to the Parliament. We take pride in saying that there is accountability in our system. But this accountability is only theoretical and not day-to-day accountability. Day-to-day accountability is that of the Prime Minister and the Council of Ministers. The Members of Parliament are called to account during the elections. Therefore, the situation has come to such a pass that elections are taking place every six months or every year. The Government that is elected must complete its term. What is the use of electing a Government which cannot last its full term? That is why the President invites a person who enjoys majority, though minority Government is also functioning at present, but it is a constitutional lacunae.

The Hon. Speaker just now read out the text of the Preamble. It says that all citizens would be given social, economic and political justice. There would be equality and freedom to all. There would be equality of opportunity to all. Now after 40 years of Independence, we should peep into our hearts and ask a question from ourselves whether equal opportunity has been given to all? The poor man is finding it difficult to make both ends meet. The preamble says that the integrity and unity of the country will be maintained. Does it look like being maintained?

Efforts are being made to disintegrate the country. That is why I want that the Constitution should be reviewed. We need not make radical changes in it. We have to make minor changes to see that the Centre becomes strong. If Centre is strong, the States will also be strong. Of course, provisions should be made to make the States also strong. For this there is not need to change the basic structure of the Constitution.

It we have smaller States, people will progress in all spheres. My only request is that we should give some more powers to Parliament so that bills etc. are passed for the entire country. This only will result in stability in the country.

We are infact becoming weak day by day. Our policies and system are also becoming weak. There is no accountability in this system. We should learn a lesson from history. If we do not recognise the crisis being faced by the country, and do not unite and sit together to solve it, we will never be able to solve it in future. My humble suggestion is that we should have a National Government; we do not have any other alternative. We should consider Parliament as Constituent Assembly and should see as

to what changes can be brought in the Constitution. We need only minor changes in it. We can take the country forward with these minor changes.

JUSTICE A.N. GROVER *(Former Judge, Supreme Court of India)*: I fail to understand whether it is our Constitution is to be blamed that we have come to a stage where I do not understand what has happened to our country. What has happened and what is happening to the representatives of the people today? The big question is: Are they doing what they are expected to do? Now I would like to understand by which Constitutional amendment you can inject all these things in those people. Why is it so? Is it the authority of the Constitution? Therefore, I would like you to consider from this point of view what changes we can make in the Constitution to get rid of this unfortunate situation?

Personally I do not think that merely by changing the system from Parliamentary to Presidential, you will be able to achieve what you desire. Amend the Constitution by all means. (Of course, I subscribe to the basic structure theory.) But unless you make some drastic changes in the Representation of the People Act or in Constitution by drawing right sort of people to the Parliament, whether you have Parliament under the Parliamentary system or the Presidential system, I do not think anything will be materially achieved. It will be only of an academic nature. What is really required is to create a kind of social revolution in the thinking of the people of this country. In this kind of atmosphere prevailing in our country, everything has been criticized, Constitution is criticised, even judiciary is criticised. That is one reason why judiciary is lagging behind in many matters. In the past, distinguished retired Chief Justices and judges were appointed to head important Commissions. Their reports were seldom subjected to criticism and carried enough weight. I am only drawing attention to such tendencies which have lately developed but which cannot be stopped by constitutional amendments.

MS. SHYAMALA PAPPU *(Senior Advocate, Supreme Court)* : Today after 44 years of independence, we feel that the things are slipping out of our hands. Nothing is moving. Everything is status-quo and we want to change this status quo. Therefore change is needed. Let us try presidential form of Government. Let us have a President with checks and balance — not a Dictator.

The legislators are not performing their duties and they are becoming un-important to-day? Because we are living in the world of 'Aya Ram-Liya Ram'. We want to remove this from the parliamentary system. Let the legislators not have a say whether the President is to be removed or not. Let him stay in office so that counting of heads will go and the value that is attached to each head will no longer be there. We want our country to have a very healthy democracy.

Today in 1991, it is essential to have a change in Constituent Assemblies. In this regard, something has to be thought of by lawyers, by parliamentarians, by thinkers, by politicians who have experiences of their own and by those who lived in these difficult situations.

Let us give greater power to centre. Unless there is a strong centre, there is autonomy of the State governments, they will not function properly.

As regards arrears in Supreme Court, I blame the concurrent List, especially where states have been indicated. A large percentage of litigation i.e. about 40 percent is of the State Government themselves. It there is a Central law in regard to these aspects, then there will be less litigation, less burden on Supreme Court and also less arrears.

Planning is essential but it should be within the Constitution. Unless there is a plan, we cannot move. Therefore, planning should be operational.

Let the women have their due share. Let us have better opportunity for women. Let us change the status-quo. Let us have a Government that moves forward and solves our problems.

SHRI MADHU LIMAYE *(Ex-M.P.)* : Amendments in our Constitution should be in tune with the real problems facing the country. Any discussion which does not take the ground reality into account will not yield fruitful result. Discontent is brewing in the states and the demand for more autonomy to the states are not attributable to the provisions of the Constitution. It could be attributed to the persons responsible for the working of the Constitution. In 1971, when Shrimati Indira Gandhi came into power she dismissed a number of State Governments. Same thing was done by the Janata Party in 1977. Therefore, before introducing

Presidential form of Government, we should remove the ills that we are facing.

The spirit behind our Constitution was that ours is a one nation and we all are its citizens. Today, we have forgotten our responsibility to the nation. We are collectively looting the country. We have become selfish and we patronise dynastic rule. The leaders belonging to all political parties are bringing their kith and kin in politics. Before making any change in the Constitution, we have to take into account the necessity of our society and historical background.

In India, elections are being held after every two or three years. We know that elections have become very expensive involving expenditure ranging from Rs. 15 to 20 lakh. In USA, elections of the President are held on fixed time. Similarly, elections of the Lok Sabha and State Assemblies should be held after five years only. Only one election should be held in a period of five years.

The question of defections has been a matter of discussion since 1967. The defection which is done due to ideological differences is not bad but the defection which is made solely with a view to getting a Ministerial post is not only bad but immoral also. Therefore, the persons seeking defection should be banned for getting any ministerial post for a period of five years from the date of defection.

I am in favour of smaller States. When State Reorganisation Commission was set up in 1956, it should have been done.

There is need of curtailment in the size of bureaucracy. In all Government Departments and Public sector, there is surplus manpower. Same is the case with the private sector also.

As regards, solving the problem of Ayodhya, it should be resolved either by the Supreme Court or through negotiations. In this regard, I sent a very good plan to Shri. V.P. Singh, Shri Chandra Sekhar and Shri P.V. Narasimha Rao but no one paid any attention to my plan.

As regards the demand of Khalistan etc., it has its germs in the dismissal of Akali Government in Punjab not once but thrice. It is said that Centre should be strengthened and State should also be strengthened. I would like to say that first it should be defined as to what we mean by strengthening of the Centre.

A large number of cases are pending in the Supreme Court and the High Courts. It has been seen that a number of time, hearings are adjourned by the judges on the request of senior counsels. This resulted in accumulation of arrears of cases in the Courts. Same situation prevails in the Universities where University teachers do not attend to their classes. As a matter of fact, this sorry state of affairs is prevailing in almost all walks of our life including judiciary, polity etc.

There is no need to change our basic structure i.e. Parliamentary form and federal system of our Constitution. Of course, there is need to change the Constitution here and there, but before changing the Constitution, the men and the political parties responsible for working of the Constitution are required to be changed.

Part X
Amendments to the Constitution

AMENDMENTS TO THE CONSTITUTION OF INDIA
1950-92

The Indian Constitution has been amended as many as 71 times during the span of 43 years of its existence. Brought about at an average of one almost every seven months and touching upon a wide area right from the Preamble to the Tenth Schedule, some of these amendments have indeed been quite significant. When we debate the need for a review of the Constitution, it would not only be interesting but also very useful to have a glance at the changes that have been made in the Constitution from time to time. It is with this purpose that we are giving below a gist of all the amendments carried in the Constitution so far, alongwith some important information relating to them, *viz.* the dates of their introduction, debate and assent as also whether the Amendment Bill was refered to a Select Committee/Joint Committee.

The Constitution (First Amendment) Act, 1950 : This amendment provided for several new grounds of restrictions on the right to freedom of speech and expression and the right to practise any profession or to carry on any trade or business as contained in article 19. These restrictions related to public order, friendly relations with Foreign States or incitement to an offence in relation to the right to freedom of speech, and to the prescribing of professional or technical qualifications or the carrying on by the State, etc. of any trade, business. The amendment also inserted two new articles 31A and 31B and the Ninth Schedule to give protection from challenge in the courts to Land Reform Laws besides making amendments to articles 15, 19, 85, 87, 174, 176, 341 and 376 of the Constitution.

Introduction : Parliament (Provisional) 12 May 1951; Referred to Select Committee; *Debated* : 12, 16-18, 23, 25, 29, 30-31 May and 1, 2 June 1951; *President's Assent* : 18 May 1951.

The Constitution (Second Amendment) Act, 1952 : By this amendment, the scale of representation for election to the Lok Sabha was readjusted by amending article 81.

Introduction : L.S. 18 June 1952; Referred to Select Committee; *Debated*: L.S. 18 June, 8-9 July, 11-18 Nov., 9-10 and 15 Dec., 1952; R.S. 15 & 18 Dec., 1952; *President's Assent* : 1 May 1953.

The Constitution (Third Amendment) Act, 1954 : The amendment substituted entry 33 of List III (Concurrent List) of the Seventh Schedule to make it correspond to article 369 so as to enable Parliament to legislate in respect of certain specified essential commodities.

Introduction : L.S. 6 Sep. 1954; Referred to Joint Committee; *Debated*: L.S. 6, 10, 11, 13, 20 and 22-23 Sep. 1954; R.S. 15, 16, 24, 27 and 28 Sep. 1954; *President's Assent*: 22 Feb. 1955.

The Constitution (Fourth Amendment) Act, 1955 : Article 31 (2) was amended to re-state more precisely the State's power of compulsory acquisition and requisitioning of private property and to distinguish it from cases where the operation of regulatory or prohibitory laws of the State results in "deprivation of property". Article 31A was also amended to extend its scope to cover categories for essential welfare legislation like abolition of *zamindaris*, proper planning of urban and rural areas and for effecting a full control over the mineral and oil resources of the country, etc. Six Acts of the aforesaid nature were also included in the Ninth Schedule besides amending article 305 to save certain laws providing for State Monopolies.

Introduction: L.S. 20 Dec. 1954; Referred to Joint Committee; *Debated:* L.S. 20 Dec. 1954; 14, 15 and 31 March and 11, 12 Apr. 1955; R.S. 17 and 19 Mar. and 19 and 20 Apr., 1955; *President's Assent* : 27 Apr. 1955.

The Constitution (Fifth Amendment) Act, 1955 : The amendment made a change in article 3 so as to empower the President to specify a time limit for State Legislatures to convey their views on the proposed Central laws affecting areas, boundaries, etc. of their States.

Introduction : L.S. 9 Dec. 1955; *Debated*: L.S. 12 and 13 Dec. 1955; R.S. 15 Dec., 1955; *President's Assent* : 24 Dec. 1955.

The Constitution (Sixth Amendment) Act, 1956 : By this amendment, some changes in articles 269 and 286 relating to taxes on sale and purchase of goods in the course of inter-state trade and commerce were made. A new entry 92A was added to the Union List of the Seventh Schedule to place taxes on inter-State sales and purchases within the exclusive legislative and executive power of the Union.

Introduction: L.S. 3 May 1956; Referred to Joint Committee; *Debated* : L.S. 7 & 29 May 1956; R.S. 16 & 31 May 1956; *President's Assent* : 11 Sep. 1956.

The Constitution (Seventh Amendment) Act, 1956 : This amendment purported to give effect to the recommendations of the State Reorganisation Commission and the necessary consequential change by amending articles 1, 80, 81, 82, 158, 168, 220, 224, 239, 240, 371 and the First, Second & Fourth Schedule and by inserting articles 290A, 350A & B, 372A and 378A in the Constitution. The amendments also provided for for change in the composition of the House of the People, re-adjustment after every census, provisions regarding the establishment of new High Courts, High Courts Judges, etc.

Introduction : L.S. 18 Apr. 1956; Referred to Joint Committee; *Debated*: L.S. 26 & 27 Apr, 4-6 Sep. 1956; R.S. 2 May and 10 & 11 Sep. 1956; *President's Assent* : 14 Oct. 1956.

The Constitution (Eighth Amendment) Act, 1960 : Article 334 was amended with a view to extending the period of reservation of seats for Scheduled Castes and Scheduled Tribes and to the Anglo-Indian community by nomination in Parliament and in State Legislatures for a further period of ten years.

Introduction : L.S. 16 Nov. 1959; *Debated* : L.S. 30 Nov. & 8 Dec. 1959; R.S. 7 Dec. 1959; *President's Assent* : 5 Jan. 1960.

The Constution (Ninth Amendment), Act, 1960 : The First Schedule was amended to give effect to the transfer of certain territories to Pakistan in pursuance of the Indo-Pakistan agreements dated 10 September 1958, 23 October 1959 and 11 January 1960.

Introduction : L.S. 16 Dec. 1960; *Debated* : L.S. 19 & 20 Dec. 1960; R.S. 22 & 23 Dec. 1960; *President's Assent* : 28 Dec. 1960.

The Constitution (Tenth Amendment) Act, 1961 : This Act amended article 240 and the First Schedule in order to include areas of Dadra and Nagar Haveli and a Union territory and to provide for its administration under the regulation making powers of President.

Introduction: L.S. 11 Aug. 1961; *Debated*: L.S. 14 Aug. 1961; R.S. 16 August 1961; *President's Assent* : 16 Aug. 1960.

The Constitution (Eleventh Amendment) Act, 1961 : The purpose of this amendment was to amend articles 66 and 71 to dispense with the requirement as to joint sitting of the Houses of Parliament for election of the Vice-President and to provide that the election of President or Vice-President could not be challenged on the ground of any vacancy in the appropriate electoral college.

Introduction : L. S. 30 Nov. 1961; *Debated* : L.S. 5 Dec. 1961; R.S. 12 Dec. 1961; *President's Assent* : 19 Dec. 1961.

The Constitution (Twelfth Amendment) Act, 1962 : The Act amended article 240 and the First Schedule to include Goa, Daman and Diu as a Union territory and to provide for its administration under the regulation-making power of President.

Introduction: L.S. 12 Mar. 1962; *Debated*: L.S. 14 Mar. 1962; R.S. 20 Mar. 1962; *President's Assent* : 27 Mar. 1962.

The Constitution (Thirteenth Amendment) Act, 1962 : By this amendment, a new article 371A was added to make special provisions with respect to State of Nagaland in pursuance of an agreement between Government of India and Naga People's Convention.

Introduction : L.S. 21 Aug. 1962; *Debated* : L.S. 28 Aug. 1962; R.S. 3 Sep. 1962; *President's Assent* : 28 Dec. 1962.

The Constitution (Fourteenth Amendment) Act, 1962 : By this Act, Pondichery was included in the First Schedule as a Union territory. The Act has also enabled the creation of Legislature by parliamentary law for Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondichery by inserting a new article 239A in the Constitution. Consequent amendments have been made in article 81 and the Fourth Schedule.

Introduction : L.S. 30 Aug. 1962; *Debated* : L.S. 4 Sep. 1962; R.S. 7 Sep. 1962; *President's Assent* : 28 Dec. 1962.

The Constitution (Fifteenth Amendment) Act, 1963 : This Act amended articles 124, 128, 217, 220, 222, 224, 226, 276, 297, 311, 316 and the Seventh Schedule and inserted a new article 224A to mainly provide for matters relating to transfers, age of retirement of High Court Judges and appointment or retired High Court Judges to act as Judges of High Court. The scope of article 226 was also enlarged to empower High Court to issue Direction, Orders or Writs to any Government Authority, etc., if the cause of action for the exercise of such power arose in the territories wherein the High Court exercise jurisdiction notwithstanding that the seat of such Government Authority is not within those territories. The Act also provided for the exercise of powers of Chairman of the Service Commissions, in their absence, by one of their Members.

Introduction : L.S. 23 Nov. 1962; Referred to Joint Committee; *Debated* : L.S. 8 & 11 Dec. 1962, 20 & 30 April and 1 May 1963; R.S. 12 Dec. 1962, 7 & 9 May 1963; *President's Assent* : 5 Oct. 1963.

The Constitution (Sixteenth Amendment) Act, 1963 : Article 19 was amended by this Act with a view to preserving and maintaining the integrity and sovereignty of the Union. Articles 84, 173 and the Third Schedule have also been amended to provide that the oath or affirmation to be subscribed by candidates seeking election to Parliament and State Legislatures shall include as one of the conditions that they will uphold the sovereignty and integrity of India.

Introduction : L.S. 21 Jan. 1963; Referred to Joint Committee; *Debated*: L.S. 22 Jan. & 2 May 1963; R.S. 25 January & 9 May 1963; *President's Assent* : 5 Oct. 1963.

The Constitution (Seventeenth Amendment) Act, 1964 : This Act modified the definition of "estate" in article 31 A and amended the Ninth Schedule by including therein certain State enactments.

Introduction : L.S. 27 May 1964; *Debated* : L.S. 1 & 2 June 1964; R.S. 4 & 5 June 1964; *President's Assent* : 20 June 1964.

The Constitution (Eighteenth Amendment) Act, 1966 : Article 3 was amended by this Act to specify that the expression "State" will include a Union territory also and to make it clear that the power to form a new State under this article includes a power to form a new State or Union territory.

Introduction: L.S. 25 July 1966; *Debated*: L.S. 10 Aug. 1966; R.S. 24 Aug. 1966; *President's Assent* : 27 Aug. 1966.

The Constitution (Nineteenth Amendment) Act, 1966 : Article 324 was amended to effect a consequential change as result of the decision to abolish Election Tribunals and to hear Election Petitions by High Courts.

Introduction : L.S. 29 Aug. 1966; *Debated* : L.S. 8, 9, 10 & 22 Nov. 1966; R.S. 30 Nov. 1966; *President's Assent* : 11 Dec. 1966.

The Constitution (Twentieth Amendment) Act, 1966 : This amendment was necessitated by the decision of the Supreme Court in Chadramohan Vs. State of Uttar Pradesh in which certain appointments of District Judges in the State of Uttar Pradesh were declared void. A new article 233 A was added and the appointments of, and judgements etc. delivered by, district judges were validated.

Introduction : L.S. 25 Nov. 1966; *Debated* : L.S. 3 Dec. 1966; R.S. 9 Dec. 1966; *President's Assent* : 22 Dec. 1966.

The Constitution (Twenty-first Amendment) Act, 1967 : By this Amendment, Sindhi language was included in the Eighth Schedule.

Introduction: R.S. 20 Mar., 1967; *Debated*: R.S. 4 Apr. 1967; L.S. 7 Apr. 1967; *President's Assent* : 10 Apr. 1967.

The Constitution (Twenty-second Amendment) Act, 1969 : This Act amended article 275 and inserted new article 244 A and 371 B to facilitate the formation of a new autonomous State of Meghalaya within the State of Assam.

Introduction : L.S. 10 Apr. 1969; *Debated*: L.S. 15 Apr. 1969; R.S. 30 Apr. 1969; *President's Assent* : 25 Sep. 1969.

The Constitution (Twenty-third Amendment) Act, 1969 : Article 334 was amended so as to extend the safeguards in respect of reservation of seats in Parliament and State Legislatures for Scheduled Castes and Scheduled Tribes as well as for Anglo-Indians for a further period of ten years. Articles 330, 332 have been amended for discontinuance of such reservation for Scheduled Tribes in Nagaland. Amendment to article 333 provided for nomination of only one member of Anglo-Indian community to a State Legislative Assembly.

Introduction : L.S. 21 Aug. 1969; *Debated* : L.S. 8 & 9 Dec. 1969; R.S. 16 & 17 Dec. 1969; *President's Assent* : 23 Jan. 1970.

The Constitution (Twenty-fourth Amendment) Act, 1971 : This Amendment Act, passed in the context of a situation that emerged with the verdict in Golaknath Case by Supreme Court, amended articles 13 and 368 to remove all doubts regarding the power of Parliament to amend the Constitution including the Fundamental Rights. Further, it was made obligatory for the President to give his assent when a constitutional amendment Bill is presented to him.

Introduction : L.S. 28 July 1971; *Debated* : L.S. 3-4 Aug. 1971; R.S. 10-11 Aug. 1971; *President's Assent* : 5 Nov. 1971.

The Constitution (Twenty-fifth Amendment) Act, 1971 : This Act further amended article 31 in the wake of the Bank Nationalisation Case. The word 'amount' was substituted in place of 'compensation' in the light of the judicial interpretation of the word 'compensation' meaning 'adequate compensation' besides inserting a new article 31C providing for saving of laws giving effect to certain Directive Principles.

Introduction : L.S. 28 July 1971; *Debated* : L.S. 30 Nov. and 1 Dec. 1971; R.S. 7-8, 1971; *President's Assent* : 20 Apr. 1972.

The Constitution (Twenty-sixth Amendment) Act, 1971 : By this Amendment Act the privy purses and privileges of the former rulers of Indian States were abolished by omitting articles 291 and 362. The Act also amended article 366 besides inserting a new article 363 A.

Introduction : L.S. 9 Aug. 1971; *Debated* : L.S. 2 Dec. 1971; R.S. 9 Dec. 1971; *President' Assent* : 28 Dec. 1971.

The Constitution (Twenty-seventh Amendment) Act, 1971 : This Amendment Act was passed to provide for certain matters necessitated by the reorganisation of North-Eastern States by amending articles 239A and 240 and by inserting a new article 371C. A new article 239B was also inserted which enabled the promulgation of Ordinances by Administrators of Union territories when their legislatures are not in session.

Introduction: L.S. 21 Dec. 1971; *Debated*: L.S. 21 Dec. 1971; R.S. 23 Dec. 1971; *President's Assent* : 30 Dec. 1971.

The Constitution (Twenty-eighth Amendment) Act, 1972 : The amendment was enacted to abolish the special privileges of the members of Indian Civil Service in matters of leave, pension and rights as regard to disciplinary matters by omitting article 314 besides inserting a new article 312A in the Constitution.

Introduction: L.S. 26 May 1972; *Debated*: L.S. 29 May 1942; R.S. 30-31 May 1972. *President's Assent* : 27 Aug. 1972.

The Constitution (Twenty-ninth Amendment) Act, 1972 : The Ninth Schedule was amended to include therein two Kerala Acts on Land Reforms.

Introduction : L.S. 26 May 1972; *Debated* : L.S. 29 May 1972. R.S. 31 May 1972; *President's Assent* : 9 June 1972.

The Constitution (Thirtieth Amendment) Act, 1972 : Article 133 was amended to provide for an appeal to the Supreme Court in Civil Proceedings only on a Certificate issued by a High Court that the case involves a substantial question of law of general importance and that in the opinion of High Court, the question needs to be decided by the Supreme Court.

Introduction : L.S. 24 May 1972; *Debated* : L.S. 17 Aug. 1972. R.S. 23 Aug. 1972; *President's Assent* : 22 Feb. 1973.

The Constitution (Thirty-first Amendment) Act, 1973 : The Amendment *inter alia* raised the upper limit for the representation of States in the Houses of the People from 500 to 525 and reduced the upper limit for the representation of Union territories from 25 members to 20 by amending article 81. It also amended articles 330 and 332.

Introduction : L.S. 26 May 1973; *Debated* : L.S. 8 May 1973; R.S. 15 May 1973; *President's Assent* : 17 Oct. 1973.

The Constitution (Thirty-second Amendment) Act, 1973 : This Act amended article 371 and the Seventh Schedule and inserted new articles 371D and 371E to provide the necessary constitutional authority for giving effect to the provision of equal opportunities to different areas of the State of Andhra Pradesh and for the constitution of an Administrative Tribunal with jurisdiction to deal with grievances relating to public services. It also empowered Parliament to legislate for the establishment of a central University in the State.

Introduction : L.S. 14 Dec. 1973; *Debated* : R.S. 18 Dec. 1973, R.S. 19, 20 Dec. 1973; *President's Assent* : 3 May 1974; The Act came into force on 1 July 1974.

The Constitution (Thirty-third Amendment) Act, 1974 : By this Act, articles 101 and 190 were amended in order to streamline the procedure for resignation of members of Parliament and State Legislatures.

Introduction : L.S. 3 May 1974; *Debated* : L.S. 8 May 1974; R.S. 9, 13 and 14 May 1974; *President's Assent* : 19 May 1974.

The Constitution (Thirty-fourth Amendment) Act, 1974 : By this Act, twenty more land tenure and land reform laws enacted by various State Legislatures were included in the Ninth Schedule.

Introduction : L.S. 3 May 1974; *Debated* : L.S. 26 Aug. 1974, R.S. 28 Aug. 1974; *President's Assent* : 7 Sep. 1974.

The Constitution (Thirty-fifth Amendment) Act, 1974 : The Act inserted a new article 2A thereby conferring on Sikkim the status of an associate State of the Indian Union. Consequent amendments were made to articles 80 and 81. A new Schedule *i.e.* Tenth Schedule, was added laying down terms and conditions of association of Sikkim with the Union.

Introduction : L.S. 2 Sep. 1974; *Debated* : L.S. 4 Sep. 1974; R.S. 7 Sep. 1974; *President's Assent* : 22 Feb. 1975.

The Constitution (Thirty-sixth Amendment) Act, 1975 : This was enacted to make Sikkim a full-fledged State of Indian Union and to include it in the First Schedule and to allot to Sikkim one seat each in the Council of States and in the House of the People by inserting article 371F. Article 2 A and the Tenth Schedule inserted by the Constitution (Thirty-fifth Amendment) Act were omitted and articles 80 and 81 were suitably amended.

Introduction : L.S. 21 Apr. 1974; *Debated* : L.S. 23 Apr. 1975; R.S. 26 Apr. 1975; *President's Assent* : 16 May, 1975.

The Constitution (Thirty-Seventh Amendment) Act, 1975 : By amendment to article 239A, the Union territory of Arunachal Pradesh was provided with a legislative Assembly. Article 240 was also amended to provide that as in the case of other Union territories with Legislatures, the power of President to make regulations for the Union territory of Arunachal Pradesh may be exercised only when the Assembly is either dissolved or its functions remain suspended.

Introduction : L.S. 9 Apr. 1975; *Debated* : L.S. 23 Apr. 1975; R.S. 26 Apr. 1975; *President's Assent* : 3 May 1975.

The Constitution (Thirty-eighth Amendment) Act, 1975 : This Act amended articles 123, 213, 239B, 352, 356, 359 and 360 to provide that the 'satisfaction' of the President, Governor or Administrator contained in these articles shall be final and conclusive and shall not be questioned in any court of law on any ground.

Introduction : L.S. 22 July 1975; *Debated* : L.S. 23 July 1975; R.S. 24 July 1975; *President's Assent* : 1 Aug. 1975.

The Constitution (Thirty-ninth Amendment) Act, 1975 : The article 329 A was inserted by this Act. It provided that the disputes relating to the election of the President, Vice-President, Prime Minister and Speaker are to be determined by such authority, as may be determined by Parliamentary Law. Thirty-eight Central and State Enactments were also included in the Ninth Schedule by this Act.

Introduction : L.S. 7 Aug. 1975; *Debated* : L.S. 7 Aug. 1975; R.S. 8 Aug. 1975; *President's Assent* : 10 Aug. 1975.

The Constitution (Fourtieth Amendment) Act, 1976 : This Act provided for vesting in the Union of all mines, minerals and other things of value laying in the ocean within the territorial waters or the continental shelf or the exclusive economic zone of India. The Act also provided that the limits of the territorial waters, the continental shelf, the exclusive economic zone and the Maritine Zones of India shall be as specified from time to time by or under any law made by Parliament, by substituting a new article for article 297. It also inserted 64 new entries (125) in the Ninth Schedule of the Constitution.

Introduction : L.S. 21 May 1976; *Debated* : L.S. 25 May 1976; R.S. 27 May 1976; *President's Assent* : 27 May 1976.

The Constitution (Forty-first Amendment) Act, 1976 : By this Act article 316 was amended to raise the retirement age of members of State Public Service Commissions and Joint Public Service Commissions from 60 to 62 years.

Introduction : L.S. 26 Aug. 1976; *Debated* : L.S. 30 Aug. 1976; R.S. 1 Sep. 1976; *President's Assent* : 7 Sep. 1976.

The Constitution (Forty-second Amendment) Act, 1976 : **This Act made a number of amendments in the Constitution. Besides the Preamble, articles 31C, 39, 55, 74, 77, 81-83, 100, 102, 105, 118, 145, 166, 170, 172, 189, 191, 194, 208, 217, 225, 227, 228, 311, 312, 330, 352, 353, 356-59, 366, 368, 371F and the Seventh Schedule were amended. New articles were substituted for articles 103, 150, 192 and 226 and new Parts IVA and XIVA and articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A were inserted. Some of the important amendments made were spelling out in the Preamble expressly the high ideals of 'Socialism,' 'Secularism' and the 'Integrity' of the nation, and making the Directive Principles more comprehensive and giving them procedence over those Fundamental Rights which have been allowed to be relied upon to frustrate socio-economic reforms. A new chapter listing the Fundamental Duties of citizens was added. The provisions relating to Judiciary were also amended by providing for a requirement as to the minimum number of Judges for determining the constitutional validity of laws and for a special majority of not less than two-third for declaring any law to be constitutionally invalid. To reduce the mounting arrears in High Courts and to secure speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of socio-economic development and progress, the Act provided for the creation of Administrative and other Tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution. Certain modifications in the writ jurisdiction of High Courts under article 226 were also made.**

Introduction : L.S. 1 Sep. 1976; 19, *Debated* : L.S. 25 Oct. 2 Nov. 1976; R.S. 4-11 Nov. 1976; *President's Assent* : 18 Dec. 1976.

The Constitution (Forty-third Amendment) Act, 1977 : This Act *inter alia* provided for the restoration of the jurisdiction of the Supreme Court and High Courts, curtailed by the enactment of the Constitution (Forty-second Amendment) Act, 1976 and accordingly articles 32A, 131A, 144A, 226A and 228A included in the Constitution by the said amendment, were omitted by this Act. The Act also provided for the omission of article 31D which confers special powers on Parliament to enact certain laws in respect of anti-national activities.

Introduction : L.S. 16 Dec. 1977; *Debated* : L.S. 19 & 20 Dec. 1977; R.S. 23 Dec. 1977; *President's Assent* : 13 Apr. 1978.

The Constitution (Forty-fourth Amendment) Act, 1978 : The right to property was omitted as a Fundamental Right and made only a Constitutional Right (Art. 300A). Article 352 of the Constitution was amended to provide "armed rebellion" as one of the circumstances for declaration of emergency and the right to personal liberty as contained in articles 21 and 22 was strengthened. With a view to minimising judicial delays, articles 132 and 134 were amended and a new article 134A was inserted. The other amendments made by the Act were mainly for removing or correcting the distortions which came into the Constitution by reason of the amendments initiated during the period of internal emergency.

Introduction : L.S. 15 May 1978; ***Debated*** : 7-11, 21-23 Aug. and 6, 7 Dec. 1978; R.S. 28-31 Aug. 1978; ***President's Assent*** : 30 Apr. 1979.

The Constitution (Forty-fifth Amendment) Act, 1980 : This Act amended article 334 to extend safeguards in respect of reservation of seats in Parliament and State Assemblies for Scheduled Castes, Scheduled Tribes as well as for Anglo-Indians for a further period of ten years.

Introduction : L.S. 23 Jan. 1980; *Debated* : L.S. 24 Jan. 1980, R.S. 25 Jan. 1980; *President's Assent* : 14 Apr. 1980.

The Constitution (Forty-sixth Amendment) Act, 1982 : Article 269 and the Seventh Schedule were amended to provide for matters relating to levy of tax on the consignment of goods in the course of inter-state trade or commerce and its assignment to the States. An amendment has also been made in article 286 relating to restriction as to imposition of tax on the sale and purchase of goods besides inclusion in article 366 of a definition of "tax on the sale or purchase of goods".

Introduction : L.S. 8 Apr. 1981; *Debated* : L.S. 13 and 14 July 1982; R.S. 10 Aug. 1982, *President's Assent* : 2 Feb. 1983.

The Constitution (Forty-seventh Amendment) Act, 1984 : By this enactment certain Land Reforms Acts were included in the Ninth Schedule with a view to obviating the scope of litigation hampering the implementation process of those Acts.

Introduction : L.S. 10 Aug. 1984; *Debated* : L.S. 22 & 23 Aug. 1984; R.S. 25 Aug. 1984, *President's Assent* : 26 Aug. 1984.

The Constitution (Forty-eighth Amendment) Act, 1984 : Article 356 was amended so as to make the conditions mentioned therein inapplicable for the purposes of the continuance in force of the Proclamation issued by the President on 6 October, 1983 with respect to the State of Punjab up to a period of two years from the date of its issue.

Introduction: L.S. 17 Aug. 1984; *Debated*: L.S. 23 Aug. 1984; R.S. 25 Aug. 1984; *President's Assent* : 26 Aug. 1984.

The Constitution (Forty-ninth Amendment) Act, 1984 : Article 244 and the Fifth and Sixth Schedules were amended to make the provisions of the Sixth Schedule applicable to the tribal areas of the State of Tripura and to give a constitutional sanctity to the autonomous District Council functioning in that State.

Introduction: L.S. 17 Aug. 1984; *Debated*: L.S. 23 Aug. 1984; R.S. 25 Aug. 1984; *President's Assent* : 11 Sep. 1984.

The Constitution (Fiftieth Amendment) Act, 1984 : New article was substituted for article 33 to enlarge its scope so as to bring within its ambit certain more categories of persons, bureau or organisations in respect of whom Parliament is empowered to enact laws determining the extent to which any of the rights conferred by Part III shall in their application be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline.

Introduction: L.S. 22 Aug. 1984; *Debated*: L.S. 23 Aug. 1984; R.S. 25 Aug. 1984; *President's Assent* : 11 Sep. 1984.

The Constitution (Fifty-first Amendment) Act, 1984 : Article 330 was amended by this Act for providing reservation of seats for Scheduled Tribes in Meghalaya, Nagaland, Arunachal Pradesh and Mizoram in Parliament. Article 332 was also amended to provide for similar reservation in the Legislative Assemblies of Nagaland and Meghalaya to meet the aspirations of local tribal population.

Introduction: L.S. 23 Aug., 1984; *Debated*: L.S. 23 Aug. 1984; R.S. 25 Aug. 1984; *President's Assent* : 29 Apr. 1985.

The Constitution (Fifty-second Amendment) Act, 1985: The Act amended articles 101, 102, 190 and 191 to provide that a member of Parliament or a State Legislature who defects or is expelled from the Party or if an Independent member of the House joins a Political Party or if a nominated member joins any party after expiry of six months from the date on which he takes his seat in the House, he shall be disqualified to remain a member of the House. The Act also makes suitable provisions with respect to splits in and merger of political parties. A new Schedule (Tenth) was added incorporating provisions as to disqualification on the ground of defection.

Introduction : L.S. 24 Jan., 1985; *Debated* : L.S. 30 Jan., 1985; R.S. 31 Jan., 1985; *President's Assent* : 15 Feb., 1985.

The Constitution (Fifty-third Amendment) Act, 1986: By this Act a new article 371G was inserted in the Constitution *inter alia* preventing application of any Act of Parliament in Mizoram in respect of religious or social practices of Mizos, Mizos' customary law and procedure, administration of civil and criminal Justice involving decisions according to Mizos' customary law and ownership and transfer of land unless a resolution is passed in the Legislative Assembly to that effect. Any Central Act already in force in Mizoram before the commencement of the amendment is however not to be affected. The new article also provided that the Legislative Assembly of Mizoram shall consist of not less than forty members.

Introduction : L.S. 4 Aug. 1986; *Debated* : L.S. 5 Aug. 1986; R.S. 7 Aug. 1986; *President's Assent* : 14 Aug. 1986.

The Constitution (Fifty-fourth Amendment) Act, 1986: This Act amended Part 'D' of the Second Schedule to increase the salaries of Judges of Supreme Court and High Courts and made an enabling provision in articles 125 and 221 to provide for determination of salaries of judges in future by Parliament by law.

Introduction: L.S. 8 Aug. 1986; *Debated*: L.S. 12 Aug. 1986; R.S. 14 Aug. 1986; *President's Assent* : 14 Mar. 1987.

The Constitution (Fifty-fifth Amendment) Act, 1986 : By this Act, a new article 371H was inserted which, *inter alia,* conferred on the Governor of the newly enacted State of Arunachal Pradesh special responsibility with respect to law and order in the State. The Governor, however, should cease to have such responsibility as and when the President is satisfied that it is no longer necessary. The new article also provided that the Legislative Assembly of the State shall consist of not less than thirty members.

Introduction : L.S. 5 Dec. 1986; *Debated* : L.S. 8 Dec. 1986; R.S. 9 Dec. 1986; *President's Assent* : 23 Dec. 1986.

The Constitution (Fifty-sixth Amendment) Act, 1987 : By this Act, a new article 371 I was inserted providing for a special provision in the Constitution with respect to the newly created State of Goa and provided that the Legislative Assembly of the State shall consist of not less than thirty members.

Introduction : L.S. 8 May, 1987; *Debated* : L.S. 11 May 1987; R.S. 12 May 1987; *President's Assent* : 23 May 1987.

The Constitution (Fifty-seventh Amendment) Act, 1987 : By this Act, article 332 was amended for making a temporary provision until the re-adjustment of seats on the basis of first census after the year 2000. In the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland for determination of the number of seats reserved for the Scheduled Tribes in the Legislative Assembly of any of these States.

Indroduction : L.S. 26 Aug. 1987; *Debated* : L.S. 27, 28 Aug. 1987; R.S. 31 Aug. 1987; *President's Assent* : *15 Sep. 1987.*

The Constitution (Fifty-eighth Amendment) Act, 1987 : By this Act, a new article 394A was inserted empowering the President of India to publish under his authority the translation of the Constitution in Hindi. The President has also been authorised to publish the translation in Hindi of every amendment of the Constitution made in English.

Introduction : L.S. 27 Feb. 1987; *Debated* : L.S. 24 Nov. 1987; R.S. 26 Nov. 1987; *President's Assent* : 9 Dec. 1987.

The Constitution (Fifty-ninth Amendment) Act, 1988 : The Act amended article 356 (5) so as to facilitate the extension of a Presidential Proclamation issued under clause (1) of that article beyond a period of one year if necessary upto a period of three years, as permissible under clause (4) thereof with respect to the State of Punjab because of the continued disturbed situation there. New article 359A inserted in the Constitution provided for the application of emergency provision of Part XVIII to the State of Punjab with modifications in articles 352, 358 and 359 for a period of two years.

Introduction : R.S. 14 Mar. 1988; *Debated* : R.S. 14, 15 Mar. 1988; L.S. 22, 23 Mar. 1988; *President's Assent* : 30 Mar. 1988.

The Constitution (Sixtieth Amendment) Act, 1988 : The Act amended article 276 to increase the ceiling of taxes on professions, trades, calling and employments.

Introduction : L.S. 22 Aug. 1988; *Debated* : L.S. 30 Nov., 1988; R.S. 5, 6 Dec., 1988; *President's Assent:* 20 Dec. 1988.

The Constitution (Sixty-first Amendment) Act, 1989 : By this amendment, the voting age was reduced from 21 to 18 years under article 326.

Introduction : L.S. 13 Dec. 1989; *Debated* : L.S. 14, 15 Dec., 1988; R.S. 16, 19, 20 Dec. 1988; *President's Assent* : 28 Mar. 1989.

The Constitution (Sixty-second Amendment) Act, 1989 : The Act amends article 334 to provide for the continuance of the provisions with regard to the reservation of seats for the Scheduled Castes and the Scheduled Tribes and the representation of the Anglo-Indian community by nomination in the House of the People and in the legislative Assemblies of the States, for another ten years.

Introduction : R.S. 20 Dec. 1989; *Debated* : R.S. 21 Dec. 1989; L.S. 22, 26 Dec. 1989; *President's Assent* : 25 Jan. 1990.

The Constitution (Sixty-third Amendment) Act, 1989 : The Act repealed the Constitution (Fifty-ninth Amendment) Act, 1988, which was earlier passed with a view to carrying out certain changes in regard to making a proclamation of Emergency in Punjab and to the duration of President's rule in that state.

Introduction : L.S. 29 Dec., 1989; *Debated* : L.S. 29 Dec., 1989; R.S. 29 Dec., 1989; *President's Assent* : 6 Jan., 1990.

The Constitution (Sixty-fourth Amendment) Act, 1990 : By this Act, article 356 was amended to provide that the Proclamation issued by the President thereunder with respect to the State of Punjab shall remain in force for a period of three years and six months from the date of the issue of Proclamation, i.e., 11 May 1987.

Introduction : L.S. 4 Apr., 1990; *Debated* : L.S. 5 Apr., 1990; R.S. 10 Apr., 1990; *President's Assent* : 16 Apr. 1990.

The Constitution (Sixty-fifth Amendment) Act, 1990 : This Act amended article 338 to provide for the constitution of a National Commission for the Scheduled Castes and Scheduled Tribes for making more effective arrangement in respect of the constitutional safeguards for them.

Introduction : L.S. 23 May 1990; *Debated* : L.S. 28, 29 and 30 May 1990; R.S. 31 May 1990; *President's Assent* : 7 June 1990.

The Constitution (Sixty-sixth Amendment) Act, 1990 : This Act amended the Ninth Schedule to include therein 54 additional State enactments relating to land reforms.

Introduction : L.S. 19 Apr. 1990; *Debated* : L.S. 29, 30 May 1990; R.S. 1 June 1990; *President's Assent* : 7 June 1990.

The Constitution (Sixty-seventh Amendment) Act, 1990 : This Act amended the Proviso to clause (4) of article 356 to provide for the extension of the proclamation issued by the President under clause (1) on 11 May 1987, with respect to the State of Punjab for a further period of six months i.e. upto a total period of four years.

Introduction : L.S. 4 Oct. 1990; *Debated* : L.S. 4 Oct. 1990; R.S. 4 Oct. 1990; *President's Assent* : 4 Oct. 1990.

The Constitution (Sixty-eighth Amendment) Act, 1991 : Proviso to clause (4) of article 356 was further amended to provide for the extension of the Proclamation issued by the President under clause (1) on 11 May, 1987, with respect to the State of Punjab for a further period of one year i.e., upto a total period of five years.

Introduction: L.S. 11 Mar. 1991; *Debated*: L.S. 11 Mar. 1991; R.S. 12 Mar. 1991; *President's Assent* : 12 Mar. 1991.

The Constitution (Sixty-ninth Amendment) Act, 1991 : This Act, by inserting two new articles 239AA and 239AB conferred special status on the Union Territory of Delhi and declared it to be the National Capital Territory of Delhi which shall have an elected legislative Assembly.

Introduction: L.S. 16 Dec. 1991; *Debated*: L.S. 20 Dec. 1991; R.S. 20 Dec. 1991; *President's Assent* : 21 Dec. 1991.

The Constitution (Seventieth Amendment) Act, 1992 : This Act amended articles 54 and 239AA, to include the National Capital territory of Delhi and the Union territory of Pondichery under the expression 'State' for constituting the electoral college for election of the President.

Introduction: R.S. 3 Apr. 1992; *Debated*: R.S. 20 Dec. 1991; L.S. 20 Dec. 1991; *President's Assent* : 12 Aug. 1992.

The Constitution (Seventy-first Amendment) Act, 1992 : By this Act, the Eighth Schedule was amended to include three more languages — Konkani, Manipuri and Napali, thereby raising the total number of languages to eighteen.

Introduction: L.S. 20 Aug. 1992; *Debated*: L.S. 20 Aug. 1992; R.S. 20 Aug. 1992; *President's Assent* : 31 Aug., 1992.

COMPARATIVE STATEMENT OF ARTICLES

Article in Constitution of India	Corresponding clause in the draft Constitution	Dates on which discussed and approved
1	2	3
1	1	15th November, 1948, 17th November, 1948.
		17th September, 1949, 18th September, 1949.
2	2	17th November, 1948.
3	3	17th and 18th November, 1948.
		13th October, 1949.
4	4	18th November, 1948.
5	5	10th August, 1949, 11th August, 1949 and 17th August, 1949.
6	5A	10th, 11th and 12th August, 1949.
7	5AA	10th, 11th and 12th August, 1949.
8	5B	10th, 11th and 12th August, 1949.
9	9	20th November, 1949.
10	5C	10th, 11th and 12th August, 1949.
11	6	10th, 11th and 12th August, 1949.
12	7	25th November, 1948.
13	8	25th, 26th and 29th November, 1948.
14 (New)	—	29th November, 1948.
15	9	29th November, 1948.
16	10	30th November, 1948.
17	11	29th November, 1948.
18	12	30th November, 1948 and 10th December, 1948.
19	13	1st and 2nd December, 1948. 16th October, 1949. 17th October, 1949.
20	14	2nd, 3rd and 6th December, 1948.
21	15	6th and 13th December, 1948.
22	15A	16th September, 1949.
23	17	3rd December, 1948.

(Contd.)

1	2	3
24	18	3rd December, 1948.
25	19	3rd and 6th December, 1948.
26	20	7th December, 1948.
27	21	7th December, 1948.
28	22	7th December, 1948.
29	23	7th and 8th December, 1948.
30	23A	7th and 8th December, 1948.
31	24	10th September, 1949 and 12th September, 1949.
32	25	9th December, 1948.
33	26	9th December, 1948.
34 (New)		
35	27	9th and 16th December, 1948 and 16th October, 1949.
36	28	19th November, 1948.
37	29	19th November, 1948.
38	30	19th November, 1948.
39	31	22nd November, 1948.
40	31A	22nd November, 1948.
41	32	23rd November, 1948.
42	33	23rd November, 1948.
43	34	23rd November, 1948.
44	35	23rd November, 1948.
45	36	23rd November, 1948.
46	37	23rd November, 1948.
47	38	23rd November, 1948 and 24th November, 1948.
48	38A	24th November, 1948.
49	39	24th November, 1948.
50	39A	24th November, 1948 and 25th November, 1948.
51	40	25th November, 1948.
52	41	10th December, 1948.
53	42	10th, 16th December, 1948 and 16th October, 1949.
54	43	10th and 13th December, 1948.

(Contd.)

1	2	3
55	44	13th December, 1948.
56	45	13th December, 1948.
57	46	13th December, 1948.
58	47	27th December, 1948 and 13th October, 1949.
59	48	27th December, 1948 and 14th October, 1949.
60	49	27th December, 1948.
61	50	28th December, 1948.
62	51	28th December, 1948.
63	52	28th December, 1948.
64	53	28th December, 1948.
65	54	28th December, 1948.
66	55 (1)-(4)	28th December, 1948, 29th December, 1948 and 13th October, 1949.
67	56	29th December, 1948.
68	55 (5)-(6)	28th December, 1948, 29th December, 1948 and 13th October, 1949.
69 (New)		November, 1949.
70	57	29th December, 1948.
71	58	29th December, 1948.
72	59	29th December, 1948 and 17th October, 1949.
73	60	29th December, 1948 and 30th December, 1948.
74	61	30th December, 1948.
75	62	30th December, 1948, 31st December, 1948, 14th October, 1949 and 17th October, 1949.
76	63	7th January, 1949.
77	64	7th January, 1949.
78	65	6th January, 1949 and 7th January, 1949.
79	66	3rd January, 1949.
80	67 (1)-(4)	3rd and 4th January, 1949 and 13th, 17th October, 1949.
81	67 (5)-(8)	3rd and 4th January, 1949, 10th, 14th and 17th October, 1949.

(Contd.)

1	2	3
82	67A	18th May, 1949, 23rd May, 1949 and 13th October, 1949.
83	68	18th May, 1949.
84	68A	18th May, 1949.
85	69	18th May, 1949.
86	70	18th May, 1949.
87	71	18th May, 1949.
88	72	18th May, 1949.
89	73	19th May, 1949.
90	74	19th May, 1949.
91	75	19th May, 1949.
92	75A	19th May, 1949.
93	76	19th May, 1949.
94	77	19th May, 1949.
95	78	19th May, 1949.
96	78A	18th May, 1949 and 19th May, 1949.
97	79	19th May, 1949.
98	79A	30th July, 1949.
99	81	19th May, 1949.
100	80	19th May, 1949.
101	82	19th May, 1949.
102	83	19th May, 1949 and 13th October, 1949.
103	83A	1st August, 1949.
104	84	19th May, 1949.
105	85	19th May, 1949 and 16th October, 1949.
106	86	20th May, 1949.
107	87	20th May, 1949.
108	88	20th May, 1949.
109	89	20th May, 1949.
110	90	20th May, 1949 and 8th June, 1949.
111	91	20th May, 1949.
112	92	8th June, 1949, 10th June, 1949 and 13th October, 1949.
113	93	10th June, 1949.
114	94	10th June, 1949.
115	95	10th June, 1949.

(Contd.)

1	2	3
116	96	10th June, 1949.
117	97	10th June, 1949.
118	98	10th June, 1949.
119	98A	10th June, 1949.
120	99	17th September, 1949.
121	100	23rd May, 1949 and 13th October, 1949.
122	101	23rd May, 1949.
123	102	23rd May, 1949.
124	103	23rd May, 1949 and 24th May, 1949.
125	104	27th May, 1949 and 30th July, 1949.
126	105	27th May, 1949.
127	106	27th May, 1949.
128	107	27th May, 1949.
129	108	27th May, 1949.
130	108A	27th May, 1949.
131	109	3rd June, 1949 and 14th October, 1949.
132	110	3rd June, 1949.
133	111	3rd June, 1949, 6th June, 1949 and 16th October, 1949.
134	111A	13th June, 1949 and 14th June, 1949.
135	112B	
136	112	6th June, 1949 and 16th October, 1949.
137	112A	6th June, 1949.
138	114	6th June, 1949.
139	115	27th May, 1949.
140	116	27th May, 1949.
141	117	27th May, 1949.
142	118	27th May, 1949.
143	119	27th May, 1949.
144	120	27th May, 1949.
145	121	6th June, 1949.
146	122	27th May, 1949.
147	122A	6th June, 1949 and 16th October, 1949.
148	124	30th May, 1949.
149	125	30th May, 1949.
150	126	30th May, 1949.

(Contd.)

1	2	3
151	127	30th May, 1949.
152	128	30th May, 1949.
153	129	30th May, 1949.
154	130	30th May, 1949 and 16th October, 1949.
155	131	30th May, 1949 and 31st May, 1949.
156	132	31st May, 1949.
157	134	31st May, 1949.
158	135	31st May, 1949 and 14th October, 1949.
159	136	31st May, 1949.
160	138	1st June, 1949.
161	141	1st June, 1949 and 17th October, 1949.
162	142	1st June, 1949.
163	143	1st June, 1949.
164	144	1st June, 1949 and 14th October, 1949.
165	145	1st June, 1949.
166	146	2nd June, 1949.
167	147	2nd June, 1949.
168	148	6th January, 1949.
169	148A	30th July, 1949.
170	149	6th January, 1949, 7th January, 1949, 8th January, 1949 and 14th October, 1949.
171	150	2nd June, 1949, 30th July, 1949 and 19th August, 1949.
172	151	2nd June, 1949.
173	152	2nd June, 1949.
174	153	2nd June, 1949.
175	154	2nd June, 1949.
176	155	2nd June, 1949.
177	156	2nd June, 1949.
178	157	2nd June, 1949.
179	158	2nd June, 1949.
180	159	2nd June, 1949.
181	159A	2nd June, 1949.
182	160	2nd June, 1949.
183	161	2nd June, 1949.

(Contd.)

1	2	3
184	162	2nd June, 1949.
185	162A	2nd June, 1949.
186	163	3rd June, 1949.
187	163A	30th July, 1949.
188	165	2nd June, 1949.
189	164	2nd June, 1949 and 16th June, 1949.
190	165	2nd June, 1949.
191	167	2nd June, 1949.
192	167A	14th June, 1949.
193	168	3rd June, 1949.
194	169	3rd June, 1949 and 16th October, 1949.
195	170	3rd June, 1949.
196	171	3rd June, 1949, 4th June, 1949 and 14th June, 1949.
197	172	30th July, 1949 and 1st August, 1949.
198	173	10th June, 1949.
199	174	10th June, 1949.
200	175	14th June, 1949, 31st July, 1949, 1st August, 1949 and 17th October, 1949.
201	176	1st August, 1949.
202	177	10th June, 1949.
203	178	10th June, 1949.
204	179	10th June, 1949.
205	180	10th June, 1949.
206	181	10th June, 1949.
207	182	10th June, 1949.
208	183	10th June, 1949.
209	183A	10th June, 1949.
210	184	10th June, 1949 and 17th September, 1949.
211	185	10th June, 1949.
212	186	10th June, 1949.
213	187	14th June, 1949.
214	191	6th June, 1949
215	192	6th June, 1949.
216	192A	6th June, 1949.

(Contd.)

1	2	3
217	193	6th June, 1949 and 7th June, 1949.
218	194	7th June, 1949.
219	195	7th June, 1949.
220	196	7th June, 1949.
221	197	7th June, 1949.
222	198	1st August, 1949.
223	199	7th June, 1949.
224	200	7th June, 1949.
225	201	7th June, 1949.
226	202	7th June, 1949 and 9th September, 1949.
227	203	7th June, 1949, 14th June, 1949, 15th June, 1949 and 16th October, 1949.
228	204	7th June, 1949 and 8th June, 1949.
229	205	8th June, 1949.
230	207	14th June, 1949.
231	208	14th June, 1949.
232	209	14th June, 1949.
233	209A	19th June, 1949 and 10th September, 1949.
234	209B	16th September, 1949.
235	209C	16th September, 1949.
236	209D	16th September, 1949.
237	209E	16th September, 1949.
238	211A	12th October, 1949 and 13th October, 1949.
239	212	1st August, 1949.
240	213	1st August, 1949 and 2nd August, 1949.
241	213A	2nd August, 1949 and 16th October, 1949.
242	214	2nd August, 1949.
243	215	16th September, 1949.
244	215B	19th August, 1949.
245	216	13th June, 1949.
246	217	13th June, 1949.
247	219	13th June, 1949.
248	223	13th June, 1949.

(Contd.)

1	2	3
249	226	13th June, 1949.
250	227	13th June, 1949.
251	228	13th June, 1949.
252	229	13th June, 1949.
253	230	13th June, 1949 and 14th October, 1949.
254	231	13th June, 1949.
255	232	13th June, 1949.
256	233	13th June, 1949.
257	234 & 234A	13th June,. 1949 and 9th September, 1949.
258	235	13th June, 1949 and 13th October, 1949.
259	235A	13th June, 1949.
260	236	13th June, 1949 & 13th October, 1949.
261	238	13th June, 1949.
262	245A	9th September, 1949.
263	246	13th June, 1949.
264	247	13th June, 1949 and 4th August, 1949.
265	248	4th August, 1949.
266	248A	4th August, 1949 and 7th September, 1949.
267	248B	4th August, 1949 and 13th October, 1949.
268	249	4th August, 1949 and 5th August, 1949.
269	250	5th August, 1949, 19th August, 1949 and 9th September, 1949.
270	251	5th August, 1949.
271	252	5th August, 1949.
272	253	5th August, 1949 and 8th August, 1949.
273	254	8th August, 1949.
274	254A	8th August, 1949.
275	255	8th August, 1949 and 9th August, 1949.
276	256	9th August, 1949.
277	257	9th August, 1949.
278	258	13th October, 1949.
279	259	9th August, 1949.
280	260	9th August, 1949 and 10th August, 1949.

(Contd.)

1	2	3
281	261	10th August, 1949.
282	262	10th August, 1949.
283	263	10th August, 1949, 9th September, 1949 and 13th October, 1949.
284	263A	9th September, 1949.
285	264	9th September, 1949.
286	264A	16th October, 1949.
287	265	9th September, 1949.
288	265A	9th September, 1949.
289	266	9th September, 1949.
290	267	10th August, 1949.
291	267A	13th October, 1949.
292	268	10th August, 1949.
293	269	10th August, 1949.
294	270	15th June, 1949 and 13th October, 1949.
295	270A	13th October, 1949.
296	271	15th June, 1949.
297	271A	15th June, 1949.
298	272	15th June, 1949.
299	273	15th June, 1949.
300	274	15th June, 1949.
301	274A	15th June, 1949 and 8th September, 1949.
302	274B	8th September, 1949.
303	274C	8th September, 1949.
304	274D	8th September, 1949.
305	274DDD	8th September and 13th October, 1949.
306	274DD	8th September, 13th October and 16th October, 1949.
307	274E	8th September, 1949.
308	281	7th September, 1949.
309	282	7th September, 1949.
310	282A	7th September, 1949.
311	282B	8th September, 1949.
312	282C	8th September, 1949.
313	283	8th September, 1949.

(Contd.)

1	2	3
314	283A	10th October, 1949.
315	284	22nd August, 1949.
316	285	22nd August, 1949.
317	285A	22nd August, 1949.
318	285B	22nd August, 1949.
319	285C	22nd August, 1949.
320	286	23rd August, 1949.
321	287	23rd August, 1949.
322	288	23rd August, 1949.
323	288A	23rd August, 1949.
324	289	15th June, 1949 and 15th June, 1949.
325	289A	16th June, 1949.
326	289B	16th June, 1949.
327	290	16th June, 1949.
328	291	16th June, 1949.
329	291A	16th June, 1949.
330	292A	23rd and 24th August, 1949.
331	293	24th August, 1949.
332	294	24th August, 1949.
333	295	24th August, 1949.
334	295A	24th August, 1949 and 25th August, 1949.
335	296	14th October, 1949 and 26th August, 1949.
336	297	16th June, 1949.
337	298	16th June, 1949.
338	299	26th August, 1949 and 14th October, 1949.
339	300	16th June, 1949.
340	301	16th June, 1949.
341	300A	17th June, 1949.
342	300B	17th June, 1949.
343	301A	12th September, 1949, 13th September, 1949 and 14th September, 1949.
344	301B	12th September, 1949, 13th September, 1949 and 14th September, 1949.

(Contd.)

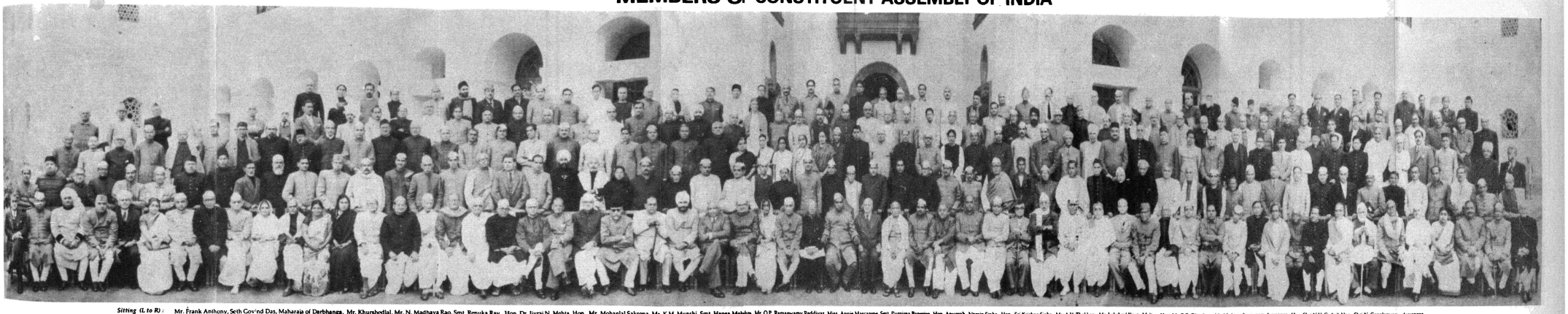
1	2	3
345	301C	12th September, 1949, 13th September, 1949 and 14th September, 1949.
346	301D	12th September, 1949, 13th September, 1949 and 14th September, 1949.
347	301E	-Do-
348	301F	-Do-
349	301G	-Do-
350	301H	-Do-
351	301I	-Do-
352	275	2nd August, 1949.
353	276	3rd August, 1949.
354	277	19th August, 1949 and 20th August, 1949.
355	277A	3rd August, 1949 and 4th August, 1949.
356	278	3rd August, 1949 and 4th August, 1949.
357	278A	3rd August, 1949 and 4th August, 1949.
358	279	4th August, 1949.
359	280	4th August, 1949 and 20th August, 1949.
360	280A	16th October, 1949.
361	302	8th September, 1949.
362	302A	13th October, 1949.
363	302AA	16th October, 1949.
364	302AAA	17th October, 1949.
365 (New)		
366	303 (1)	16th September, 1949, 17th September, 1949 and 14th October, 1949.
367	303 (2 & 3)	-Do-
368	304	17th September, 1949.
369	306	7th October, 1949.
370	306A	13th October, 1949 and 17th October, 1949.
371	306B	13th October, 1949.
372	307	10th October, 1949.
373 (New)		
374	308	10th October, 1949.
375	309	7th October, 1949.
376	310	10th October, 1949.

(Contd.)

1	2	3
377	310A	7th October, 1949.
378	310B	7th October, 1949.
379	311	10th October, 1949 and 11th October, 1949.
380	311A	7th October, 1949.
381	311B	-Do-
382	312	-Do-
383	312A	-Do-
384	312B	-Do-
385	312C	-Do-
386	312D	-Do-
387	312E	-Do-
388	312F	4th October, 1949, 7th October, 1949 and 11th October, 1949.
389	312G	7th October, 1949.
390	312H	-Do-
391 (New)		
392	313	7th October, 1949
393	313A	17th October, 1949.
394	314	-Do-
395	315	-Do-

Schedule	Date
1	14th October, 1949 and 15th October, 1949.
2	11th October, 1949 and 12th October, 1949.
3	26th August, 1949 and 16th October, 1949.
4 (Schedule III-A)	17th October, 1949.
5	5th September, 1949.
5 (Part D)	5th September, 1949.
6	5th September, 6th September, and 7th September, 1949.
	Para 1, 5th September, 1949. Paras 2-15, 6th September, 1949, and Paras 16-20, 7th September, 1949.
7	26th August, 1949, 29th August, 1949, 30th August, 1949, 31st August, 1949, 1st September, 1949, 2nd September, 1949, 3rd September, 1949, 9th September, 1949, 13th October, 1949 and 17th October, 1949.
8 (Schedule VII-a)	14th September, 1949.

MEMBERS OF CONSTITUENT ASSEMBLY OF INDIA



Sitting (L to R) : Mr. Frank Anthony, Seth Govind Das, Maharaja of Darbhanga, Mr. Khurshedlal, Mr. N. Madhava Rao, Smt. Renuka Ray, Hon. Dr. Jivraj N. Mehta, Hon. Mr. Mohanlal Saksena, Mr. K.M. Munshi, Smt. Hansa Mehtha, Mr. O.P. Ramaswamy Reddiyar, Miss. Annie Mascarene, Smt. Purnima Banerjee, Hon. Anugrah Narain Sinha, Hon. Sri Krishna Sinha, Mr. A.V. Thakkar, Mr. Lakshmi Kanta Maitra, Hon. Mr. R.R. Diwakar, Mr. M. Ananthasayanam Ayyangar, Hon. Shri N.V. Gadgil, Hon. Shri N. Gopalaswamy Ayyangar, Hon. Shri Jairamdas Daulatram, Hon. M. Abul Kalam Azad, Hon. Dr. B.R. Ambedkar, Hon. S. Baldev Singh, Hon. Dr. John Mathai, Hon. Shri G.V. Mavalankar, Hon. Rajkumari Amritkaur, Hon. Shri Jawaharlal Nehru, Dr. H.C. Mookerjee, Hon. Dr. Rajendraprasad (President), Mr. V.T. Krishnamachari, Hon Sardar Vallabhbhai Patel, Hon. Shri Jagjivan Ram, Hon. Shri Rafi Ahmad Kidwai, Hon. Dr. Syamaprasad Mookherjee, Hon. Shri B.G. Kher, Mr. Abdul Halim Ghaznavi, Hon. Pt. Ravishankar Shukla, Hon. Shri Gopinath Bardoloi, Mr. T. Prakasam, Hon. Rev. J.J.M. Nichoes Roy, Hon. Shri K.C. Niyogi, Dr. Pattabhi Sitaramayya, Mr. K.C. Reddy, Mr. P. Govinda Menon, Mr. Damodar Swarup Seth, Prof. Nibaran Chandra Laskar, Dr. Raghuvirra, Hon. Shri K. Santhanam, Mr. D.B. Malani, Mr. Rohini Kumar Chowdhry, Mr. Babu Ramanarayan Singh Mr. Laxminarayan Sahu, Mr. R.K. Sidhwa, Smt. Sucheta Kripalani, Maharaja of Parlakimedi, Mr. B. Das, Mr. Jaspatrai Kapoor.

Standing 1st Row (L to R) : Hon. Shri K.B. Sahay, Mr. Syamanandan Sahay, Mr. Tajmal Hussain, Mr. Sarangdhar Sinha, Prof. N.G. Ranga, Dr. Raghunandan Prasad, Mr. Kazi Syed Karimuddin, Mr. Jafar Imasu, Mr. Mohamed Tahir, Mr. Mohhammed Hifazur Rahman, Mr. Latifur Rahman, M. Sri Narayan Mehta, Hon. Shri Binodanand Jha, Mr. Guptanath Singh, Mr. Dipnarayan sinha, Mr. Jadubans Sahay, Mr. Amiyo Kumar Ghosh, Mr. R.E. Patel, Lt. Col. Brij Raj Narayan, Sardar Sucher Singh, Mr. Upendranath Burman, Mr. Boniface Lakra, Mr. Brajeshwar Prasad Master Nandlal, Mr. Ram Sahay, Mr. B.N. Munawali, Mr. Manikyalal Varma, Mr. R. B. Vijayvargiya, Mr. Balwantsinha Mehta, Mr. Sitaram S. Jajoo, Thakur Lalsingh, Mr. Chandrikarsm, Pro. Yeshwant Rai, Dr. Dharam Prakash, Mr. Pragilal, Mr. Bhagwan Deen, Mr. Dayaldas Bhagat, Mr. P. Kakkan, Mr. Davindranath Samanta, Thakur Chhedilal, Mr. Ramchandra Gupta, Mr. V.N. Tiwari, Mr. K.C. Sharma, Mr. Jainarayan Vyas, Mr. Kallur Subha Rao. Mr. B.N. Biyani, Mr. Gokullal Asava, Lala Achint Ram, Mr. Jaswant Singhji. Mr. Girijashanker Guha, Mr. P.D. Himmat Singhka, Mr. H.J. Khandekar, Mr. S. Nagappa, Mr. Aribahadur Gurung, Mr. C.M. Poonacha, Mr. V. Ramaiah, Mr. S.C. Mazumdar, Mr. U.S. Mallaya, Mr. Surendra b Mohan Ghosh.

Standing 2nd Row (L to R) : Dr. P.K. Sen, Mr. Sardar Singh Bahadur of Khetri, Mr. A. Thanu Pillai, Mr. Banarasi Prasad Jhunjhunwala, Mr. Jagannayanlal, Mr. Hussain Immam, Mr. Kishorimohan Tripathi, Mr. Mohammed Ahmed Kazmmi. Mr. Abdur Rauf, Mr. B.M. Gupta, Mr. Mahesh Prasad Sinha, Col. B.H. Zaidi, Dr. P. Subbarayan, Mr. S.V. Krishnamoorthy Rao, Mr. R.C. Upadhyaya, Mr. K.P. Yadav. Mr. Shantanu Kumar Das, Thakur Kishan Singh, Mr. L.K. Bharti, Mr. V.C. Kesva Rao, Mr. Bhagwat Prasad, Mr. Jaipal Singh, Mr. M. Thirumul Rao, Smt. G. Durga Bai, Smt. Kamla Chowdhary, Smt. Dakshayani Velayudahan, Smt. Ammu Swaminathan, Begum Aizaz Rasul, Mr. T. Siddalingaiya, Mr. Mohanlal Gautam, Mr. B.L. Sondhi, Mr. Mahavir Tyagi, Jr. Mr. B.L. Malviya, Mr. Ramprasad Pokai, Mr. Sarangdhar Das, Mr. K. Hanumanthiya, Mr. H.V. Kamath, Mr. H. Guruv Reddy, Lala Rajkanwar, Sardar Ranjit Singh, Mr. Padampat Singhania Mr. M.A. Muthiah Chettiar, Syed Mohammed Saduila, Mr. T.J.M. Wilson, Acharya Jugal Kishore, Ch. Hyder Hussain, Mr. K.T.M. Ahmed Ibrahim, Mr. B. Pocker, Mr. G.K. Vijay Vargiya, Mr. Mohd. Ismail, Mr. O.V. Alagesan, Mr. C. Subramaniam, Mr. Hiralal Shastri, Mr. Gokulbhai D Bhatt, Lt. Col. K.R. Dalel Singhji, Pt. Hirdayenath Kunzru, Dr. Baksh Tekchand.

Standing 3rd Row (L to R) : Mr. Pranlal Thakurlal Munshi, Mr. Kuldhar Chaliha, Mr. Mukut Biharilal Bhargava, Mr. Vinayak Rao B Vaidya, Sardar Hukam Singh, Mr. Mehboob Ali Beg, Ch. Ranbir Singh, Mr. Nand Kishore Das, Mr. Thakurdas Bhargava, Dr. Joseph Alban D'Souza, Mr. T. Channiah, Capt. Awdesh Pratap Singh, Mr. Shambunath Shukla, Mr. K.M. Jadhe, Mr. H.V. Pataskar, Mr. R.B. Kumbhar, Hon. Mr. N. Sanjeeva Reddy, Mr. D. Govinda Dass, Mr. S. Bhupendra Singh Man, Mr. H. Siddaiah, Mr. P. Kunhiraman, Mr. A.K. Menon, Mr. Bhawanji Arjan Khimji, Mr. Ram Sahay Tiwari, Mr. Mannulal Dwivedi, Mr. Khandubhai Desai, Mr. K.N. Desai, Mr. C.C. Shah, Dr. Y.S. Parmar, Mr. Darbar Gopaldas A. Desai, Mr. Balwant Rai G. Mehta, Mr. Jasukhlal Hathi, Mr. Ajit Prasad Jain, Sardar Jogindar Singh, Mr. Baltrishna Sharma, Mr. M.L. Chattopadhya, Mr. Hargobind Pant, Mr. R.V. Dhulekar, Mr. Masurya Das, Mr. Baneshar Mishra, Hon. G.S. Gupta, Mr. B.A. Mandloi, Mr. S.T. Dharmadhikari, Mr. Kusumkant Jain, Mr. Raj Bahadur. Mr. Deshbandhu Gupta, Mr. Bishwanath Dass, Mr. M.C. Veera Babu, Mr. V. Nadimuthu Pillai, Mr. T.A. Ramlingam Chettiar. Mr. K. Kamaraj, Mr. Govind Malviya, Mr. S. Nijlingappa, Hon. Mr. Satyanarayan Sinha.

Standing Last Row (L to R) : Shri. , Mr. Komlapati Tripathi, Mr. Shibbanlal Saksena, Shri. , Pt. Motiram Bagra. Mr. Molana Mohamed Syed Masudi, Mr. Mirza Mohd. Afzal Beg, Mr. Sunderlal, Mr. Satish Chandra, Mr. Yudhishtar Mishishra, Mr. Arunchandra Guha, Mr. V. Subramaniam, Mr. M. Satyanarayana, Mr. B.K. Das, Mr.Satish Chandra Samanta, Mr. Jasimuddin Ahmad, Dr. Monomohan Dass, Mr. P.T. Chako, Mr. K.A. Mohamed, Mr. R. Sankar, Mr. P.S. Narraja Pillai, Mr. B. Shiva Rao. Hon. Rajkrishna Bose, Mr. V.I. Munswamy Pillai, Mr. V.S. Sarvate, Dr. P.S. Deshmukh, Mr. Gopal Narayan, Mr. P.L. Narsimha Raju, Mr. L.S. Bhatkar, Mr. R. M. Nalvade, Mr. V.D. Tripathi, Mr. Algu Rai Shastri, Mr. A. Dharamdas, Mr. H.V. Tripathi, Mr. Gyanu Guru Mukh Sir Singh Musafir, Mr. Nawab Mohd. Ismail Khan, Mr. Maulana Hasrat Mohani, Mr. Lal Mohan Pati, (5 Men Police), Mr. Kala Venkata Rad, Mr. Nasiruddin Ahmed, Mr. Kaka Bhagwanz Roy.

Photo taken on : 7th April 1949 चित्रांकन : ७ अप्रैल १९४९