

Indian Constitution - Past Experience and Present Concerns¹

Dr. Jayaprakash Narayan

Making of the constitution

1. With the transfer of power in 1947, an earnest attempt was made to radically transform the Indian state. With the adoption of a democratic system of government, universal adult franchise, republicanism and representative democracy became the corner stones of the architecture of the Indian constitution. Independent judiciary, separation of powers, accountable governance and people's sovereignty became the guiding principles which informed the making of the constitution. The turbulence and bloodshed accompanying partition in 1947 did not diminish the great excitement and expectation generated by freedom struggle and independence. Obviously there was enormous pressure on the state to fulfil these expectations in a significant measure. The constitution-makers attempted to reconcile individual liberty with the state's interventionist role in transforming society.
2. Thus the Fundamental Rights guaranteed various liberties to citizens and these liberties ensured that the state could not affect adversely the liberty and autonomy of individuals and groups. The doctrine of reasonable restrictions and the provision for judicial review effectively protected citizens from the traditional tyranny and depredations of the Indian state. At the same time, the Directive Principles of State Policy were enunciated and they were declared to be fundamental in the governance of the country and a duty was cast upon the state to apply these principles in making laws. The Directive Principles attempted to give expression to the aspirations of the people and to the ideals of the freedom struggle through control, regulation and reform of the Indian Society.
3. A constitution is a living document which gives a concrete structure and shape to the ideals in forming the state. Mere pious proclamations and grand declarations remain as empty rhetoric in the absence of a suitable state structure and the myriad details that support the state architecture. In building the edifice of the new India, our constitution-makers relied on time-tested principles of democratic governance and statecraft. A republican form of government based on representative democracy and universal adult suffrage came into being. Given our colonial ties with the United Kingdom and our acquaintance with the Westminster model, a cabinet-system of government responsible to the elected legislature and which survives only as long as it can enjoy the support of the majority of legislators came to be accepted as a matter of course.
4. The holocaust accompanying partition was an extraordinary calamity by any standards, and is unprecedented during peace time anywhere in the world. More than a million people, both Hindus and Muslims, were butchered for no fault of theirs. Hundreds of

¹ The word 'state' is used in this essay in its juridical sense, and 'State' denotes a province of India

2. This essay draws heavily from the author's paper "A Review of the Indian Constitutional and Political System" presented at the National Workshop on "Constitution of India - A Case for Rethinking" held in New Delhi in December 1999.

thousands of families were devastated by the widespread violence, arson, rape and looting. About eighteen million people were permanently uprooted in the largest ever mass migration in human history. Given these cataclysmic events at the time of partition, restoration of order, and preservation of the unity and integrity of the fledgling nation were of paramount importance to the new leaders of government and constitution-makers. As a result, a highly centralized state-structure, with certain quasi-federal features was built. In order to maintain peace and order, it was felt necessary to retain the inherited 'steel-frame' of bureaucracy without any serious effort to reshape it to suit the needs of a democratic India. However, in order to ensure a modicum of fairness in the functioning of the state, apart from the independent judiciary, several constitutional institutions like Public Service Commissions, Comptroller and Auditor General, Election Commission and Finance Commission were created. However, in keeping with the tradition of unchallenged power of the executive, the appointment of all these constitutional functionaries was left entirely to the executive. This vast centralization meant that the fate of a whole nation, whose vastness, diversity and durability were unparalleled in human history, was left to possibly the smallest number of final decision-makers in any modern democracy.

Are constitutions immutable?

5. Let us now examine whether a constitution is immutable. Ambedkar rightly said that the constitution is only as good as the men and women who operate it. No matter how sound and impregnable the fortress of the constitution is, the termite of human greed and follies is bound to destroy its foundations unless the best men and women assume public office and serve the nation. However, Ambedkar carried this argument too far when he asserted, "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". If this argument is taken to its logical conclusion, the constitution cannot safeguard the republic against the depredations of those in power. The people have the responsibility to always ensure that wise and good men and women ascend to public office and only then can the constitution be effective in ensuring good governance. In many ways this is a rehash of the argument of Plato in 'The Republic'. If we accept this assumption, then in fact there is no need for a constitution and all we have to do is to elect wise and good persons to public office and leave all statecraft to their judgement without restraining them by a set of rules and regulations in the name of constitution. However it is with the recognition that such uncircumscribed and absolute power in the hands of any state functionary is not desirable have constitutions come into being. If the constitutional framework and rules cannot operate as checks and balances against abuse of power and to promote the greatest public good, then such a constitution is surely flawed.
6. There are no guarantees ever in any society that only moral giants and men and women of unimpeachable integrity with an eternal sense of public purpose will always occupy public offices. Therefore wisdom demands that a set of rules and institutions is designed to ensure that persons with right qualities will operate the constitution and once they ascend to public office they will function within certain parameters without over-stepping the

limits of their authority. If a constitution is merely a declaration of good intentions and has no role in shaping the nature of the state, then such a constitution is a worthless scripture. Thomas Jefferson is closer to reality when he argued that constitutions are living documents. "Some men look at constitutions with sanctimonious reverence and deem them like the Ark of Covenant too sacred to be touched. They ascribe to the men of the preceding age 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 human mind.... As new discoveries are made, new truths discovered and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times". Each generation has the benefit of experience of the past and should have the capacity and the right to build upon the foundations of this experience. If certain portions of the constitution have become redundant or dysfunctional over the years, or if new problems arise and new instruments and rules are needed to face those challenges, then constitutions must be revised. If we accept the theory of immutability of the constitution, we are no longer talking in terms of human frailty, limits to state authority, and constitutional checks and balances; we are in fact treading into the realm of religion and spiritualism where the authority of the divine revelation is supreme, unchallenged and immutable. Obviously in modern secular states constitution does not have religious sanction based on divine revelation.

India at crossroads

7. Indian republic is now fifty years old. Let us have a glimpse of the Indian State today, in order to have a better understanding of the constitution in actual operation. India today is at the crossroads. The most likely topic of conversation when any two Indians meet at leisure is the decline of civil society and the condition of the Indian state. The Indian state has become too big, all-pervasive and yet soft, inefficient, and effete. In large parts of the country there is breakdown of order. Virtual lawlessness and anarchy are prevailing. A citizen, whose dignity and self-reliance are paramount for the survival of democracy, is made more and more dependent on the state. The situation is aggravated by competitive populism, a dangerous permissiveness that tolerates criminalisation of our polity and society, ever-growing nexus between money power, muscle power, and political power, increasing centralisation in a vast and diverse polity and serious erosion of the legitimacy of authority — all of which have become characteristic of the Indian state. In the light of this, we should examine where exactly our democratic model of governance has gone wrong. We all accept that democracy is the best and humane form of government. Modern history has also taught us that democracy is the most successful form of government in terms of economic growth, national power, and human welfare.

Constitutional values vs. colonial instruments

8. This crisis resulting from the many deficiencies noted in our democratic system leads us to the inescapable conclusion that our democracy is extremely flawed, and its poor design ensured the eventual breakdown. The preamble, the fundamental rights and most of the

directive principles reflect universal human democratic values of modern civilization. However, the antiquated instruments of governance are largely unsuited to the challenges of today in a vast, developing nation with high proportion of population oppressed under the weight of poverty, drudgery and illiteracy. In the early year after independence, this conflict between constitutional values and colonial instruments of governance was camouflaged. The euphoria accompanying the transfer of power led to a general belief that the moment Indian leaders acquired power, things would automatically improve even with the old instruments of governance. However, the subsequent events belied these hopes. In the first two decades after independence, the aura of freedom struggle, the towering stature of the early leaders associated with that struggle, the hope of better things to come, and the inadequate understanding of the loopholes in the mechanics of governance ensured a certain measure of stability, hope and harmony. As all such hopes are dashed, and as persistent rejection of the parties in power does not seem to result in any significant, tangible improvement, people are increasingly sullen and resentful.

9. It is very easy and tempting for us to blame any particular segment of our polity or governance structure for this unhappy state of affairs. There are many among our governing classes who were, and are, honourable. It would be cynical and dangerous to condemn ourselves and assume that we, as a people, are incapable of self-governance. The Indian people are in no way inferior — they are as good as any other people. Our governing classes are no more venal than in any other society. Our people are no more capricious than those elsewhere. We have the same sense of values and capabilities that made other nations great. The real problem is that our governance apparatus tends to suppress the best and bring the worst out of us. The state structure has been increasingly incapable of rewarding good behaviour or correcting bad behaviour. Power has two manifestations — positive and negative. Positive power can be defined as the power to influence events, resources or human behaviour to promote public good. This positive power is severely restricted in our governance structure. The high and mighty of the land — be it the prime minister or chief minister or other ministers or high officials — have very limited positive power. The outstanding among these functionaries shine by comparison, as they perform several notches above the average. However, even the best performance is far short of what is possible in a well-designed governance structure and what is necessary in a well-run civil society. In the process, every functionary in our constitutional and legal scheme of things has a perfectly rational and plausible alibi for non-performance. However, the negative power which is manifested in pelf, privilege, patronage, petty tyranny or plain nuisance value is more or less unfettered and limitless. Every one of the 18 million public servants, including all elected politicians, appointed public officials and employees of all public sector undertakings, enjoys this negative power in abundance. Understandably, the vast majority of them choose to exercise it, given the climate in which good is not rewarded and bad is not punished. The few who wish to exercise positive power find themselves in shackles and wield limited influence at best. The resultant imbalance has caused incalculable damage to our polity and society, hurtling the Indian nation into a grave crisis. As a consequence, the great institutions of state have all but collapsed, and the crisis of governability is deepening by the day.

10. In the judgement of the people, no arm of state escapes the blame — whether the political class or the bureaucracy or judiciary. The politicians are much more reviled and blamed, because in their case the imbalance in exercise of power as well as the incompatibility between honesty and survival are far more clearly evident. In this demonology, the bureaucracy comes next because in its case there is life-time security irrespective of performance and therefore it is possible to be honest and yet survive. Judiciary is last in vilification, since it is largely immune from the vagaries of politics and there is less interface with the general public on a day-to-day basis. However, judiciary is no less culpable, to the extent that there is gross inefficiency, delay and inaccessibility, almost amounting to miscarriage of justice in most cases. As the old adage goes, the loser in a civil suit laments publicly in court, and the winner sheds tears privately at home. The root of the problem, in a large measure, lies in the governance structure we adopted and not in our people and politicians or officials or judges. It is easy and fashionable to blame the political class or bureaucracy or judiciary for all our ills. This demonising may find scapegoats but will not help in retrieving the situation, unless we identify the root causes and eliminate them.

Political process

11. Political and electoral systems have played havoc with people's lives and governance process. Political parties are totally unaccountable to people in their organisational functioning. It is impossible for any serious candidate for elective office to get elected without mobilising unaccounted funds and violating law. The people or the members of the political parties have no role whatsoever in the selection of candidates nominated by the parties. In most cases, even a list of members of the political parties is unavailable. There is no internal democracy in political parties. As a result, organisations that function wholly undemocratically and are totally unaccountable are expected to govern the nation democratically! The behaviour of the electorate is increasingly plebiscitary in nature. However, the Westminster model adopted by us recognises only power by acquiring legislative majority by means fair or foul, without reference to public opinion or people's mandate. As people's mandate and power are easily divorced, the rulers are increasingly obsessed with survival in power at any cost. As a result, it is now axiomatic that integrity in public life and survival in public office are no longer compatible.

12. In this milieu, the vote, instead of being an unifying, cleansing and energising tool, has become a divisive force, or at best a means for expression of anger and frustration. The electoral behaviour in most parts of the country over the past 25 years clearly shows that the dominant mood of the electorate is to reject the party in power. Often this rejection is despite the perception of the elites that the government has performed creditably, and the alternative chosen by the people is even less attractive on careful analysis. Obviously the voter perceives the issue differently. As far as he is concerned the government of the day failed to fulfil his expectations. Even populist governments, which successfully transferred assets and resources to the people through direct subsidies and welfare schemes, incurred the wrath of the people as much as those governments that had long-

term perspective. This only shows that people are disgusted with the political process itself, and there is deep-seated resentment and unrest about the exercise of power, the imbalance between the exercise of positive and negative power, marginalisation of their own role in the governance process and their disempowerment.

13. This rejection of the governing class by the voter can be construed to be both positive and negative. The positive significance is the demonstration of the voter's yearning for a comprehensive reform and rejection of status quo. The negative impact is the increasing instability and fear of the ruling classes to face the electorate. All these maladies constitute a first class recipe for corruption, greed, and short-sightedness on the part of those in authority. Corruption has become endemic and is widely perceived to be an ubiquitous feature of our governance. No class of public servants is exempt from this. People who are victims of this day-to-day corruption do not have effective institutional mechanisms for resisting it, and therefore succumb to it. Those who have the will to resist do not dare to do so for fear of greater personal loss than the potential gain resulting from resistance. As a result, it is more convenient and less cumbersome to become a part of the process, than to fight against it. Every individual in this vicious cycle therefore prefers the status quo either to maximise personal gain or minimise personal pain, even as the society at large loses more than individual gain, and is increasingly debilitated. To explain this phenomenon, Robert Wade coined the expression, 'dangerously stable equilibrium'.

Election verdicts

14. The election verdicts at various levels in the country have an important lesson to offer to us. At the macro level, when we examine a whole state or the country, the verdict does broadly reflect public opinion. We have already seen that, more often than not, this verdict of rejection is a reflection of people's anger and frustration. But when we go to the constituency level, we find the picture far more disturbing. At the local level, caste or subcaste, crime, money and muscle power have become the determinants of political power. All parties are compelled to put up candidates who can muster these resources in abundance, in order to have a realistic chance of success. As a net result, irrespective of which party wins, the nature of political leadership and its quality remain largely the same and the people end up being the losers. This is followed by another rejection vote in the next election, and the vicious cycle keeps repeating. Where the candidate cannot muster money or muscle power, he stands little chance of getting elected irrespective of his party's electoral fortunes. Increasingly in several pockets of the country people are spared even the bother of having to go to the polling station. Organised booth-capturing and rigging are ensuring victory without people's involvement.
15. If we examine the new entrants into politics over the past three or four decades in the country, hardly any one with intellect, integrity, commitment to public service and passion for improvement of the situation could enter the political arena and survive. Almost every new entrant has chosen politics exactly for the wrong reasons. A careful analysis shows that heredity and family connections are the commonest cause for entry into politics. This is closely followed by those who have large inherited or acquired wealth and have

decided that investment in politics is good business. In recent years, many local muscle men, whose services were earlier sought for extortion or vote-gathering, are now directly entering the fray and gaining political legitimacy. A few persons have entered politics out of personal loyalty to, and close contacts with, those in high public office. Film stars, whose faces are widely known and admired, have predictably started converting their popularity and image into elective office. Occasionally, accidents of fate are pitchforking certain individuals into elective public office. If we exclude these methods of heredity, money power, muscle power, personal contacts, stardom, and accidents of fate, there will not be even a handful of persons in this vast country of ours, who have entered politics with passion for public good and survived for any length of time over the past four decades. There is no activity more vital and nobler than governance. In the true sense, politics is about promotion of happiness and public good. But if the best men and women that society can boast of are either prevented or repelled or rendered incapable of surviving in the political arena, then that governance is bound to be in shambles. Over the past fifty years of our republic, the unsuitable constitutional and legal mechanisms that we evolved landed the Indian republic in an extraordinary crisis of governability.

Legislator as disguised executive

16. One of the main causes of this decline in politics and political discourse is the fact that the legislative office is not perceived by the candidates as well as the general public as one of law making and keeping the executive under check. Legislators are seen by the people, and themselves, as the disguised executive. The Indian Union and even States are too large for any social group to gain complete dominance or decisive influence. The sheer diversity of our society ensures that no group can really exercise control over a whole State or nation. When we come to the constituency level, it is an altogether different proposition. The local dominant castes or groups can, and do, exercise near-total control. When these groups elect the disguised executive in the form of a legislator, what they are looking for is control of the executive branch of government through that legislator. There is little concern for law making. Those few people's representatives who discharge their legitimate public duties fairly and diligently are likely to either lose support of dominant groups, or fall prey to the rejection vote in the election. What the dominant groups want is a legislator who can get a local police or revenue official transferred, who can intervene on behalf of the accused in a criminal case, or at best one who can be a dispenser of patronage in the form of many government welfare schemes. In our constitutional scheme of things, these legislators' support is critical for the survival of the government. Rarely is this support given on the basis of principles or ideology or public opinion. Invariably, there is a price extracted for such support, which can be in many forms. The executive is then at the mercy of the legislators, on whose continued good will and support its survival depends. As a consequence, integrity and survival in power are not compatible any longer.

17. All governance is then reduced to patronage, and transfers and postings of bureaucrats. As Robert Wade pointed out, there is a well-developed market for public office in India. Money habitually changes hands for placement and continuity of public servants at

various levels. These public servants in turn have to collect 'rent' from the public. The hafta paid to a policeman, the mamool charged by the excise official, the bribe collected by the revenue functionary or the corruption of a transport officer are all part of a well-integrated, well-organised structure. This vicious cycle of money power, bureaucratic placements, political power, muscle power and election battles based on dominance of local factions is extremely well-entrenched and resilient and cannot be dismantled by a few good deeds of a few good people or by incremental reform or tinkering with the system. It is this vicious cycle that leads to the pervasive corruption that large sections of citizenry in all walks of life are disenchanted with, and which is enfeebling ordinary citizens. With the exclusion of the people from the political process or governance, except for voting once in a while in favour of a candidate who is imposed on them, most people are sullen, resentful, angry and frustrated. No matter how many times they reject a government or party, no matter how often they give vent to their anger and frustration through public protests, demonstrations, and at times violence, the real character of governance does not seem to change; the local public servant behaves in the same manner as always — corrupt, greedy, arrogant and arbitrary.

Is economic liberalization enough?

18. There are many who believe that the economic liberalisation process initiated in 1991 would somehow find answers to our governance crisis. It is well recognised that such a reform process is long overdue. However economic reform, while it is necessary, is by no means sufficient to resolve our national dilemmas. Even if the role of the state is redefined with sharper focus in a narrower area, an efficient and just state in a free society is a vital precondition for economic growth and human happiness. Even in a liberalized economic environment, the state still has the duty to discharge vital responsibilities. Public order, crime investigation, speedy justice, good quality school education accessible to all children, universal primary healthcare, maintenance of minimal standards of sanitation and civic amenities, and building of vital infrastructure like roads and facilitating economic growth through other infrastructure development like power and ports — all these are the legitimate functions of the state irrespective of the economic system we choose. It is this failure of the state to provide good governance and to enforce rule of law that explains in a large measure the partial success of economic reforms. In the absence of good governance, economic reform in itself will lead to modest growth at best for some period and the fruits of reform will be transient and self-limiting. Inadequate human development and the failure of our delivery systems have led to appallingly low levels of literacy and skills, poor health coverage and hopelessly inadequate infrastructure. The vast majority of Indians are thus left outside the pale of the productive process of the nation.
19. The situation is further complicated as abuse of power is now finding expression in the critical sovereign areas of state function as opposed to the earlier days when economic patronage of state was abused for personal gain. As long as license-quota-permit raj was in vogue, most players of the power game were content with distorting competition and extending patronage on selective basis for a consideration. The political class and

bureaucracy have thus lined their pockets at the cost of fair competition, creating monopolies and distorting market forces and hurting the hapless citizens. However since 1991 the role of Indian state in licensing and other related economic activities has been on the decline. But in the absence of effective institutional checks against abuse of authority, the state continues to have a wide latitude in areas of sovereign functioning like public order, crime control, administrative justice, crime investigation and related matters. No matter how much we limit the role of state, there are vital areas which will always be within the state sphere. When conditions for good governance are not fulfilled, abuse of power becomes the norm. When economic decision making power is denied to the state, such abuse of power will find expression in these sovereign areas and society will be deeply hurt. Over the past several years there is mounting evidence of such a phenomenon resulting in increased criminalisation of politics, greater politicisation of crime investigation, and increasing nexus between political class, state agencies and organised criminal gangs and operators. In effect such abuse of power in the critical areas of state functioning leads to complete lawlessness and undermines the firm foundations of our society and civilisation. In any case, even with economic liberalisation the state will continue to play an important role to ensure fair competition. A rogue state whose legitimacy is in question, whose appetite for ill-gotten funds is uncontrollable, and whose actions are not accountable to the people will continue to use the limited economic decision making power under its control for private gain and personal ends at the cost of public good and economic growth. Therefore mere economic liberalisation is not a panacea to resolve our governance crisis. There is no substitute to good governance characterised by liberty to all citizens, self-governing institutions, empowerment of people and stakeholders, rule of law and institutional safeguards against abuse of authority.

Is political stability the answer?

20. Those who believe that political stability is the answer to our crisis are forgetting the lessons of the past fifty years. For about forty-six years since transfer of power, we had stable single-party rule in India with only five prime ministers, with three prime ministers from a single family presiding over our destiny for nearly forty years. Such extraordinary stability did not help us realise our potential as a nation, nor did it promote human dignity and happiness any more than the remaining period of instability. Undoubtedly stability of governments and smooth and predictable policy changes are necessary for good governance. However, mere stability of the graveyard is no substitute to good governance and accountability and people's empowerment. In fact, long periods of instability in a democracy may actually lead to major reforms, as evidenced by the collapse of the Fourth Republic in France in 1958. Indian experience shows that major policy shifts and reforms are often engineered by compulsion than by conviction. The failure to dismantle even the more glaring, obnoxious and counter-productive elements of the license -permit raj until the nation was in danger of default and perilous economic ruin is an example of such criminal inertia. Similarly, there is no evidence to suggest that the governing classes will herald political and governance reform in periods of stability. In fact, major reform is likely to be initiated only when status quo is unsustainable. If the average politician has

the stable tenure to recover in multiples the 'investment' made in the elections, he has no real incentive to change the rules of the game.

Do we need constitutional reforms?

21. Let us now briefly examine the need, if any, for a review of the Indian constitution and the extent of reforms needed. As we have seen earlier, the constitutional principles are fundamentally sound. Ambedkar was right when he asserted confidently, "I feel that it (the constitution) is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time". The grand architecture of the Indian constitution is impressive and sublime. However over the years several detailed features have become quite disabling to our governance structure and require to be critically examined. No matter how wise the constitution-makers are, problems are bound to crop up from time to time. In the case of our own constitution and governance structure the need for certain changes has arisen out of four basic considerations. Firstly, there has been glaring failure in translating the noble constitutional principles into tangible, practical instruments. Secondly, we have discovered with experience that certain features of the Constitution are not suitable for a vast, complex, diverse, multi-lingual, multi-ethnic society like ours. Thirdly, certain distortions have crept into our fragile democratic system in the absence of well-established systems of accountability. Finally, the economic imperatives of a modern, fast-growing technological era necessitate restructuring of government to enable it to fulfil the rising expectations of the people.

Constitutional principles vs tangible instruments

22. In some respects, the constitution, impressive though it is, has failed to translate noble principles into tangible, practical instruments. This glaring inadequacy is seen in dispensation of justice, protection of basic liberties, enforcement of bureaucratic accountability and appointments and accountability of constitutional functionaries. Securing to all citizens justice — social, economic and political — is one of the avowed goals of the constitution. However, there is glaring failure to translate this into practical action. The failure of justice system, our incapacity to ensure at least a few years of school education to all children, the continuing shame of child labour and a highly centralized polity negated this constitutional promise of justice for all. Unnecessary litigation, needless appeals, dilatory procedures, obsessive concern with the advocates at the cost of justice and indiscriminate application of writ jurisdiction have actually denied justice to the people. The facts are incontrovertible. There is no time limit for adjudication of cases. Some 38 million cases are said to be pending in various courts — many for decades. People have lost faith in courts and are taking recourse to extralegal methods for rough and ready justice. The result is rise of criminal gangs with political connections to settle disputes through extortion and strong-arm methods. As courts are no longer capable of enforcing contracts, they have lost all sanctity, retarding economic growth. Practically every case can end up in higher courts with escalating costs and lost time. The principles of judicial review and writ jurisdiction have been extended to all manner of cases

including transfers and postings of employees. As a result, the truly vital freedoms of right to life and liberty have suffered. The plight of tens of thousands of juvenile undertrials languishing for years in inhuman conditions is an extreme example of the failure of justice system. Anarchy, rise in crime, break down of public order and criminalization of society and polity are some of the glaring consequences of this failure of justice system.

23. Article 53 of the constitution states that the executive power of the Union shall be vested in the president and shall be exercised by him either directly or through offices subordinate to him. Article 154 makes a similar provision in respect of the States. However, the provisions of chapter 1 of Part XIV and their interpretation by the courts have ensured that the bureaucracy is largely unaccountable to the public or elected representatives. At the same time, bureaucracy has no security of tenure in any office, and has become a plaything of unscrupulous politicians. Similarly, several constitutional offices have been created with secure tenure and protection to insulate them from political pressure. However, the appointment has been left entirely to the discretion of the executive, thus undermining their impartiality and independence. The appointments of judges of higher courts has now been practically usurped by the supreme court, making the whole process incestuous and unaccountable. Even more worrisome is the fact that removal of judges of higher courts and certain other constitutional functionaries following the cumbersome procedure prescribed under Article 124(4) has become virtually impossible, making them unaccountable. Our experience in Justice Ramaswamy impeachment case shows that the parliament is incapable of acting as an impartial court in judging the conduct of constitutional functionaries.

Suitability to our conditions

24. A constitution cannot operate in a vacuum. Even otherwise sound constitutional design might fail if it does not take into account the specific nature and requirements of a society. It is by now axiomatic that India is a vast, complex, multi-cultural, multi-lingual polity with disparate groups struggling to coexist and achieve a measure of cohesion and national integration. In such a plural democracy, true federalism and local self-governance are the only effective ways of managing the polity. All successful plural democracies followed this route. However, our constitution-makers opted for a largely unitary state with a few federal features. The pronounced bias in favour of the Union on legislative matters, the obnoxious emergency provision under Article 356, which has been a constant source of abuse of power striking at the very roots of federalism and democracy, and the use of pliable nominated governors as crude partisan political tools have undermined our nascent democracy and often negated people's mandates. The other constitutional provisions for the creation of all-India services for administration have led to the anomaly of public servants functioning in a State being held accountable to the Union, thus undermining democratically elected governments.
25. The most neglected aspect of federalism in our constitution is local self-governance. Despite the pious proclamation in Article 40 directing the state to 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, such local self-governance has not been made integral to the design and functioning of the Indian state. As a result, centralized, unresponsive, inefficient, and largely unaccountable governance has been the norm. The much-talked about 73rd and 74th amendments to the constitution are but very hesitant initial steps in the direction of democratization of our polity. However, these amendments have not ensured true empowerment of local governments as Article 243-G, and 243-W left transfer of powers to panchayats and municipalities to the discretion of State legislatures. Nor has the constitution provided for direct empowerment of citizens as stake-holders at least in areas where they can be identified clearly. As a net result, people have been marginalised in our governance process, and most decisions are highly centralised. Even as Rs.1200 crores of public money is being spent every day by the governments at various levels, precious little of it reaches the people in the form of public goods and services. In the absence of this clear nexus between taxation and public services, and between costs incurred and benefits realized, corruption has become rampant. Legal plunder of state resources and constitutional brigandage have become the hallmarks of the state. The citizen, who is the alleged sovereign in a democracy, has become the mendicant seeking favours, and the public servant has become the master dispensing patronage. The unsuitable centralized model of state has made this anonymous tyranny possible.

Distortions over time

26. Over the past fifty years several distortions have crept into our state structure. As Ambedkar pointed out, " The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of these organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics...." Over the years, parties have become centralized, autocratic, unaccountable instruments for power in the hands of unscrupulous, self-seeking coteries. Elections have been perverted beyond belief and criminal gangs, money power and exploitation of the loopholes in election process have become the determinants of power. This, combined with a patron-client based democracy in which the elected representative is seen as a leader dispensing patronage and the citizen is a recipient has distorted our democratic process. Absence of voter identity cards and effective mechanisms to prevent bogus voting and to ensure legitimate exercise of franchise, and abnormal use of money power to purchase votes have made elections a costly gamble. Once elected, a legislator is obsessed with monetary rewards to ensure a good return on his investment, and to insure for the future. Corruption has thus become ubiquitous.
27. The Westminster model accepted at all levels so uncritically by our constitution-makers has been distorted a great deal. As the council of ministers survives only as long as it commands legislative majority, and as loyalty of legislators has a price attached to it, the political executive is perpetually on tenterhooks. In fact a vast proportion of time, energy and power are spent only to survive in office, and honesty has become increasingly incompatible with survival. As legislative election in a first - past - the post system

determines the formation of government, there is enormous incentive for abuse of electoral process. As people's mandate is easily divorced from power, and as legislators are often up for grabs by the highest bidder, governments have become notoriously unstable. As power is seen as a highly personal treasure, and as institutional checks against abuse of power are ineffective, elections are only leading to change of players, without any meaningful change in the nature and functioning of the state. As the political process has become highly incestuous, and elections are distorted, the best men and women are often discouraged from entering public life. All these distortions have undermined the legitimacy of the governance structure, and led to a near collapse of the state.

28. As the domination of a single - party has become a thing of the past, the working of the bicameral parliament has been distorted. As the Rajya Sabha is a permanent body with a third of the members indirectly elected by State legislatures every two years, it ceased to reflect the will of the people at any point of time. Even governments with a clear mandate in the Lok Sabha have found it difficult to get legislation through the Rajya Sabha. The coequal legislative powers of both houses except in respect of money bills meant that law-making is increasingly difficult. For instance, during the life of the 12th Lok Sabha, practically no legislation was possible. As members vote predictably on party lines, Union legislature is nearly paralyzed.
29. The well-meaning 52nd Amendment and 10th schedule have led to grievous consequences. While individual defections are discouraged, group defections are rewarded. 'Split' in a political party is so loosely defined that these provisions have actually ended up encouraging group defections through midnight coups and endless conspiracies. People's mandates are negated at will, and democracy has been reduced to a farce. As seen in Uttar Pradesh, at times a whole new arithmetic is invented to escape the provisions of the tenth schedule. At the same time, even on matters not affecting the survival of a government, the individual legislator has no choice to deviate from his party's whip. The most blatant abuse of such a whip is in respect of Justice Ramaswamy's impeachment hearings, reducing the high duty of a constitutional trial into a partisan numbers game.

Economic imperatives

30. The combined fiscal deficit (borrowings plus deficit financing) of the Union and States is of the order of 12% GDP in the current year. Already, nearly 50% of all Union tax revenues are spent for debt servicing. Despite mounting budgetary expenditure, the state's capacity for providing quality public goods and services is in serious question. Our economy is stagnating at moderate levels of growth on account of failure of public order, incapacity to enforce rule of law, poor level of skills as a result of low literacy, low level of health care and inadequate infrastructure. Even in a liberalized economic regime, we need competent state sharply focused on vital public services. Market in itself is not a panacea to our crisis. Effective and fair monitoring is critical for healthy and productive competition to generate real wealth. The issues of glaring poverty, child labour, poor sanitation, inadequate water supply, and other basic amenities and services can no longer

be glossed over. It is widely recognised that market is not a substitute to effective democratic governance and people's empowerment. At the end of this millennium, there is a revolution of rising expectations on account of rapid spread of telecommunications and satellite television, and economic stagnation can no longer be tolerated by the people. Unemployment is growing and unless there is high level of sustained economic growth with employment generation, it will be very difficult to maintain any degree of stability and social harmony.

31. The Indian state, which is guzzling vital national resources without commensurate returns to society, has become an impediment to economic growth and harmony, instead of being a promoter. We need to reinvent government, and make it a potent instrument for promotion of human happiness. If such an effort is not successfully made soon, there could be paralysis of governance and fiscal collapse. The erstwhile USSR faced a similar crisis. Sadly, the Russian society and leadership failed to respond to the challenge in time, and the results are horrendous for the people. Not only did USSR break up, but even now there is economic decline, social chaos and paralysis of governance, leading to anarchy, rampant organized crime and collapse of a once-mighty state. We need to review the institutions of state and design new instruments to make government function effectively. Speedy justice, rule of law, accountable bureaucracy, democratic decentralization, transparency in government, fair elections and democratic party functioning are all vital not only to build a sound modern state, but also to build a vigorous and fast-growing economy.

Conclusion

32. In conclusion, much needs to be done urgently to resolve our governance crisis. Our constitution is a fundamentally sound document, and its preamble, fundamental rights and most of the directive principles are as relevant today as even before. However, the detailed working of the state structure requires a careful review and reform in keeping with these basic constitutional principles. Short-term self-serving reform is counterproductive and damaging to the polity and society. An attempt to wholly rewrite the constitution is a potentially dangerous enterprise which may lead to an illiberal, authoritarian state structure. Over the years the contours of reform have become clear to most discerning observers, and around most of these reforms there is already a broad national consensus. Such a reform need not be an all-or-none exercise. A few critical reforms could be the vital first steps leading to other vital reforms later. Many reforms of our political system can be brought about by ordinary legislation. For instance reform of political parties and elections need not necessarily wait for constitutional amendments.
33. The nature and magnitude of our crisis are undoubtedly daunting and we are witnessing the collapse of the Indian republic. However the Indian crisis is by no means intractable or immutable. The resolution of this crisis lies in the recognition that what we need is not merely a change in players, but a fundamental transformation of the rules of the game. Such a reform process should encompass several spheres of governance ranging from political parties to justice system.

- Democratization of political parties to enable our best men and women to participate actively in the political process
- far-reaching electoral reforms to ensure free and fair elections enabling the best leadership to emerge, democratic decentralization and empowerment of citizens to an extent that the relationship between the citizens vote and their welfare, between the tax collected and public services provided is clearly established
- a public service reform to make bureaucracy an effective instrument of good governance
- greater separation of executive from legislature to make honesty compatible with survival in public office; a speedy, efficient, accessible justice system and
- institutional self-correcting mechanisms and safeguards against abuse of public office — all these should be integral components of our governance reforms.

In this all-pervasive crisis of governability, the only practical realistic realisable way out is a peaceful, democratic, holistic transformation of the Indian governance structure. The people are ready and impatiently waiting for a change. The time to change is now before the all-pervasive restlessness is transformed to revolution or resignation. The meaning of the people's verdicts over successive elections is clear. The ball is in the court of politicians and public opinion makers. The task is difficult, but vital; the struggle is hard, but necessary; the risks are high, but cannot be avoided. The time for concerted action is now.

* * *

LOK SATTA
401 & 408 Nirmal Towers
Dwarakapuri Colony,
Punjagutta
Hyderabad – 500 082

Ph : 040-3350778/3350790
Fax : 040-3350783
Email : fonderef@hd1.vsnl.net.in

Date : 5 January 2000