

## SC reserves NDI orders in Veerappan case

By T. Padmanabha Rao

**NEW DELHI, OCT. 31.** The Supreme Court today reserved judgment on the appeals challenging the August 19 order of the Designated Court, Mysore giving consent to the special public prosecutor (PP) for withdrawal of TADA charges against certain Veerappan associates-accused.

The Mysore judge's August 28 order directing the release on bail of Veerappan associates is under challenge in the appeals filed by a retired police officer, Mr. Abdul Karim, (father of a sub-inspector who was killed in 1992 along with a superintendent of police allegedly by the brigand Veerappan).

Related public interest litigation writ petitions from Dr. B. L. Wadhwa, advocate, and Mr. Adarsh Ganesh were also before the court.

The Bench, comprising Mr. Justice S. P. Bharucha, Mr. Justice D. P. Mohapatra and Mr. Justice Y. K. Sabharwal, said it was "principally concerned with the way the PP made the application (under Section 321 of the Cr.PC) and how the designated court allowed dropping of TADA charges without applying its mind to find out whether the PP was satisfied with primary documents and material shown to him by the Government for dropping of charges."

The Bench also said "it is the question of the application under Section 321 of the Cr.PC (for withdrawal of TADA charges) being faulty and therefore, the order also being faulty."

"Our prima facie conclusion that both the State Governments acted in panic without thinking about the repercussions stand reinforced," the Bench said.

"Prima facie, we feel" the concerned applications under Section 321 of Cr.PC made by the concerned PPs (both in Karnataka and Tamil Nadu) gave "no primary material to produce a valid order" (by the concerned courts), the Bench said.

When Mr. Kirit N. Rawal, Additional Solicitor-General appearing for the Centre pleaded that the court might not go into the legality of the State Governments' decision to negotiate with Veerappan to secure the release of Mr. Rajkumar, the Bench said it was not concerned with those aspects but might look into the manner in which the applications were made before the concerned courts (under Section 321 of the Cr.PC) for withdrawal of TADA charges.

Asked what the Centre had done to help the two State Governments nab Veerappan for the last 10 years, the ASG submitted that, in a situation concerning law and order in a State in a federal set-up, the Centre could act only on a specific request from the State concerned.

THE HINDU

7 NOV 2000

# Suraj Bhan shifted to H.P.

By Harish Khare

NEW DELHI, NOV. 3. Mr. Suraj Bhan has been moved out of the Raj Bhavan in Lucknow and posted as the Governor of Himachal Pradesh. His place in Lucknow has gone to Mr. Vishnu Kant Shastri, incumbent Governor of Himachal Pradesh.

This was announced in a press communique from Rashtrapati Bhavan this afternoon.

For both Mr. Suraj Bhan and Mr. Shastri it is not a fresh appointment, but a case of transfer. The Rashtrapati Bhavan communique makes it clear that the appointments will be for the remainder of their respective terms of office.

Both are known to be BJP men, and the swapping of places between them reflects the intra-party calculations, rather than any constitutional principles. In fact, the departure of Mr. Suraj Bhan from the Lucknow Raj Bhavan was on the cards for sometime, as the BJP establishment has not been totally happy with his pro-active approach to the gubernatorial assignment.

In particular Mr. Bhan had taken it upon himself to keep vigil over the interests of Scheduled Castes, and this was not much appreciated by the BJP hierarchy in Uttar Pradesh. On the other hand, as Governor Mr. Bhan has been seen to be an active

advocate of "reservation," and he, in fact, heads a committee of Governors, appointed by the President of India after the last Governors' conference, to look into the inadequacies in the implementation of the reservation arrangements.

In fact, it is believed that Mr. Suraj Bhan sought to invoke the intervention of President Narayanan to ward off a transfer out of the Lucknow Raj Bhavan; however, limits of Presidential capacity to influence course of events in normal times asserted themselves.

It is ironic that Mr. Bhan should have fallen out of favour with the BJP establishment, as he was cited earlier as a shining example of the party's accommodative approach towards weaker section. Now that the party is headed by a Dalit himself, perhaps the BJP can afford to jettison a lesser symbolic figure-head, without inviting the charge of being prejudiced against Scheduled Castes.

On the other hand, Mr. Vishnu Kant Shastri is known to be an RSS ideologue. His presence in Lucknow, however symbolic, would help the BJP's latest electoral strategy to consolidate its upper-caste support. Mr. Shastri also has claims to be a poet of a sort, and as such counts himself as a literary peer of the Prime Minister.

# Pro-Dalit agenda led to transfer: Bhan

LUCKNOW, NOV. 3. The Uttar Pradesh Governor, Mr. Suraj Bhan, who was shifted to Himachal Pradesh, today said his pro-Dalit agenda might have annoyed some people in the State. "Welfare of Dalits and corrective measures in the educational institutions and pointing out irregularities in scholarship scheme for Dalit students were on top of my agenda. If these steps have annoyed someone, I can not help," he told presspersons here.

He refused to answer a suggestion that his shift to Himachal Pradesh had to do with the pro-active role he had played during his tenure as the U.P. Governor. "It is up to you to draw your conclusions on this," Mr. Bhan said. Defending his pro-Dalit posture, he said he had noticed some irregularities in the Dalit welfare schemes during regional meetings he held after assuming office in 1998. "I drew the attention of the State Government to these irregularities." Mr. Bhan said he would continue to pursue the problems of Dalits "where ever I go and try to solve them."

PTI

# SC lambasts TN, Karnataka in Veerappan case

## Quashes orders to drop TADA charges

The Times of India News Service

NEW DELHI: The supreme court on Tuesday gave the Karnataka and Tamil Nadu governments a severe jolt by quashing orders to withdraw TADA charges against forest brigand Veerappan and his associates.

This has put a question mark on the fate of thespian Rajkumar, who has just completed 101 days in the outlaw's custody since his abduction on July 31.

A bench comprising Justice S.P. Bharucha, Justice D.P. Mohapatra and Justice Y.K. Sabharwal also deprecated the two state governments, saying, "The way applications were made for dropping TADA charges against 160 accused, including Veerappan, before the designated court in Mysore shows it was a package deal. The deal was that the TADA charges will be dropped and then the 51 accused, who are in judicial custody, will file bail applications which will not be opposed." This, the court said, "showed the governments' complicity with the accused".

The accused may, however, have grounds for challenging their prosecution under TADA or for seeking bail, the court said, adding that such proceedings "shall be decided on merit".

The court noted that the records, including sensitive intelligence documents given to the court in a sealed cover, did not show that the government was assured that Rajkumar would be released after Veerappan's associates were freed from prison. "The government did not consider the possibility of reprisal against witnesses and the effect on the morale of the police force

after the accused were released," the court said.

Abdul Karim, whose police officer-son Shakeel Ahmed had been killed by Veerappan in 1992, had challenged the two states' orders. Lawyers B.L. Wadhwa and Adarsh Ganesh also challenged the decision to release the accused. The Karnataka government had said the decision to drop charges against Veerappan's men was based on the apprehension that if something happened to Rajkumar, there would be linguistic unrest and widespread violence.

The court said the sequence of events showed the governments acted in panic and haste. This was clear since Veerappan's demands had been met overnight and without application of mind to the requirement of law.

Expressing grave concern over the states' failure to arrest Veerappan for the last ten years, the court noted, "The government said that Veerappan's gang had been reduced to under ten, but did not controvert the allegation that he was now in league with secessionist elements."

In his separate but concurring judgment, Justice Sabharwal said, "If the real reason was to grant bail to the accused, then why this camouflage? It was a deceit. No court can be a party to such deceit and camouflage."

"It does not appear that anybody considered that if democratically elected governments gave an impression to citizens of being law-breakers, would it not breed contempt for law, would it not invite citizens to become a law unto themselves?" Justice Sabharwal asked.

THE TIMES OF INDIA

8 NOV 2000

# It is the Supreme Court that released Rajkumar!

NO one will ever be able to claim again that the Judiciary are intruding into the realm of the Executive, least of all politicians of the ilk of Karunanidhi in Tamil Nadu and Krishna in Karnataka. Barely two months ago these two worthies had arrived at the conclusion, *in panic and in haste* in their Lordships' words, that the only way to secure the release of matinee idol Rajkumar was to concede the demands of his captor, the brigand, Veerappan. There were ten of them, several of them political, like sharing the Cauvery waters, compensation for Tamil Nadu rape victims, Tamil to be a secondary language in Karnataka, apart from freedom for 51 TADA detenus. As soon as emissary Gopal returned with a soft reply, Veerappan raised two fresh demands. Their Lordships, Justices, Bharucha, Mohapatra and Sabharwal were told, on instructions, of frightful consequences that would inevitably flow if Veerappan's demands were not met, at once, immediately and without delay. Their

Lordships kept their cool and applied the law because the two governments demonstrated both their inability and unwilling to do so. After the judgment, Karunanidhi even complained that his agreement with his Karnataka counterpart to free *innocent* TADA detenus had not been implemented and this had led Veerappan to kidnap Rajkumar; as though to justify the crime. Apart from the inherent contradiction in calling TADA detenus, *innocent*, the presumption of a Chief Minister to declare innocence or guilt all by his little self, without any material and in total usurpation of the authority of the judiciary, is intolerable. We have had occasion to point out editorially that a mere Chief Minister has no authority to set criminals free. This is the prerogative of the judiciary after a full and fair trial. If there is any usurpation of the functions of one arm of the state by another, it is generally by the Executive — politician and bureaucrat — who presume to play the judge, without training, without

scruples and in gross abuse of power. Veerappan seems to have realised that his game was up and he was left with no choice except to release Rajkumar. If he were dreaming of a political career, it would be out of the question if anything happened to Veerappan and his threats hav-

C R IRANI

**CAVEAT**

ing turned to dust after the Supreme Court judgment, he was seen to have shrunk in size and no longer the feared outlaw with a price on his head.

The larger than life image projected by Veerappan is exposed as a creation of Tamil politicians with other fish to fry. His sympathies with the Tamil Tiger cause were obvious in his demands and the

way Karunanidhi played on the subject within a week of the Supreme Court judgment suggests a strong bond between the two. It does not help to plead that the Tamil Nadu Chief Minister had no choice, the ease with which their Lordships pricked that particular balloon proves that he had, but chose not to exercise it, either out of cowardice or design. What is clear is that the entire edifice erected by Karunanidhi of justifying Veerappan's demands has collapsed like a house of cards; he will have to think again and much more carefully.

TWO further thoughts are in order. One, no time should now be lost to go into the jungles and nab Veerappan quickly. Unless the authorities are deeply implicated with the forest brigand — and there is more than a suspicion that they are — they should know by now where to find him. In fact the arrest would have been carried out earlier if the Tamil Nadu government acting in haste and in panic, if not with

malice aforethought, had not disbanded the Force and transferred the leader, as soon as it was obvious that Veerappan was cornered and would be arrested any moment. Their Lordships sitting in Delhi have reduced Veerappan to size, only mopping up operations are left, unless of course Karunanidhi plays his devious games again. It will be much more difficult for him this time. And he should not complain if Jayalalitha, an equally consummate politician accuses him of being hand in glove with Veerappan. am not saying he is — not yet — but there are few options left for the Tamil Nadu Chief Minister except to play with a very straight bat from now on.

AND thanks to Their Lordships, Bharucha, Mohapatra and Sabharwal, outlaws like Veerappan and their accomplices among politicians, bureaucrats and touts of all kinds will rest far more peacefully than they have done for many years. For this, Lords, my respect and my tribute on bended knee

THE STATESMAN

16 MAY 2000

It is time to review the Constitution for the creation of a New India

# Upgrade the programme

BY RAJINDER PURI

ONE NEED not dwell on the inadequacies of the present system of governance. The need to set up the Constitution Review Commission by the Government was itself an admission that inadequacies exist. The present system allowed a non-member of Parliament to become Prime Minister. Consequently, as Prime Minister he could not vote in Parliament of which he was the leader, but could vote in a state Assembly of which he continued to be an MLA. Was this what the founding fathers conceived when they framed the Constitution?

The present system debars the CBI to either investigate or prosecute a Government official or minister without clearance from the Government. Does this even remotely conform to the principles of natural justice?

Under the present system, a full bench of the Supreme Court could decide that one of its own judges was corrupt. However, that judge could not be penalised because only Parliament has the power to impeach him. Parliament voted against his impeachment. Was that judge corrupt, were the rest of the Supreme Court judges partial and vindictive, or was Parliament derelict in its duty?

Most of the distortions in the system arise from a flawed understanding of what constitutes real Indian nationalism. Although the Constitution was framed with great care, it is a matter of record that several sections of society felt left out of the deliberations preceding it. Little wonder then that the past 50 years have witnessed insurgencies and separatist movements in different parts of the nation. The people of India are not seeking just a new Constitution. They seek a New India.

It is true that there exists no constitutional provision for making a new Constitution. We must therefore be constrained by the framework of the present Constitution. We can create a New India without violating its basic structure.

In pursuance of this belief, I enclose some suggestions:

■ We should introduce a clause in the Directive Principles of the Constitution committing our nation to pursue the goal of creating a community of nations comprising members of the SAARC. This community would have common tariffs, com-

mon defence arrangements, and no visas among themselves. India must patiently persuade its neighbours that without compromising any nation's sovereignty, SAARC nations can create the proposed community on the lines of the European Community.

■ We should introduce genuine democracy by recognising the federal character of our nation. Accordingly, the Central Government should keep the subjects of defence, foreign affairs, communications and currency with itself. The rest of the subjects should devolve to the respective state Governments.

■ We should constitute a new States Reorganisation Commission that would create smaller states for effecting better administration and promoting cultural and ethnic identities. The commission would act according to predetermined norms.

■ We should carry the federal principle of governance to its logical conclusion by effecting amendments that create a five-tier system of governance. The five tiers would be federal, state, district, block and primary. We should delimit the present districts so that each district conforms to each parliamentary constituency. Similarly, each block would conform to each Assembly constituency. The primary units would be the rural village and the urban colony.

The three tiers below the federal and state tiers would each have its own elected council and executive committee. The area MP could preside over the district council, the area MLA over the block council, and the elected headman over the primary urban or rural council. All executive powers related to problems faced solely by those residing in an area would devolve to their own elected body.

For example, district tiers could have their own universities and medium of instruction. The inhabitants of each district would exercise a veto and say over the use of natural resources in their area. The executive of each tier of governance, including the primary tier, would have control over the appropri-

ate level of the law and order machinery.

The elections to all bodies of the five tiers should be simultaneous, mandatory, time-barred, and under the authority of the Central Election Commission. All elected bodies of the five tiers should have fixed five-year terms. The President's election should coincide with the general election. The presidential candidates should file their nominations at the same time as the candidates for Parliament and all Assemblies.

The newly elected MPs and MLAs should elect the new President immediately after their election. In case of any executive head at any of the five tiers losing a simple majority in the House, the whole House would elect the successor who would complete the fixed five-year term.

■ We should give the President of India a role commensurate with his mandate that is the widest held by any individual in our Republic. That would ensure unity and cohesion in governance. To this end, we should give constitutional status to newly created bodies, as well as to certain existing bodies, in fields that require autonomous functioning, and make them accountable to the President.

The Central Election Commission provides a model. Wherever required the Constitution Review Commission should reinterpret the clauses of the Constitution in the light of current realities. It is noteworthy that India has moved from single party governance to multi-party governance. Consequently, the conflicting views about the relationship between the President and the Cabinet expressed by Rajendra Prasad and Jawaharlal Nehru respectively deserve reappraisal.

The Constitution says that the President must abide by the advice of the Cabinet. How does that make the President any less responsible than the Prime Minister who is also bound by the advice of the Cabinet? True, the Prime Minister presides over Cabinet meetings. However, he must periodically brief the President. Cabinet decisions to



become law or executive orders must obtain the President's signed approval.

Does this not render the Prime Minister akin to the foreman who executes from day to day but must report to the chairman who wields the ultimate authority? We should also note that each appointment or transfer of a Government official is in the name of the President. Does this not give the President a veto on all appointments or transfers in Government personnel policy if they in any way violate set rules or norms?

The Prime Minister is the chief executive officer dealing with affairs under the domain of the Central Government. The majority in the Lok Sabha elects him. But the President is responsible for not only monitoring the conduct of the Central Government but also the conduct of state Governments because the state Assemblies elect him. Indeed, the Governors, appointed by the President, should be responsible solely to him. In many Centre-state disputes, the Central Government is partisan because of political vested interests.

■ The Inter-State Council should be a body representing all states and designated representatives of the Central Government. The council should be empowered to resolve all issues of concern and contention affecting the Centre and the states, the Centre and any one state, and the states themselves. The President, who alone has the electoral mandate from both Houses of Parliament as well as all the state Assemblies, should head the council.

■ We should dissolve the Planning Commission, which is not a constitutional body. In its place, there should be constituted a People's Planning Commission accountable to the Inter-State Council. This commission should concentrate on formulating People's Plans to provide infrastructure to the masses in the spheres of roads, management of drinking and irrigation water, power generation, healthcare and literacy.

The Constitution Review Commission should go back to the original Constitution before a amendment. That should be the basic document and the starting point for the review.

(This is an edited excerpt from the letter of former writer to the Constitution Review Commission.)

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## BARNALA AMONG PROBABLES

# Governors 'chosen' for three new States

HD-1  
28/10

By Vinay Kumar

**NEW DELHI, OCT. 27.** The Vajpayee Government is learnt to have cleared three names for appointments as Governors to the new States of Chhattisgarh, Uttaranchal and Jharkhand, scheduled to come into existence next month.

While the former Union Minister, Mr. Surjit Singh Barnala, is tipped for Uttaranchal Governor, the Cabinet Secretary, Mr. Prabhat Kumar who is retiring on October 31, is likely to take over the gubernatorial assignment in Jharkhand. Dr. Dinanath Tiwari, a Planning Commission member, is believed to have been chosen for the job of Chhattisgarh Governor, authoritative sources in the Government said.

The candidature of Mr. Barnala, a former Governor of Tamil Nadu and also a former Chief Minister of Punjab, was being pushed by the Shiromani Akali Dal, an ally of the National Democratic Alliance (NDA). The new State, to come into being on November 9, has a sizeable number of Sikh farmers and businessmen. The inclusion of Udham Singh Nagar district in Uttaranchal had sparked off a controversy as the Akali Dal wanted it to remain a part of Uttar Pradesh.

Mr. Barnala was Chemicals and Fertilizers Minister in the Vajpayee Government's first innings. The NDA Government has been under pressure to accommodate the senior leader in some appropriate capacity. The Shiromani Akali Dal's candidate, Mr. Darbara Singh, was appointed Rajasthan Governor in 1998 but after his death in May 1998, the NDA ally was left with no representation among the gubernatorial posts.

Mr. Prabhat Kumar's experience as an administrator and senior bureaucrat appears to have weighed in his favour. He is likely to be posted to the Raj Bhavan in Ranchi, the provisional Capital of Jharkhand, slated to come into being on November 15. Mr. Kumar, a senior IAS officer belonging to the D.P. cadre, has been Cabinet Secretary for the past two years. He has also served in key posts in U.P. and his rich administrative experience is likely to be of crucial help in overcoming initial hiccups of a new State like Jharkhand.

Dr. Dinanath Tiwari, a Planning Commission member, is believed

to have been cleared for gubernatorial assignment in Chhattisgarh. The new State is coming into existence formally on November 1. An expert in Environment, Forests, Space and Science and Technology, Dr. Tiwari also looks after Tribal Development Affairs in the Planning Commission.

At one time, the Home Ministry was toying with the idea of asking the present Governors to take care of additional responsibilities of the new States but it was felt that new Governors would be able to devote their energies full-time in tackling the nitty-gritty of the administration and other day-to-day responsibilities.

## Chhattisgarh HC at Bilaspur

By Our Legal Correspondent

**NEW DELHI, OCT. 27.** The Government has issued a Presidential notification to the effect that the High Court of Chhattisgarh State, to be formed on November 1, would be situated at Bilaspur.

The notification has been issued under Section 21 (2) of the Madhya Pradesh Reorganisation Act. This will be the 19th High Court. Accordingly the High Court of Madhya Pradesh with Benches at Gwalior and Jabalpur will be bifurcated.

Meanwhile, the process of appointing the Acting Chief Justice (CJ) and other Judges to the new High Court from among the Judges of the Madhya Pradesh High Court has been set in motion and according to the sources, the matter is pending with the Supreme Court. The Centre has also finalised segregation of cases to be posted before the Chhattisgarh High Court. Once the appointment of the Acting CJ and other Judges are made, these cases would be transferred to the new High Court.

Similarly, the Centre has decided to locate the High Court of Jharkhand State at Ranchi, where a Bench of the Patna High Court is already functioning. For Uttaranchal, the High Court will be located temporarily at Nainital, where the summer Raj Bhavan will be made into a court building with all facilities.

UNI reports from Jabalpur:

Mr. Justice R. S. Garg would be the first Acting CJ of the Chhattisgarh High Court. According to official sources, Mr. Justice Garg has already given his assent in the matter to go to the new State.

THE HINDU

28 OCT 2000

# AUTONOMY DEMANDS

## 516 Lessons For The Federal State 20/10

By AD MODDIE

**I**n the federal state of India, the demand for "autonomy" has been raised and it needs to be examined in the context of the last century of profound changes in the nature of states and peoples worldwide. Till 1918, the main issue was who ruled the dynastic empires and kingdoms from the UK to China. Then followed the break up of dynastic empires, and the question was, how to rule? By democracy, by fascist regimes, or by Communist ones — these experiments lasted from 1917, the end of the Czarist empire, to 1989, with the disintegration of the Soviet Union. Now the question is, who rules whom?

National states have multiplied since the UN was founded in 1945. Empires of all kinds, including Communist ones, have spawned new states, colonies, and now ethnic groups. One good example of the latter is Yugoslavia, which is now found to be teeming with Serbs, Croats, Bosnians and Kosovans. Nigeria and the Congo have been plagued by ethnic conflicts for independence or autonomy.

### RICH AND POOR

Earlier, Bangladesh emerged from Pakistan. The whole of East Europe has new states in smaller national/ethnic groups, the most homogeneous being Poland. Then there is the residual problem of Taiwan and the Koreas in the Far East. Israel and Palestine are in a prolonged conflict and a tortuous "peace process". Afghanistan is being torn apart by tribes. Behind all of these states is the question, who rules whom, and what is the legitimacy and acceptability of that rule.

At the Paris Peace Conference in 1918-19, Woodrow Wilson's secretary of state, Robert Lansing made a prophetic entry in his diary. The phrase (self-determination) is loaded with dynamite. It will raise hopes which can never be realised. It will, I fear, cost thousands of lives. Between the earlier sovereign states and "self-determination", millions of lives have been lost or are in the balance. The nation-state is not always a clear concept. Its cement has been made of dubious material.

The world is now faced with 184 independent countries, 600 living language groups, and 5,000 distinct ethnic groups, of which India has a burdensome share, and the world has only 50 years of management experience in this field.

rience in this field.

The major lesson of this global experience is that peaceful co-existence has been achieved mostly in relatively prosperous democratic societies. These are the USA, the EEC, Japan and Australia, all of whom, save Japan, have sizeable ethnic



groups. So prosperous democracies seem to be healers of ethnic conflicts within states, even of varied ethnic origins. And the Nigerias, the Congos, and the Afghanistans stand as examples to the contrary; with Pakistan and Sri Lanka following closely. This is the cardinal lesson for rulers: "progress" of the people has to go with the security of the state and its rulers. Or else, there is turbulence and chaos.

In this historical context, what are the lessons for India? How far has the federal state been too federal, with an imbalance of powers, especially financial, between the Centre and the states? How far have the states extended devolution of powers to local bodies? Their record is no better than that of the Centre.

### MISMANAGEMENT

Since 1981, the Centre has maintained a reasonable stability in staff numbers. Local bodies staff has increased only 10 per cent. But state governments and quasi-government institutions have raised their numbers between 1981 and 1998 by 31 per cent and 41 per cent, respectively.

State administrations have bloated, made insufficient efforts to either enhance revenues or effect economies, or even provide efficient law and order, power, transport, health and education services to the people. Demands for autonomy by the states have been mainly demands for money, which has been wasted in unproductive enlarged ministries and unproductive staff overheads, with little or no financial prudence. Not to mention political and bureaucratic plundering.

But politics is the manipula-

tion of emotions and myths for politicians to continue in power; and the bureaucracy has a permanent stake in the exercise of power. Where come the checks and balances of power in a democracy? Where comes the role of the people in governing themselves? It is no accident that, in the Indian state, the most unstable areas have been those where there has been the least progress —

Kashmir, Bihar and the north-eastern states. And this is because large allocations, disproportionate to their per capita shares have been misused by local politicians in power, especially in Kashmir. Hence, less progress and rising dissatisfaction. The state politicians asking for more autonomy have created this rising spiral of dissatisfaction and disintegration. They, their henchmen and their bureaucracies

have fattened on scarce national resources, leaving the people in the lurch; be they Kashmiris, Nagas, or Biharis. In border states, this also has serious national security implications. "Autonomy" has to subserve national security.

### IMPEDIMENTS

Any move for secession, in Nagaland or elsewhere, is impossible to accept. Farooq Abdullah's autonomy resolution for J&K is irresponsible. No part of India can free itself from the jurisdiction of the Supreme Court, the Election Commission, Parliament and the President's role. Nor can each state have its separate charter of fundamental rights. Abdullah should have had the sense to know that the first to exercise their fundamental right to be free of his rule would be the people of Jammu and Ladakh.

There are only two answers to these questions in the Indian context. First, that modernisation and progress do not spring from a vacuum, but from the history and culture of each region. Second, the basis for the resolution of conflicts lies in the fair implementation of democratic processes and fundamental rights; the setting in motion of a civil society and local development.

Kerala and MP have pioneered the devolution of democratic local development down to the village level. Not only has this made a promising start — with a 50 per cent success in Kerala since 1996 — but it has signalled the only path of survival for politicians in the future. Kerala politicians have learnt that the greatest impediment is the bureaucracy.

The author is formerly of the Indian Civil Service.

# Some facts about the Constitution

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**H.Y. SHARADA PRASAD**

**W**ho is the author of our Constitution? To that, many people would say: "What a question! Everyone knows it is Dr Ambedkar."

But Ambedkar himself shied away from claiming that title for two reasons. One, as he often pointed out, he was only giving expression to a consensus that had been reached after many compromises in the Drafting Committee of the Constituent Assembly. Two, he could not hide the fact that in many areas the Constitution fell far short of what he would have liked.

But there is one man who literally wrote our Constitution. His name, little known, is Prem Behari Narain Raizada (Saxena), son of Brij Behari Narain Raizada of Delhi, although the family originally came from Rampur. The Constituent Assembly, which met on December 9, 1946, concluded its labours and adopted the Constitution on November 6, 1949. The entire document was then written out in his own hand by Prem Behari in a flowing italic style in the best calligraphic tradition of our country.

This original version was then signed by all the members of the Constituent Assembly in January 1950. The Constitution itself came into force on the twenty-sixth of that month. Photolithographed copies of it were then made at the office of the Survey of India in Dehra Dun.

I had seen a couple of them displayed in exhibitions and had marvelled at the quality of the craftsmanship, particularly because of the art work lavished on it by one of our most eminent painters, Nandalal Bose. Each page had a frame and at the beginning of each part of the Constitution, Nandalal Bose had depicted some scene from our national experience. In doing so he gave us a gallery of some of the greatest figures of our history.

And now I have become the proud possessor of a copy of this beautiful volume because the government had the welcome idea of reprinting it to mark the 50th anniversary of the Republic. Once again the work was entrusted to the Survey of India, which has done a splendid job of it.

The articles and clauses of the Constitution are available in various editions for the use of lawyers and legislators. But Nandalal Bose's outstanding art

work can be seen only by those who have access to this collectors' item. It ought to be better known. To the best of my knowledge only the page which gives the Preamble which begins with the words "We the People of India..." has been reproduced and displayed in public offices. It would be a good idea if all the illustrations were brought out in the form of a separate publication, for they show an eminent artist contemplating our heritage from the Mohenjo Daro period to our own days.

The Vedic period is represented by a scene of a *gurukula* and the epic period by a visual of Rama, Sita and Lakshmana returning homeward and another

**T**hose who argue that all that the Constituent Assembly did was to rehash the Government of India Act of 1935 miss one important point, namely that the Constitution is not just a charter of political freedoms but embodies something of the vision of social change that Mahatma Gandhi preached and practiced. It has sometimes been remarked that the Constituent Assembly did not provide organised representation for several segments of our population, such as the Muslims, Hindu communal groups and the working classes. But this could be said of the founding fathers of the US as well

er of Krishna propounding the *Gita* to Arjuna on the battlefield. Then there are depictions of the lives of Buddha and Mahavira, followed by scenes from the courts of Ashoka and Vikramaditya. Other great figures of our history who are represented are Akbar, Shivaji, Guru Gobind Singh, Tipu Sultan, and Lakshmi Bai.

The Freedom Movement is delineated by line drawings of Mahatma Gandhi's Dandi March and his tour of Noakhali as the great peacemaker, and of Netaji Subhas Chandra Bose saluting the Mahatma from abroad and asking for his blessings in the war for India's liber-

ation.

There are also beautiful renderings of our landscape and some of the masterpieces of our art. Even the decorations used for the borders exemplify fine craftsmanship in the Santiniketan style.

This is not a book I would turn to if I had to look up what the Constitution has said on any particular subject. For one thing, it does not contain an index. Nor does it have the amendments which have been adopted in the last half century. It is too large (16 inches by 12) and too heavy (3.75 kg) even to keep in one's lap. But merely to look at the signatures of our founding fathers which are given at the end in the very colours of the various inks they had used arouses nostalgic memories.

There are 11 pages of these signatures which begin immediately below the list of languages in the Eight Schedule. The first to sign appears to have been Jawaharlal Nehru. For some unexplained reason the first page has a preponderance of Constitution-makers from the South — B. Patthabhi Sitaramayya, N. Gopalaswami (without the Ayyangar), O.P. Ramaswamy Reddy, Alladi Krishnaswami Iyer, Ammu Swaminathan, T. Prakasam, K. Santhanam, K. Venkata Rao, then an illegible name, then G. Durgabai, M. Thirumala Rau, M. Anantasenam Iyengar and N. Sanjiva Reddy. The names of Abul Kalam Azad, Vallabhbhai Patel and B.R. Ambedkar appear in the first column of the next page along with those of Baldev Singh, Amrit Kaur, Jagjivan Ram, John Matthai, Syama Prasad Mookerjee, Jairamdas Daulatram, K.C. Neogy, P. Subbarayan and C. Subramaniam. The very last signature is that of Feroze Gandhi. The president of the Constituent Assembly seems to have affixed his signature after all the other members had signed. Nobody seems to have thought of leaving a special place for him, and so he has signed his name in the space next to the list of languages. He has also signed in two languages, first in Devanagari and then in the Roman script. Most others have signed in English, the outstanding exceptions being Abul Kalam Azad in Urdu and Purushottam Das Tandon in Devanagari. While almost all have managed to sign within the limited space provided, four or five have been unable to do so and their signatures extend well into the border. Particularly notable is the flourish of the signature of Dr Sachchidananda Sinha, the grand old man of Bihar who had the privilege of being the temporary chairman of the assembly before Rajen Babu was elected to that position.

One signature which is not



there in the Constitution is that of Mahatma Gandhi. He was no longer alive when the Constitution was adopted. But he was very much there when the Constituent Assembly met. One can say that without him there would have been no Constituent Assembly. Those who argue that all that the assembly did was to rehash the Government of India Act of 1935 miss one important point, namely that the Constitution is not just a charter of political freedoms but embodies something of the vision of social change that Mahatma Gandhi preached and practiced.

It has sometimes been remarked that the Constituent Assembly did not provide

As for the Constituent Assembly itself, it is true that it was a creature of the British rulers' statement of May 16, 1946. But as Jawaharlal Nehru, the main advocate for years of the idea of a Constituent Assembly drawing up free India's scheme of governance, remarked in an editorial in the *National Herald* on July 16, 1946: 'It is certainly to some extent a creation of the British Power. But even more so it is a creation of circumstances which none can ignore. Taking birth out of the womb of the circumstances it may well grow of itself and function as it chooses...'

organised representation for several segments of our population, such as the Muslims, Hindu communal groups and the working classes. But this could be said of the founding fathers of the United States as well, since the franchise there was then so notoriously narrow and did not provide representation for women, blacks and many sections of the propertyless.

It has also been remarked that Gandhi himself was not much of a democrat because he ruled the Congress in a very authoritarian way. But the miracle of Gandhi is that though born in a Dewan's family, through his

experiments with truth, he evolved into the voice and symbol of the poorest of the poor. He shed raiment after raiment and became truly the shirtless one. Gandhi's concern for the poor ran like a thread through the debates of the Constitution-makers.

As for the Constituent Assembly itself, it is true that it was a creature of the British rulers' statement of May 16, 1946. But as Jawaharlal Nehru, the main advocate for years of the idea of a Constituent Assembly drawing up free India's scheme of governance, remarked in an editorial in the *National Herald* on July 16, 1946: "It is certainly to some extent a creation of the British Power. But even more so it is a creation of circumstances which none can ignore. Taking birth out of the womb of the circumstances it may well grow of itself and function as it chooses. Who is going to put an end to it or dissolve it? Lawyers and constitutionalists may ponder over these problems but there is something beyond the lawyer's textbooks and precedent in these happenings, and vital forces are at play..."

Elsewhere Jawaharlal Nehru declared that the Constituent Assembly would not be bound down by any conditions: "The Constituent Assembly as such is not bound by any conditions. The members of the Assembly can change anything and everything by mutual agreement... So far as we are concerned we shall act as a sovereign body. We are going to the Constituent Assembly in a constructive spirit, and not to create trouble or to wreck it. As long as we feel that the Constituent Assembly is drawing the charter of India's freedom, we shall work in it."

When the Constituent Assembly met, the British had not yet quit India. In the very first few days it was apparent that it functioned exactly in the sovereign manner that Nehru had indicated when he said that everything would be guided by our own interpretation and everything would be examined in the context of Indian Independence.

In the end, the Constituent Assembly produced a document which, in the words of Dr Sunil Khilnani: "Became a programmatic manifesto, setting out elaborate prescriptions for the shape of the future society... The Constitution did not see itself as merely expressing the already existing hopes and fears of the society; rather, it took the view that preferences had to be created and nurtured, that law should reform rather than merely express the morality and customs of society."

*H.Y. SHARADA PRASAD is a former adviser to the Prime Minister of India*

# President urged to restrain Governor

HT Correspondent  
New Delhi, March 3

OPPOSITION PARTIES led by the Congress today told President K.R. Narayanan that Bihar Governor V.C. Pande's decision to swear in Samata Party leader Nitish Kumar as Chief Minister was biased, and uncalled for after the Congress decision to support the Rashtriya



Janata Dal was conveyed to him. An Opposition delegation including Congress leaders Dr Manmohan Singh, Mr Madhavrao Scindia, Mr Pranab Mukherjee, Rashtriya Janata Dal leader Raghuvansh Prasad Singh, Bahujan Samaj Party president Kanshi Ram, CPI-M leader Dr Biplab Dasgupta and Janata Dal(S) leader S.R. Bommai presented a memorandum to the President to personally express their protest over the Governor's decision.

Mr Mukherjee told newsmen at Rashtrapati Bhavan that the delegation had requested the President, as the custodian of the Constitution, to "restrain" the Governor and ask him to "rescind" his

order inviting the Samata Party leader to take oath. Mr Mukherjee said while they made the request to the President, Mr Kumar had already been sworn in.

"We do feel the Governor has failed to discharge his Constitutional responsibility in inviting Mr. Nitish Kumar to form the Government when he is fully aware that the stated position of all the political parties who enjoy the confidence of the majority members of the House is opposed to the formation of the Government by the NDA," the Opposition memorandum stated.

The Opposition leaders who spent about half an hour with the President told him that as the Constitutional Head of the Government in Bihar, Mr Pande should have arrived at his "satisfaction" after concluding who enjoyed majority in the House. The Governor had gone by his "pre-determined view" and invited Mr Kumar even after the Congress decision to support the RJD was conveyed to him last night itself.

The Opposition told the President that the 10-day period given to Mr Kumar to prove his majority would only encourage "horse-trading." Mr Mukherjee said the RJD enjoyed the support of 161 MLAs, while 12 MLAs of the CPI and the CPI (ML) had announced their view to remain neutral in a vote of confidence. This meant that 173 MLAs opposed Mr Kumar in a House of 324. How could Mr Kumar prove his major-

ity in such a situation. It was clear the Governor had sworn in a "minority Government," he said.

A team of RJD members of Parliament sat on a two-hour dharna at the Rashtrapati Bhawan entrance road to protest against the Governor's decision.

Mr Raghuvansh Prasad Singh said the mandate was for a coalition Government. The Governor had ignored the practice of inviting the leader of the largest party in forming the Governor. Mr Kanshi Ram said money was being used to "buy the votes of the poor." He said he was told that three of his MLAs had been "bought" but the report was not true.

The Governor's move had significantly brought together the Leftist parties which maintained different views on supporting the RJD but were united in condemning the Governor's "hasty and undemocratic" step. While the CPI (M) was supporting the RJD, the CPI and the CPI (ML) were only willing to remain neutral in a trial of strength of a RJD Government. The All India Forward Bloc stated the Governor had no right to continue in Raj Bhawan as he had let down the Constitution by taking a partisan decision.

The Congress leaders — Mr Pranab Mukherjee and Mrs Mohsina Kidwai — told newsmen there was no delay on the part of the Congress in extending support to the RJD as also communicating the same to the Governor.

## Governor's decision 'undemocratic'

4/3 By Our Special Correspondent HD-1

**NEW DELHI, MARCH 3.** Both Houses of Parliament today witnessed uproarious scenes over the decision of the Bihar Governor, Mr. Vinod Pande, to invite the National Democratic Alliance leader, Mr. Nitish Kumar, to form the new government in the State and had to be adjourned without transacting the customary private members business scheduled for Friday afternoons.

As soon as the two Houses assembled in the post-lunch session, the Opposition members were on their feet accusing the Mr. Pande of "murdering democracy" and acting under pressure from the Centre.

The developments in Patna overshadowed the RSS issue which had disrupted official business in the two Houses for the last seven days. In the Lok Sabha, members of the Rashtriya Janata Dal, the Samajwadi Party and the CPI(M) stormed into the well of the House and shouted slogans against the action of the Governor and the House had to be adjourned in less than ten minutes.

The wrangle in the Rajya Sabha lasted for over half-an-hour with the Opposition terming the Governor's decision "undemocratic". The BJP member, Mr. M. Venkaiah Naidu, made a vain attempt to speak on the subject amidst protests and shouting of slogans.

As soon as the House assembled to take up the private members' business, Mr. Gurudas Das Gupta (CPI) drew the attention of the chair to the happen-

ings in Bihar saying the Governor's action was "autocratic" and declared that the Opposition could not be expected to take part in the proceedings of the House.

The Congress(I)'s Mr. Pranab Mukherjee described the decision as "really astounding" saying there was no rationale behind the move after the Congress(I) had reached an understanding with the RJD and decided to back its claim for forming the Government. Mr. Pande had been informed of the agreement over the telephone late on Thursday night, he added. Though the conduct of a Governor should normally not be discussed in the House, a 1967 ruling says it could be done if it related to his constitutional responsibilities.

There were loud protests as Mr. Venkaiah Naidu rose to speak on behalf of his party. As the commotion continued, the Opposition members rushed to the well of the House and began shouting slogans.

The chair repeatedly asked the members to go back to their seats but they continued to shout from the well. There were counter shouts from the ruling party members. Sensing the Opposition mood, the Deputy Chairman, Mrs. Najma Heptullah, adjourned the House for the day.

In the Lok Sabha, the CPI(M)'s Mr. Somnath Chatterjee said the appointment of Mr. Nitish Kumar as Chief Minister was "unconstitutional" and a brazenly partisan act. The Governor has not been guided by material facts before him in deciding on the issue, he added.

# Pande's haste baffles Opposition

By Harish Khare

**NEW DELHI, MARCH 3.** Enraged at the Bihar Governor, Mr. Vinod Pande's inexplicable decision to ask Mr. Nitish Kumar to take oath as Chief Minister and give him as many as 10 days to prove his majority in the Bihar Assembly, the entire non-National Democratic Alliance political leadership has sought the intervention of the President, Mr. K.R. Narayanan, to roll back the "undemocratic" act. A delegation of Opposition leaders called on the President this evening and invited Mr. Narayanan's attention to the unwisdom and the palpable haste of Mr. Pande's decision. What has taken the entire Opposition by surprise is the speed with which Mr. Pande acted; also, they have reason to believe that the Governor had betrayed their judgment that he would be intrinsically "fair and neutral" and not be susceptible to advice from the Centre.

As soon as the Governor's decision was known here, both houses of Parliament witnessed pandemonium. Earlier, Mr. Nitish Kumar resigned from the Union Council of Ministers. For now, Mr. Vajpayee himself will keep the Agriculture portfolio with him.

While the Opposition was quick to see the

Centre's hand in Mr. Pande's decision, the ruling establishment denied any such suggestion. Mr. Pramod Mahajan, Minister for Parliamentary Affairs, asserted that "no one from our side has given any advice to the Governor on this matter. The Governor is a constitutional authority and he did not seek any suggestions from us on who should be called." As far as Mr. Mahajan is concerned, the mandate was against the RJD.

The entire Opposition and the legal luminaries were unable to appreciate the haste shown by the Governor as well as the absence of any detailed explanation from the Patna Raj Bhavan about the process by which Mr. Pande arrived at his decision. The decision appeared all the more baffling and partisan in view of the Congress(I) contention that Mr. Sadanand Singh, president of the Bihar Pradesh Congress(I) Committee, had informed the Governor on Thursday night itself that the Congress(I) (with 23 MLAs) would support Ms. Rabri Devi of the RJD.

"The Governor should have allowed the strengths of two sides to get crystallised; he could have called leaders of various groups and ascertained their views; but by his precip-

itate action, he has pre-empted the full range of his options," argued Mr. P.P. Rao, a former president of the Supreme Court Bar Association.

A similar view was articulated by Mr. Devendra Dwivedi, a constitutional expert (and a general secretary of the Nationalist Congress Party): "The Governor's decision would have carried greater conviction had he acquainted himself with fuller facts. I am surprised at the undue haste. Although the Governor owes no explanation, he cannot brush aside both the principle of accountability and transparency and the precedent set by Mr. Narayanan in detailing his rationale in inviting Mr. Vajpayee to form the Government in March 1998."

The official denials notwithstanding, the Bihar development is seen as part of a quid pro quo between the BJP and the Samata Party and the Janata Dal(U). The Samata Party leadership, particularly Mr. George Fernandes, is believed to have told Mr. Vajpayee that either Mr. Nitish Kumar was to be sworn in or Article 356 should be invoked in Bihar. The BJP leadership, on its part, has reportedly sought help from the two allies on the RSS issue. Hence, the invitation for Mr. Nitish Kumar.

9-Combin  
HD-12

# 'Governor acted arbitrarily'

By Our Special Correspondent

**NEW DELHI, MARCH 3.** In a strong reaction, the Opposition charged that the Bihar Governor Mr. V. C. Pande, had acted "arbitrarily" and urged the President, Mr. K. R. Narayanan, to "instruct" him to "rescind" his action. Senior Opposition leaders representing the Congress(I), the CPI(M), the Rashtriya Janata Dal, the JD(S), and the Bahujan Samaj Party, met the President here this evening and submitted a memorandum expressing "shock" over the Governor's action. The CPI and the CPI(M-L) are likely to meet him tomorrow.

There was also talk in Opposition circles of launching a joint campaign against "murder of democracy" in Bihar with the RJD threatening a battle from "Parliament to the streets". The Opposition was convinced the Governor had acted at the "behest" of the Centre, as the CPI(M) general secretary, Mr. Harkishan Singh Surjeet, put it demanding Mr. Pande's recall.

During the meeting with the President, Opposition leaders sought to impress upon him that the Governor had acted "unconstitutionally" and that as the custodian of the constitution, Mr. Narayanan should "restrain" him in whatever manner he deemed proper. They expressed the fear that the ten days given to the NDA to prove its majority on the floor of the House would only facilitate horse trading.

Earlier, a group of RJD MPs sat on dharna outside Rashtrapati Bhavan for over an hour to protest the "slaughter" of democracy and constitution in Bihar.

Briefing the mediapersons after the meeting with the President, the Congress(I) leader, Mr. Pranab Mukherjee, said the Governor should have consulted all political parties to ascertain which com-



The Congress(I) leader, Mr. Pranab Mukherjee, along with other leaders, addressing mediapersons after submitting a memorandum to the President, Mr. K.R. Narayanan, protesting the Bihar Governor's action of installing Mr. Nitish Kumar as Chief Minister. — Photo: R.V. Moorthy

bine would have the confidence of the House. "Unfortunately, he did not do so. The Governor had his own pre-determined view. Last night, the Congress decided to support the RJD as its strength was very critical from the arithmetic point of view," he said.

He pointed out that Mr. Laloo Prasad Yadav had already given the list of 161 MLAs who had promised support to an RJD Government. In addition, 12 MLAs of the CPI and the CPI-ML said they would not support the NDA government during the vote of confidence, taking the RJD's strength to 173 in a house of 324.

"All this was in the domain of public knowledge. But the Governor completely ignored the relevant facts and violated the letter and spirit of the Constitution," he said.

The Bahujan Samaj Party chief, Mr. Kanshi Ram, alleged that "open horse trading" of MLAs was on in Patna and called it a murderous assault on democracy.

"In the morning, I was told that three of the BSP MLAs had been bought but it turned out to be totally false when I verified with them," he said. The BSP leader said he had urged the President to put a stop to trading of "votes with notes".

The RJD leader, Mr. Raghuvansh Prasad Singh, said they urged the President to save Bihar from chaos. The RJD being the single largest party should have been invited by the Governor to form the government, he said.

"Even the present President consulted political parties and Constitutional experts on two previous occasions," he said alleging that Bihar Governor had acted in haste and without applying his mind. Explaining the arithmetic in support of the RJD combination, he said that the list of 161 MLAs with their signatures had been submitted to the Governor. "Besides, 12 MLAs of CPI and CPI-ML had announced that they were opposed to the NDA forma-

tion. After all this, how can the Governor arrive at the conclusion that NDA had majority. This smacks of a very deep rooted conspiracy," he charged.

Besides Mr. Mukherjee, those who met the President included Dr. Manmohan Singh, Mr. Madhavrao Scindia, Mr. Kanshi Ram, Mr. S. R. Bommai, Mr. B. S. Ramoowalia, Mr. Nilotpal Basu and Mr. Raghuvansh Prasad Singh.

Earlier, the Congress(I) accused the Governor of having "acted in haste" and committing a constitutional impropriety. Last night itself, the party's Bihar unit president, Mr. Sadanand Singh, informed the Governor that the Congress(I) had decided to support the RJD and that a letter would follow.

Asked why the Congress(I)'s letter of support was faxed to the Governor only at 1.30 p.m. today when the decision was taken last night, Mr. Pranab Mukherjee's said they had expected the Governor to wait.

# Governors and Govt. formation

By K. K. Katyal

*This is not the first time doubts have been cast on the credibility of the office of Governor and an outraged public wonders why the checks and balances in the Constitution have been unable to prevent misuse.*

THE LATEST Bihar episode — the Governor, Mr. Vinod Pande's action installing an NDA Government — has served to confirm the fact that the polity is let down not by the Constitution but by those required to work it. That was what the President, Mr. K. R. Narayanan, said the other day when he advised the advocates of a statute review to ponder "whether it is the Constitution that has failed us or whether it is we who have failed the Constitution".

The developments in Patna are disturbing both in the immediate context and for the functioning of the constitutional authority. There was undue, if not indecent, haste on the part of the Governor in inviting Mr. Nitish Kumar to form the Government when the process of ascertaining the support of the two rival contenders had not been completed. If at all there was a presumption of advantage in the uncertain scenario which emerged from the electoral verdict, it was in favour of the largest single party or the largest single pre-poll alliance. In case Mr. Pande possessed special information through his sources, it should have been made public. The situation called for transparency, not secrecy.

Then there is the fundamental question of the role of Governors which, often in the past, has been patently unedifying. Revealing indeed is the criticism voiced by some former holders of the office, quoted by a constitutional historian, Dr. Granville Austin, in his monumental book, "Working a Democratic Constitution".

According to Mr. L. P. Singh, also a former Home Secretary, the Governor's office had "undergone devaluation and even debasement" and Governors had been accused of political partisanship and of acting as "agents of the Central Government and not as holders of an independent constitutional office". Mr. C. Subramaniam believed that the Governor had "become a party appointment, serving the party rather than the interest of the nation". Mr. B. K. Nehru described Governors as "burnt out" and "superannuated members of the ruling party for

whom governorship was a kind of luxurious retirement". This is not the first time doubts have been cast on the credibility of the office of Governor and an outraged public wonders why the checks and balances in the Constitution have been unable to prevent the misuse. The issues, connected with the institution, were examined at length by the Administrative Reforms Commission, the Sarkaria Commission on Centre-State relations and a Committee of Governors, constituted during V. V. Giri's tenure as President. Their valuable suggestions are now part of the archives, there being no worthwhile attempt, what to say of political will, to work out the necessary reforms. The assumptions of the architects of the Constitution, who opposed the idea of codifying the functions of the Governors or even framing an instrument of instructions, have been proved wrong. The present case provides another warning — that any delay in this area could cause incalculable harm. A way out needs to be found to ensure that the exercise of discretion by the Governors does not degenerate into blatant arbitrariness and that political considerations are not allowed to creep into this process, either to suit the rulers at the Centre or powerful political sections in the States.

Supporting the case for codifying constitutional proprieties for Governors, Dr. Austin says: "Such suggestions are not too late to follow, for the rules continue to be uncertain. The absence of a well-established understanding of the limits of the Governor's role as a constitutional sovereign is an open invitation to personal prejudice and to Central manipulation of a State's affairs... Unless Governors conduct themselves strictly as constitutional monarchs (whether by personal self-discipline or as the result of constitu-

not have the satisfaction, in any State, of seeing even its allies emerging victorious. The actual performance of the Congress (I) was as miserable as had been predicted.

For the BJP, the victory of its allies provided comfort only to the extent that the Congress(I) or the other non-NDA elements had been kept at bay, but otherwise it was a loser all the way. In Haryana, the ally, Mr. O. P. Chautala's party, not only secured a majority on its own but was also instrumental, through its "rebels", in ensuring the defeat of prominent BJP contestants. He welcomed some of the victorious rebels back into his party, as the sulking BJP chose not to join the Government. In Orissa, what stood out was the size of the Biju Janata Dal's victory. In Bihar, the BJP, at one stage prior to the poll, hoped to head the new Government but after the verdict made a virtue of necessity and chose to "forgo" its claim in favour of its allies.

The upbeat allies are certain to use their ascendancy for narrowing the imbalance against them in the NDA. This may mean increased assertiveness both on policy issues and for increased accommodation in the Central dispensation. The pressure exerted by the allies on the RSS issue and some of the budgetary proposals, perhaps, would not have been that persistent had they not been conscious of their newly-acquired clout. The coalition may thus have a new equilibrium. This, however, does not necessarily mean a better understanding of the true coalition culture or an end to delays in decision-taking.

At the State level, the BJP units may not find it easy to reconcile themselves to a position in which they are required to play second fiddle to the allies. The party satraps there had been wanting the status and role which the Central leaders had at the Centre. The reality, emerging from the elections, was a big shock and could well lead to new tensions.

Bihar has provided drama but the significance of the post-poll scenario as a whole is not to be underestimated.

# Bihar rocks RS, Oppn wants Governor out

PRESS TRUST OF INDIA  
NEW DELHI, MARCH 6

**A**MIDST vociferous demands from the Opposition to suspend the Question Hour and discuss the Bihar issue, Chairman Krishna Kant on Monday adjourned the Rajya Sabha till 2 pm without conducting any business.

After Kant rejected the notice of motion moved by Opposition leader Manmohan Singh for suspension of Question Hour to take up the Bihar issue, the entire Opposition sprang to their feet to voice their protest.

Leader of the House Jaswant Singh said the "Government is not fighting shy to discuss the (Bihar) issue" and the chairman could fix a time for the discussion later. Following this, Kant called for the first question to be taken up but a determined Opposition continued to raise shouts of protest and demanded that the Question Hour be suspended. Sensing the unrelenting mood of the Opposition,

Kant then adjourned the House.

As soon as the House met for the post-lunch session after the adjournment over the issue in the morning, angry RJD, CPI(M) and Congress members rushed to the front benches vociferously protesting the installation of NDA Government in Bihar. Vice Chairman Sanatan Bisi pleaded for calm so that the listed business could be taken up to discuss a motion of thanks to the President's address.

The initiator of the discussion, M Venkaiah Naidu (BJP), was on his feet but was not allowed to speak by determined Opposition led by RJD members who shouted slogans to "recall the Governor and dismiss Bihar government".

As Bisi's repeated pleas fell on deaf ears and utter confusion prevailed in the House for ten minutes, Deputy Chairperson Najma Heptulla took the chair and tried to bring order.

"If you behave like this, I will name you," she repeatedly warned the members who had trooped into the front benches. Heptulla

told the members that the issue can be discussed after the Chairman allotted time for it. As the Opposition members did not relent, she adjourned the House till Tuesday barely 12 minutes into the post-lunch session.

Earlier, when the House had assembled at 11 am, Leader of the Opposition Manmohan Singh gave notice under rule 267 to move the motion for suspension of Question Hour to "facilitate immediate discussion on the failure of Bihar Governor to discharge his constitutional responsibility by inviting the NDA in violation of democratic norms".

Singh contended that the RJD as the single largest party and as pre-poll alliance group in Bihar Assembly had larger number of members than the NDA and should have been called to form the Government. He described the decision to call the NDA to form the Government in Bihar as a "mockery of democracy".

Kant said he had already given

CONTINUED ON PAGE 2

## Bihar rocks Rajya Sabha

the ruling on the "inviolability" of the Question Hour and could not go back on it.

"I had not permitted it and cannot go back on my own ruling". Kant had on February 24 ruled out suspension of Question

Hour to discuss the RSS issue.

He had then reminded the members of a unanimous resolution by Parliament during its special Golden Jubilee session on the inviolability of Question Hour.

INDIAN EXPRESS

7 MAR 2000

# Governors enjoy discretionary powers

Anand K Sahay  
New Delhi, March 6

MR VINOD Pande may have courted controversy by installing Mr. Nitish Kumar as Chief Minister, but in a matter like this the Governor enjoys limitless power. He could have picked up any Bihari babu promenading on the banks of the Ganga and sworn him in as Chief Minister, with no questions asked.

Surprise may have been registered in political circles but there was no technical bar. Little wonder that there has been no occasion for communication on this issue between the President and the Prime Minister, even though those arguing against Mr Pande recall Mr K R Narayanan's own scrupulously transparent style in tackling the hung Parliament dilemma before him two years ago that led to the elevation of Mr Atal Behari Vajpayee as Prime Minister.

In this situation, the demand of the CPI (ML) that the Bihar Governor be recalled, and the RJD's demand that he be dismissed, can only be

called political with no chance that anyone can plausibly even attend to them, let alone accept them.

The Governor's discretion in inviting anyone at all to become Chief Minister in a post-election situation, when the numbers are hazy, is thought to be unbounded principally because its constitutional status has never been tested. A belief about the non-justiciability of application of Article 356 also held sway once. It was dispelled only after the judgment in the Bommai case when the courts ruled that imposition of President's rule under the dreaded Article was, indeed, justiciable.

Mr. Pande's faith in Mr Nitish Kumar's ability to produce a majority on D-Day may well, in the end, be found to be justified, though when he was invited to form the government Mr Kumar had not been able to suggest how he proposed to muster the needed strength. All that can be said for the other side is that it is the first time in the country that the claim of a party with the highest number of seats in the

Assembly, and which also leads the largest pre-poll alliance in the House, has been overlooked by a Governor.

Of course, a party with the most seats can come a cropper in the end, as happened with the BJP back in 1996. On that basis, the President, Dr Shankar Dayal Sharma, invited Mr Vajpayee to form government, but the BJP's own strength was so low in relation to the strength of the Lok Sabha that the Prime Minister could not manage the numbers. The government fell in 13 days and the President was embarrassed.

The Andhra case of 1984 also involved the ushering in of a CM, but was not the same as the present case. NTR had won the election and went abroad. In his absence, one of his colleagues, N Bhaskar Rao, played Trojan horse, split the party and was installed Chief Minister.

Governor Ram Lal Anand winked at the whole thing at the behest of Delhi. NTR rushed back, led a stupendous public agitation, and the Governor was obliged to resign under pressure.



# RS to take up Bihar Governor's conduct

HT correspondent  
New Delhi, March 7

THE OPPOSITION today stalled proceedings in the Rajya Sabha after failing in its efforts to force

an immediate discussion on a motion to discuss the conduct of Bihar Governor Vinod Pande in installing an NDA Government in the State.

The motion, moved by Dr Manmohan Singh (Cong), was admitted by Chairman Krishan Kant as of last evening. However, the failure to fix any date and time for its discussion led to heated exchanges between the Opposition and the treasury benches, resulting in the House being adjourned twice.

The House bulletin published today mentioned that Dr Singh's motion had been admitted last

evening. It reads: "This House disapproves the conduct of the Governor of Bihar in installing the NDA-led Government rather than the Rashtriya Janata Dal and its alliance partners."

After Question Hour, the Opposition members sought a discussion on the motion under Rule 170, which allows for voting too. Aware that the Government was outnumbered in the RS, the Opposition was confident that if the motion was put to vote, the ruling party could be embarrassed with a defeat.

The Leader of the House Jaswant Singh (BJP) protested, saying that though he had no objection, he would like to consult the Prime Minister and senior Cabinet colleagues before announcing a time for it.

LS meets for 3 minutes — Pg. 8

## 'Largest single party should form Govt'

ANDHRA PRADESH Chief Minister N Chandrababu Naidu on Tuesday found himself uncomfortable on the political situation in Bihar when he parried questions on the state Governor's invitation to the NDA to form government. However, he said in principle the TDP was for single largest party being called to form the government.

PTI, Vijayawada

THE HINDUSTAN TIMES

- 8 MAR 2000

# Was the Governor ethically correct in Bihar?

**G**OVERNORS HAVE become vulnerable commodities in contemporary politics. Earlier their decisions went relatively unchallenged. Now every decision becomes controversial. This is largely due to the emergence of coalition governments and a vigilant and sensitive media. Having been at the receiving end myself, I would like to express my views on what has happened in Bihar.

Under Article 164 of the Constitution, the appointment of a Chief Minister is the discretionary responsibility of the Governor. The Governor has to be conscious of past precedents. Plus, his own credibility is at stake, as his selection has to be endorsed by the Assembly. It would bring no credit to the Governor if the person invited by him fails in the Assembly. The question is whether Governor Vinod Pandey took the correct decision in inviting Nitish Kumar to form the Government in Patna?

In a situation where there is a hung assembly as has happened in Bihar, the Governor had a few clear choices. The first was to invite the largest single pre-poll alliance to form a government and let its leader seek the confidence of the House in a specified period of time. This had to be ruled out due to the prevailing practice in the last few years. Late President S. D. Sharma had invited Atal Behari Vajpayee to form a Government in 1996. He was unable to get the requisite support and resigned without having the Lok Sabha vote on it.

In October in the same year, there was a hung assembly in UP after the State elections. The BJP was the single largest party. It was short by 37 from a simple majority. All the other parties

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ROMESH BHANDARI  
were opposed to the BJP forming a government, but they were not prepared to come together. I took the decision, supported by the Central Government, that being the single largest party per se was not enough to warrant an invitation to form a government. By asking the leader of the single largest party to form a government, and then giving him time to prove his majority on the floor of the House, would be akin to giving a licence to defections. As such it was preferred to keep the Assembly in suspended animation, reimpose President's rule, and wait for some configuration to emerge that would provide a stable government.

A somewhat similar situation arose in Delhi after the fall of the Gujral Government. As no party was able to secure enough support to form a government, Parliament had to be dissolved. The same happened in April 1999. The leader of the single largest party was not invited to form a government and given time for a floor test after the fall of the Vajpayee Government. Parliament was again dissolved prematurely and fresh elections ordered.

In the decision taken by Mr Pandey, there is valid objection on some counts. What was the hurry? There was no constitutional time constraint. He could well have waited to see if the NDA or the RJD could muster enough support. Instead, what he did in a great hurry was to swear in a Chief Minister who had not shown evidence of majority support. In fact, Mr Kumar has admitted that he is 11 MLAs short.

The anti-defection laws need drastic revisions.

By inviting a leader to form a government without being satisfied that prima facie he has the majority support, is not the Governor giving an open invitation to defections? It has to be accepted that the Governor has the sole discretion under Article 164 to appoint the Chief Minister. However, this is a responsibility based on the fact that the final verdict has to be that of the Assembly. But is not equally important to consider as to how the numerical gap would be bridged? Knowing what had been happening in Bihar, and going by the example of the Kalyan Singh government in UP, there should have been greater importance given to the manner in which Mr Kumar will try to prove his majority.

Kalyan Singh was able to prove his majority on the withdrawal of support by the BSP in October 1997, by breaking the Congress, BSP and Janata Dal. He also won over Independents. All the defectors including Independents were made ministers. Even criminals were not excluded. He could do this and get away because he was the Chief Minister.

Nitish Kumar will now have all the powers and allurements to give; to muster support by promising ministerships or other offices, or money, or both. The Governor has given full opportunity to him to violate the spirit of the 10th Schedule and the anti-defection laws. (Mr Kumar has announced that the size of his ministry can be as large as the situation demands.) Obviously, political parties will be broken. All the defectors will be made ministers. Criminals in jail will also become ministers. Is all this not a insult to the letter and spirit of the Constitution, and our democracy?

# Review panel may look into reservations issue

STATESMAN NEWS SERVICE

NEW DELHI, March 7. — The information and broadcasting minister, Mr Arun Jaitley, today said the Constitution review committee could seriously look into the reservations issue.

Stating that the issue required "serious discussion", Mr Jaitley mentioned other areas which also needed attention. These included judicial appointments, electoral reforms, Centre-state relations, the anti-defection law, and significantly, maintaining an equilibrium between the different limbs of the government.

Mr Jaitley said a "serious re-look" was needed at the functioning of the various limbs of the government so that one does not encroach upon the areas of jurisdiction of the others.

He also called for a national judicial commission for judicial appointments and also, a system so that there were public checks and balances.

Speaking about the criminalisation of politics, he said the problem of criminals entering Parliament or Assemblies had to be tackled.

There was also a need to restrict the use of "money power" during elections.

Mr Jaitley was also critical of the repeated use of Article 356 and the anti-defection law.

He called for safeguards against a state Assembly being dissolved at the Centre's whims and pointed out that almost all political parties have criticised the misuse of Article 356.

Similarly, the anti-defection law, he said, was well-intentioned but had not proved very successful and now, efforts to find a way to prevent misuse had to be found.

Mr Jaitley added that the Constitution had many strong features including the parliamentary system that India was best suited for. He called the Emergency a brief aberration and ruled out moving to the presidential form of government as it gave too much power in the hands of one individual, something unacceptable in such a heterogenous society.

He also spoke of the strong fundamental rights in the Constitution and the presence of a strong and independent judiciary.

THE STATESMAN

- 8 MAR 2 000

# Opposition parties want Pande to resign

By Our Special Correspondent

**NEW DELHI, MARCH 10.** Enthused by the developments in Bihar the Opposition parties today targeted the State Governor, Mr. Vinod Pande, and sought his recall for what they termed "blatant misuse" of office to further the interests of the National Democratic Alliance even as the NDA termed the demand as "absurd".

The entire Opposition spoke in one voice on the developments in Bihar and said the sordid chapter beginning with installation of Mr. Nitish Kumar as the Chief Minister to his resignation prior to the confidence vote in the Assembly has exposed the attempt to subvert democracy in the state.

The BJP and its allies conceded that they had been proved wrong in their calculations but rejected the demand for resignation/recall of the Governor saying he had acted in his wisdom and there was no mala fide intention in his decision to install the NDA Government.

In a statement, the CPI(M) central secretary said Mr. Kumar was forced to quit in the face of imminent defeat on the floor of the Assembly and this was a big defeat for the communal forces. It accused the Governor of being a "part of the conspiracy" to foist the NDA Government on the State's people.

"The Governor has, thus, by his action permitted both time and scope for naked horse-trading. Fortunately for Indian democracy, despite all efforts of horse-trading this conspiracy could not succeed. The Governor

has no right to continue in office and should quit forthwith. Failing which he should immediately be recalled," the party said.

The BJP general secretary, Mr. M. Venkaiah Naidu, debunked the demand for Mr. Pande's recall saying the latter had acted in good faith. No one had sought the resignation of the then President, Mr. Shankar Dayal Sharma, when the Vajpayee Government failed to muster majority in the Lok Sabha in 1996, Mr. Naidu pointed out.

The Congress(I) welcomed the developments in Bihar as a victory of secular forces over communal forces. The Congress(I) Working Committee members, Mr. Motilal Vora and Mr. Jitendra Prasad, said the decision to invite Mr. Kumar to form the government was totally wrong.

Mr. Prasad demanded the resignation of Mr. Pande and also that of the Home Minister, Mr. L. K. Advani. The latter was the "main culprit" and had been instrumental in "forcing" the NDA to take this action, Mr. Prasad said.

Defending Mr. Pande, the JD(U) general secretary, Mr. M. Raghupathy, said the NDA did not believe in 'horse-trading' and decided to quit gracefully when it realised it did not command a majority. "Now we will watch to see whether the CPI and the CPI(ML) keep their word of maintaining equi-distance if the BJP is invited to form the government".

The CPI national secretary, Mr. D. Raja, said the developments had exposed the NDA's credibility and the Governor's undemocratic

action. The CPI national executive would meet on Monday to decide on its future course of action. He felt that if the Governor had any sense of morality he should put in his papers.

In a separate statement, the Janata Party president, Dr. Subramanian Swamy, demanded the sacking of the Governor and said Mr. Advani should be dropped from the Union cabinet following Mr. Nitish Kumar's resignation ahead of a confidence vote in the State Assembly.

He said the "ignoble and disgraceful collapse" of the NDA Government required an "atonement" by the Prime Minister, Mr. Atal Behari Vajpayee. "He should ask the President to sack the Bihar Governor and drop the Home Minister from the Cabinet or if he is unable to do that, he should resign to protect the dignity and honour of the Prime Minister's Office," the statement said.

The Samajwadi Party termed Mr. Kumar's resignation ahead of a confidence vote as another incident of the BJP-led NDA "succumbing" to the strength of secular forces and demanded immediate resignation of the Vajpayee Government on moral grounds.

Our Chennai Special Correspondent writes:

The Tamil Nadu Chief Minister and DMK chief, Mr. M. Karunanidhi, termed the resignation of Mr. Nitish Kumar as "necessary". At the DMK headquarters here, Mr. Karunanidhi said, "The first decision was hasty, but today's decision was necessary."

# Advani rules out recall of Pande

STATESMAN NEWS SERVICE

NEW DELHI, March 13. — The Opposition staged a walk-out from the Rajya Sabha today as the Union home minister rejected the demand to recall the Bihar Governor, while in the Lok Sabha, the Speaker accepted a motion under Rule 184 on Mr VC Pande's conduct.

Mr LK Advani contended that Mr Pande had committed no impropriety by inviting Mr Nitish Kumar to form government. This triggered the walk-out. A war of words followed in which the Congress objected to Law Minister Mr Ram Jethmalani's comment that the Governor had no idea that the Congress would reverse its campaign position and lend support to the RJD.

The Opposition had to settle for a short routine discussion on the Governor issue as the government had not allotted time for a discussion, followed by voting, on a substantive motion criticising his conduct.

While the Treasury benches may have breathed easy that no formal motion was adopted disapproving of Mr Pande's conduct, the BJP suffered some discomfort as three of its NDA partners — TDP, DMK and National Conference — said the Governor had erred.

A critical factor to the controversy that came under focus during the debate was a telephonic conversation between Bihar Congress president Mr Sadanand Singh — who was in Delhi at the time — and the Governor on the night of 2 March. The Congress and the government were at odds on the same conversation.

The Leader of the Opposition, Dr Manmohan Singh, said the

call was made from his room and the Governor was informed of the Congress decision to support the RJD. He was also told that a formal letter would follow. Veteran Janata Dal-S leader Mr SR Bommai confirmed this, saying he was present when the call was made.

But both the home minister and the law minister maintained that the Governor had communicated to them that the message he received from that call was that the Congress had not finalised its position. While Dr Singh, Mr Pranab Mukherjee and Mr Bommai alleged that the Governor had misled the government, Mr Advani said he had "no reason to disbelieve the Governor".

In the Lok Sabha, Speaker Mr GMC Balayogi accepted a motion under Rule 184 — calling for a vote — on Mr Pande's conduct as the Lower House resumed business after almost two weeks.

Though the motion, moved by RJD leader Mr Raghuvans Prasad Singh, has been adopted, discussion and voting are likely to be taken up only in the second half of the Budget session, which goes for a one-month recess after Thursday. The business advisory committee of the Lok Sabha shall take a decision on the matter tomorrow, the Speaker said.

**CPI stand:** The CPI national executive met today to decide the course of action of its five Bihar MLAs during Mrs Rabri Devi's trust vote. The party said it would make its decision known by tomorrow afternoon. CPI-M iterated his party's demand for the Bihar Governor's recall and accused him of ignoring the majority claim of the RJD-CPI-M combine.

THE STATESMAN  
14 MAR 2000

# RSS chief calls for debate on Constitution

**Arindam Sarkar**  
Calcutta, March 17

RSS CHIEF K S Sudarshan said here today that the formation of the Constitution Review Committee (CRC) will not serve any purpose. "A national debate should be held to ascertain whether the present Constitution is suitable for the country," he said.

"The CRC is working within a limited framework. It aims to study the Constitution without disturbing its basic structure. But nobody knows what is the basic structure of the Constitution. If it means democracy then I would say that the Westminster model of democracy is not suitable for us. We should also consider the US Presidential system and the democratic systems prevailing in France and Germany," Sudarshan told *The Hindustan Times*.

"Even Dr Ambedkar quoted Thomas Jefferson and said we

don't want a Constitution which will bind our future generations and that every generation is a new nation. After 50 years, it's time to evaluate whether our Constitution has fulfilled our hopes and aspirations," the RSS Sarsangchalak added.

On the economic policies of the NDA Government, Sudarshan said

Organisation (WTO), the Vajpayee Government has to work within limitations. "Secondly, we have a coalition at the Centre. All the allies don't think alike. I feel it will be very difficult to have a consensus on India's stand vis-à-vis WTO. Many partners of the NDA believe that the Western economic model is best-suited for our coun-

Sudarshan said.

Criticising the present political system, the RSS chief said it was only concerned about its interests. "No wonder, people are disgusted with the political system and the politicians of the country. We have no qualms about criticising the Government's policies. It is not necessary for the Government to implement our suggestions but we will not stop airing our views," he said.

On the Gujarat controversy, Sudarshan said that the issue was blown out of proportion. "If people can join other organisations, what's wrong if they join an apolitical outfit like the RSS. Whatever the RSS has achieved is not through Government patronage. And if the Government tries to impose a ban on the organisation, we will fight it. We don't care which party is ruling at the Centre," the RSS president said.

Another report on Page 3

## Panel won't serve need: Sudarshan

try," the RSS chief said.

"But liberalisation cannot lead to equality and development. The WTO, GATT, IMF and World Bank are exploiting the natural resources and markets of develop-

ing countries to fill their coffers. The RSS has suggested that a committee comprising industrialists, Gandhian economists, representatives of farmers, working class and the present Government should be set up to thrash out the issue."

swadeshi policies cannot be implemented unless the Centre realised that liberalisation was only an instrument in the hands of Western countries with which to exploit developing countries.

Sudarshan said the present Government was working under certain compulsions. It has inherited policies of the previous regime and since the earlier Government had signed agreements with agencies like the World Trade

# Constitution review panel identifies areas for scrutiny

HT Correspondent  
New Delhi, March 23

THE CONSTITUTION Review Commission, holding its first meeting here today, has identified eight core areas for scrutiny, including strengthening of democratic institutions and enlarging fundamental rights. The controversial issue of barring persons of foreign origin from holding high offices did not come up during the deliberations.

While clarifying that its brief was only to review the working of the Constitution and not to re-write it, the 11-member Commission, headed by Justice M.N. Venkatachaliah, emphasised that its function was essentially advisory in nature.

Among the identified areas, the Commission proposes to examine enlargement of fundamental rights in Part III of the Constitution by specific incorporation of the freedom of the media, right to compulsory elementary education, right to privacy and right to information.

A Commission spokesperson said the members stressed the need to uphold and strengthen the existing Constitutional provisions meant for the uplift of the poor and deprived sections in addition to protecting the Constitutional rights of SC/ST and the OBCs.

The Commission's focus would be on examining the working of existing Constitutional provisions and the laws with regard to welfare of the deprived sections of the society and suggest measures to make them more effective.

Today's meeting broadly deliberated on issues like strengthening the institutions of parliamentary democracy and their accountability, including examination of the "persisting menace of unprincipled defections", working of Article 356 and appointment and removal of Governors, decentralisation and devolution of powers, effective implementation of the Directive Principles of State Policy, fiscal and monetary policies, and the size of the Government and its expenditure.

It was also decided to prepare a separate consultation paper on these subjects. Subsequently, a questionnaire would be formulated for circulation among political parties, Constitution and statutory commissions, trade unions and other representative bodies of trade and industry, Bar Associations, universities and colleges, media, NGOs, academicians and research institutes.

A spokesperson said the consultation paper and the questionnaire would also be available on the Commission's website for people's response. The Commission's recommendations would be thrown open for public debate.

Meanwhile, a Government notification said that Commission chairman Justice Venkatachaliah would draw a token salary of Re 1 per month as desired by him, adds PTI. Most of the 11 members, including Justice B.P. Jeevan Reddy and Attorney General Soli Sorabjee have also decided to forego their daily allowances.

THE HINDUSTAN TIMES

24 MAR 2000

# UP Governor in the eye of House storm

STATESMAN NEWS SERVICE

LUCKNOW, March 23. — "The future of democracy greatly depends on our behaviour, whether inside or outside the House. I hope you will always maintain the prestige and purity of the House".

Thus spake the Uttar Pradesh Governor, Mr Suraj Bhan, technically ending his address to the joint session of the state legislature today. Because of unruly scenes created by Opposition members, Mr Bhan could not read out his entire speech. He

could only read the first and the last lines of his address, technically amounting to reading the whole speech.

Opposition members just would not allow him to complete the lengthy 38-page address, with continuous sloganeering from some in

the Well and others standing on the secretary's table. One of them pulled off his kurta and hurled it at the podium from where the Governor was trying to read out the address. Others threw paper balls at him.

As soon as Mr Bhan entered the House, all hell broke loose as Opposition members from the Samajwadi Party, the Bahujan Samaj Party and the Congress started shouting slogans. Some of the Congress members carried placards against the Religious Places and Buildings (Regulation) Bill and also the postponement of the panchayat elections.

At times it appeared that the Governor would succeed in completing his address. After the first time that the sloganeering erupted, the Governor sat down and there was a lull. But again, as he renewed his effort to deliver the address, the Opposition members were back in business. One member jumped on to the secretary's table and moved rather dangerously towards the podium. The marshal had a tough time controlling the situation.

The bedlam was started by a BSP MLC, Mr Murari Lari.

Many Opposition members joined him and headed for the Well, determined to block the Governor's speech.

The chief minister later criticised the behaviour of Opposition members. It was an insult to democratic norms, he said.

After the joint session, the two Houses were adjourned for tomorrow after some formalities like placing of the copies of the ordinances on the table.

In the Assembly, members continued to protest the Religious Places and Buildings (Regulation) Bill. The Speaker, Mr Kesari Nath Tripathi, allowed the Leader of the Opposition, Mr Dhani Ram Verma, to speak on the subject, but did not permit Mr SP Maurya of the BSP to make his point.

In the Council, the Governor's address was read out. There were objections over non-inclusion of the names of two of the members who had died.

## FIR against ex-minister

LUCKNOW, March 23. — Police have registered an FIR by the Crime Branch against former UP transport minister Mr Ramvir Upadhyay and 10 other officials of his department for appointing 173 employees "fraudulently and without proper sanctions". Mr Upadhyay was a minister in Ms Mayawati's Cabinet. — PTI



# 10 expert groups for statute review

STATESMAN NEWS SERVICE

NEW DELHI, March 29. — Ruling out the possibility of coming under political pressure, curtailing the rights and guarantees of the weaker sections, including the minorities, or changing the basic structure of the Constitution, the Constitution review panel today announced the setting up of experts committees in 10 broad areas.

Addressing a press conference, Mr Justice (ret'd) B P Jeevan Reddy, member of the panel, said the experts groups would cover the areas of strengthening the institution of parliamentary democracy and accountability, including exploring the possibility of stability within the discipline of parliamentary democracy; electoral reforms; pace of socio-economic change and development and removal of poverty; promoting literacy, generating employment and ensuring social security; centre-state relations, decentralisation and devolution including empowerment and strengthening of panchayat raj institutions; fundamental rights and their enlargement, fundamental duties and their effectiveness, enforcement of directive principles and legal control of fiscal and monetary policies.

The experts committees would prepare a background paper and a questionnaire on their respective areas and this would be considered by the Commission and circulated widely to elicit public opinion.

The Commission has already identified some eminent persons to

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## CONSTITUTION:

(Continued from page 1)

chair each of the committees and each committee will be co-chaired by a member of the Commission. In addition, the committee will have some more eminent persons as also other members of the Commission.

The committees will also take the help of organisations working in the area of their concern and use them as resource institutions. The panel might set up more committees at a later stage, he said, if it was found to be necessary.

The co-chairmen for the respective groups are: Mr Justice (ret'd) Jeevan Reddy (Parliamentary democracy), Mr Justice (ret'd) K Punniah (pace of socio economic development), Mr Justice (ret'd) R S Sarkaria, who might also be chairman, (Centre-State relations), Mr P A Sangma (decentralisation), Mr Soli J Sorabjee (fundamental rights), Mr C R Irani (fundamental duties), Mr K Parasaran (enforcement of directive principles), Mr Abid Hussain (legal control of fiscal and monetary policies), Mr Subhash Kashyap (electoral reforms) and Mrs Sumitra Kulkarni (literacy).

The committee on socio-economic change will be chaired by Mr Justice (ret'd) K Ramaswami while the panel is in the process of confirming the other chairpersons.

During the press conference, Justice Reddy took the opportunity to restate and reaffirm that the Commission has been set up to review the "working" of the Constitution and not to review the Constitution itself.

The objective was not to rewrite the Constitution but to examine in which areas the working of the Constitution had not been satisfactory he said. If found necessary, the Commission would recommend some of the provisions, laws or policy mechanisms which required improvement. Mr Reddy also emphasised that the role of the panel was advi-

sory in nature. To enable the panel to do its work in an effective and appropriate manner the panel proposed to undertake as wide a consultation as possible involving research institutions, national commissions, study groups, political parties, press council and all such bodies organisations, institutes which are engaged in research or interested in the area of its work. The panel hoped that the background paper and questionnaires would be ready in time for the next meeting of the panel on April 22. Justice Reddy said the panel wished to emphasise and re-emphasise that it did not propose to curtail, diminish or cut down in any manner the rights and guarantees provided by the Constitution to the scheduled castes, scheduled tribes, other backward classes and the minorities. On the contrary, the idea was to try and discover and to recommend methods for effectuating and improving those rights.

Justice Reddy said the Commission hoped to earn the trust and confidence of people through its work. It would work in the spirit of service, he said, adding that a number of members had declined to take any allowance. The panel would not depart from the philosophy of the Constitution, he said. No one, not even Parliament, could tamper with the basic structure of the Constitution in view of the Supreme Court judgement, he added.

While declining to comment on the BJP's announcement of a white paper, Justice Reddy said the panel would take into account anything that was relevant adding that it was clear from the composition of the panel that it could not be influenced. On the criticism that the panel has had to face, Justice Reddy said there were bound to be several opinions on such an important issue but that the panel would not be affected by this.

## Review panel H D sets up 10<sup>30/3</sup> expert groups

By Our Legal Correspondent

**NEW DELHI, MARCH 29.** The National Commission to review the working of the Constitution, headed by Mr. Justice M.N. Venkatachalaiah, has set up 10 expert groups to study areas identified by the Commission for consideration.

Announcing this to mediapersons here today, the spokesperson of the Commission, Mr. Justice B.P. Jeevan Reddy, reiterated that the Commission's role was only to review the working of the Constitution and not to re-write it.

He said he would be the co-chairperson of the group on 'strengthening parliamentary democracy and their accountability'. Mr. Subash Kashyap will co-chair the group on 'electoral reforms'; Mr. Justice K. Ramaswamy, retired Supreme Court Judge, will head the group on 'pace of socio-economic changes and development and removal of poverty'; Mr. Justice R.S. Sarkaria was likely to head the group on 'Centre-State relations'; Mr. Soli J. Sorabjee, Attorney General, will co-chair the group on 'enlargement of fundamental rights'.

Mr. P.A. Sangma will co-chair the group on 'strengthening panchayati raj institutions'; Mr. C.R. Irani, Editor, *The Statesman*, will co-chair the group on 'effectuation of fundamental duties'; Mr. K. Parasaran, former Attorney General, will co-chair the group on 'enforcement of directive principles of State policy'; Mr. Abid Hussain will co-chair the group on 'legal control of fiscal and monetary policies' and Ms. Sumitra Kulkarni will co-chair the group on 'promoting literacy, generating employment and ensuring social security'.

Mr. Justice Reddy said the expert groups, with a chairperson and co-chaired by a member of the Commission, would prepare the background paper and questionnaire in each of the areas, to be sent to national commissions, research institutes, NGOs, consumer groups, political parties and interested parties. Some groups are expected to ready the background paper and questionnaire before the Commission's next meeting on April 22.

**THE HINDU**  
**30 MAR 2000**

# Constitution review panel sets up 10 expert groups

Our Political Bureau  
NEW DELHI 29 MARCH

**T**HE NATIONAL commission, set up to review the Constitution of India, has set up 10 expert committees which will make an in-depth study of the core issues identified at its last meeting.

The 10 expert groups will cover areas such as

- Strengthening of the institution of parliamentary democracy and their accountability;
- Enlargement of fundamental rights;
- Electoral reforms;
- Pace of socio-economic change and development and removal of poverty;
- Strengthening of panchayati raj institutions;
- Centre-state relations;
- Effectuation of the fundamental duties;
- Enforcement of directive principles for achievement of preambular objectives of the Constitution;
- Legal control of fiscal and monetary policies; and
- Promoting literacy, generating employment and ensuring social security.

Disclosing this to newsmen here on Wednesday, the spokesman of the national commission, Justice B.P. Jeevan Reddy, emphasised that the panel will only review the working of the Constitution and not rewrite it completely.

He said that of the 10 expert committees constituted on Wednesday, two will finalise their background papers and a questionnaire for nation-wide circulation by April 22 this year.

Justice Reddy said he will be co-chairman of the committee on

strengthening of the institution of parliamentary democracy and accountability, while attorney general Soli J. Sorabjee will co-chair the committee on the crucial issue of enlargement of fundamental rights.

The committee on electoral reforms will be co-chaired by former Lok Sabha secretary-general Subhas C. Kashyap while Justice K. Ramaswamy has been asked to chair the committee on pace of socio-economic change and development and removal of poverty.

The latter, co-chaired by former Andhra Pradesh High Court judge K. Pooniah, will stress on rights and guarantees provided by the Constitution to scheduled castes, tribes, other backward classes and minorities, said Justice

Reddy.

Politician P.A. Sangma, who had raised the controversy over barring persons of foreign origin from holding high public offices — an issue which Justice Reddy said had not come up at any of the review panel meetings so far — will co-chair the expert group on strengthening of panchayati raj institutions.

Replying to persistent queries on whether the foreigners' issue would be considered in the future, the spokesman said it would be done if all the members expressed their consent towards raising such an issue for deliberation.

He said the guiding force for the Commission will be the fundamental goals of the Constitution, namely, the socio-economic and political justice besides equality and other fundamental rights to the people.

## CORE POINT

*The Economic Times*

30 MAR 2000

# Ominous portents

By Rajindar Sachar

THAT MS. Rabri Devi would win the confidence vote was a foregone conclusion, more so in view of the bungling and antics of the National Democratic Alliance (NDA) indicating its tendency to commit political *hara-kiri*. The pre-election squabbling and the mud-slinging exposing the chinks in the alliance's artificial unity showed the RJD chief, Mr. Laloo Prasad Yadav, by comparison, as a colossus.

The result of the Bihar election showed how distant are political parties from the ground reality. There was no disputing that Mr Laloo Yadav had given Bihar its worst administration coupled with corruption. But given the functioning of the NDA and its internal squabbles, it is no wonder that he scored, belying the smug pollsters. Mr. Laloo Yadav did not give the poor more drinking water. He also possibly stole public money but somehow he was able to give the disadvantaged and the minorities a sense of belonging. Opinion polls showed that 33 per cent of the people in Bihar feel that the poor have got an increase in dignity during the Laloo decade, of over-riding importance in a caste-ridden society and more so when the NDA gloats over its globalisation visage which spells ruin for the small man, the labourer and the landless.

It is true that it was not mandatory for the Governor to call Mr. Laloo Yadav simply on the ground that he had one MLA more than the NDA. But this is subject to the proviso that the NDA should convince the Governor that it enjoyed majority support. But Mr. Nitish Kumar by his own admission had the backing of only 154 members.

The Governor knew fully well that the possibility of Congress(I) support to Mr. Laloo Yadav was being seriously considered and this would have taken the RJD's tally to about 160 MLAs. In such a situation, Rodney Brazier's comment on the role of a monarch — "it was clear, however that an unwise or ill-advised Monarch might conceivably act in a manner which could be construed as

partial, in that it appeared to reflect a royal preference for one particular group within the party. A royal mistake is not final but it could still harm the monarch's own reputation — would aptly fit the Governor, Mr. Vinod Pande.

With Mrs. Rabri Devi getting a majority, the Governor has now been placed in the same embarrassing position as the Governor General of Canada in 1926

strategy of the RSS. That alone can explain why the Gujarat Government persisted in the RSS issue notwithstanding the daily flak the Central Government was facing in Parliament and the embarrassment it was causing to the Prime Minister, Mr. Atal Behari Vajpayee, personally.

It appears to me that the RSS has somehow come to the conclusion that

## *The Constitution Commission per se need not be objected to... But it must guard itself against being used as a whipping boy by the BJP.*

when he refused a dissolution to the liberal leader, Mackenzie King, and instead invited Meighen, the Conservative leader, to form the Government believing Meighen would be able to obtain a majority. But he failed to obtain the majority in the House and the general elections were held thereafter returning the Liberals with a majority.

The Governor's actions gave Mr. Laloo Yadav the oxygen he needed and an opportunity for dominance in the coalition by the Congress(I) though routed at the polls. Such was the atmosphere created that even the CPI(ML) which has a running feud with Mr. Laloo Yadav, accusing him of murdering its cadres, had to choose the alternative of abstaining from voting.

The unembarrassed felicity with which various JD(U) leaders such as Mr. Sharad Yadav now acknowledge that the Governor's action was hasty shows not a acceptance of their own unprincipled conduct but political chicanery and contempt for public opinion.

More serious, however, is the question that has to be faced by various allies of the BJP on the change of guard in the RSS — the rise of hardcore elements such as Mr. K. S. Sudarshan who openly advocate extreme communalism. I needs to be emphasised that this is no sudden development. This was a well-thought-out

Commission as a sounding board to find a respectable way to put forth all these divisive issues and programmes before the public. It will take cover under the pretext that it is only facilitating a discussion on these issues. To me, this is a stratagem to unlock the BJP's hidden agenda, sugar-coated in the language of presentation to the Commission. That is why the BJP has persisted in constituting the Commission notwithstanding the sweep of opposition to it from various sources including the President.

Of course, the Constitution Commission *per se* need not be objected to, as it is needed to deal with matters such as the National Judicial Commission or changes in the anti-defection law. But, it must guard itself against being used as a whipping boy by the BJP. In this context, the Opposition parties must insist that the Commission at its very first sitting announce that there will be no consideration of the proposal for a change in the preamble or the guarantees of minority rights or in the fundamental rights already given to Scheduled Castes and Scheduled Tribes and Backward Classes, and no consideration of abrogation of Article 370. If such immediate declaration is made by the Commission, then if the BJP still persists in going to town with its divisive proposals, it will expose its nefarious intentions making it easier for sane forces in society to resist it powerfully.

This danger is now more serious given the new leadership of the RSS. Its open hostility to minorities and the recent speech by Mr. Sudarshan that there is to be an epic battle between Hindus and anti-Hindus is very much in the mould of a Hitlerian hate campaign against the minorities. I feel the time has come for the non-BJP constituents of the NDA to adopt a strongly assertive role to counter this pernicious propaganda. No longer can they conceal themselves behind the NDA agenda, when the RSS and the BJP have given notice and revealed their true ugly face.

(The writer is a retired Chief Justice of the Delhi High Court.)

# THE SENTINEL

## Let Supreme Court Remain Untouchable

TWO score and 10 years ago our country was blessed with a Court, which our Founding Fathers christened the Supreme Court of India. It was conceived not merely as the final arbiter of all disputes between our people but as the guardian of our constitutional values eloquently articulated in the Preamble of our Constitution. Moreover, it was visualised as a courageous judicial sentinel on the *qui vive* protecting the human dignity of our people and promoting their fundamental freedoms.

Fifty long years have passed since the inaugural sitting of the Court on 28 January 1950. There were teething troubles in the beginning, there were constitutional quarrels with Parliament over property rights for three decades until property rights were deleted from the Fundamental Rights Chapter, there were difficult times when the doctrine of committed judges held sway for a while. The court temporarily experienced some aberrations during the obnoxious June 1975 Emergency. Happily this was followed by a resurgence of the bold sentinel and a period of redemption.

Historians may pass different value judgments on the court's performance. But what is undeniable is that the court has played a regular role and has firmly established itself in the consciousness of our people.

### BRIGHT STAR

Sceptics scoff at miracles. Our Supreme Court is a living refutation of their scepticism because it is indeed a miracle that despite acute disillusionment, bordering on disgust, with the working of the legal system and the judicial process on account of the horrendous delays, the Supreme Court is the one institution in which citizens, be they prince or pauper, captains of industry or indigent workers, the religious or the agnostic, aggressive males or submissive females, all of them have regarded the Supreme Court as the one bright star, "the ever fixed mark", in an otherwise dark and depressing firmament. There is an explanation for this miracle. Thanks to liberalisation of the concept of *locus standi* and the development of public interest litigation by the Supreme Court, some fundamental rights have been made meaningful, to some extent, for some oppressed and exploited segments of Indian humanity. The greatest achievement of the Supreme Court is that it has taken human suffering seriously.

By SOLI J SORABJEE

We live in a world of myths and paradoxes. The judiciary is supposed to be weakest branch of the state, the least dangerous branch. Our Supreme Court has demolished these

*This is the text of the address delivered by the author, the Attorney General of India, at the Supreme Court Golden Jubilee function at Vigyan Bhavan, New Delhi, on 28 January 2000.*

myths. Weak our Supreme Court certainly is not. Short of transforming a man into a woman and vice versa, which even the Mother of Parliaments in the United Kingdom cannot hope to achieve, the orders passed by our Supreme Court in their range and effect are unparalleled in any part of the world. Constitutional amendments which seek to mutilate the identity of our Constitution and damage its basic structure have been struck down. Weak branch indeed.

Neither is our Supreme Court the least dangerous branch. It has proved most dangerous to the citadels of authoritarianism, to the centres of arbitrariness, to the forces of fanaticism and intolerance, to those who sow the seeds of distrust and dissension between high constitutional functionaries and thereby impair the integrity of the institutions, to those who would subvert the Rule of Law and suppress our basic liberties and demean our dignity. May the court continue to be dangerous to these elements.

You may well ask: What is the reason for this phenomenon? The answer is simple. The power and authority of a court, the prestige of a court, the primacy of a court, its ultimate strength lies in public confidence, the respect accorded to its judgments and its independent and honest functioning. The curse of untouchability which disfigures our society must be extirpated.

### PARTNERSHIP

But as Chief Justice Kania reminded us at the inaugural sitting, the Supreme Court "should be quite untouchable by the legislature or the executive authority in the performance of its duties". Let our Supreme Court in the years to come remain untouchable.

Our Supreme Court has adopted the Sanskrit saying which when translated means "Let noble thoughts come to us from all sides". Its judgments are replete with references to the decisions of the court in England, America, Canada, South Africa, Pakistan, Sri Lanka, Bangladesh, Australia and New Zealand as well as the European Court of Human Rights at Strasbourg and the European Court of Justice at Luxembourg.

By creative interpretation of the Constitution, the court has enlarged the fundamental rights guaranteed by the Constitution by judicially deducing certain fundamental rights which are not specifically mentioned in the Constitution, such as freedom of the press, the right to travel abroad, the right to privacy, the right to education and the right to know. It is our prayer that the court may grow in strength and not falter in its mission to translate the constitutional values enshrined in our Preamble into living realities for the people of India. In this noble venture, in the quest for equal justice under the law and for social justice, which is the signature tune of our Constitution, the Bar is the

natural ally of the Bench, its dependable and indispensable partner. There can be no dissolution of that partnership.

In the battle against inequalities, exploitation and injustice, we lawyers have a vital role to play. Our function does not begin not end with assisting the court in reconciling two inconsistent statutory provisions or advancing learned arguments whether "may" means "shall" and "or" means "and". I firmly believe it is the abiding moral obligation of every lawyer to uphold the Rule of Law and to protect the human rights of our people, to ensure easy and expeditious access to justice, especially to the lowly and the lost, and, above all, to make reverence for the Constitution and the court, the secular religion of our nation. That must be our task and our goal.

### NOT UTOPIAN

History and legend will grow around this day. And in the years to come further jubilees will be celebrated and those amongst us who have not shuffled off their mortal coil and will be present on that occasion will judge us, not by the sound and fury of our words, but by our deeds, by our commitment, by our efforts to realise the dreams of the Father of the Nation, of Pandit Nehru, and of our Founding Fathers. I do hope and trust that the verdict of posterity will be "These chaps were not mere chatterers. They tried. They kept the faith and held the banner high. Their unfinished work is for us to complete."

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Does all this sound utopian, a childish fancy? May be. But remember that a map of the world which does not contain Utopia is not worth glancing at and a nation without vision cannot prosper.

So let us take a pledge today on this historic occasion that we shall continue to toil without ceasing to dream until we make the grand dream of our great leaders and Founding Fathers and their vision come true and usher in a society where social justice prevails, truth, decency and human dignity are respected, where wealth and power are held in trust for the common good and where all people and communities live in peace and harmony. That is the India of my dream which I would like to share with you today. Let us work together and make it a reality.

# Govt. decides to form panel to review Constitution

By Harish Khare

NEW DELHI, FEB. 1. The Vajpayee Government has decided to go ahead with its proposal to set up a "National Commission" to review the working of the Constitution. The Union Cabinet passed a resolution to this effect this evening, but, according to the Union Law Minister, Mr. Ram Jethmalani, the "review" would not tinker with the basics of the parliamentary form of government.

According to Mr. Pramod Mahajan, Union Minister for Parliamentary Affairs, who briefed the media after the Cabinet meeting, the terms of reference for the proposed Commission would be: "To examine in the light of the experience of the past 50 years as to how best the Constitution can respond to the changing needs of an efficient, smooth and effective system of governance and socio-economic development of a modern India within the framework of the parliamentary democracy and to recommend changes, if any, that are required, in the Constitution, without interfering with its basic structure or features."

Mr. Mahajan said the terms of reference clearly mentioned that the working of the Commission would be within the framework of parliamentary democracy. "We have taken care of that. It was hoped that the Commission would not go beyond it."

## 11-member panel

However, the Government could not an-

nounce the names of the proposed 11-member panel. The Vajpayee regime's first choice for the chairmanship of the panel was the former President, Mr. R. Venkataraman, but it was said that the DMK, an ally of the ruling National Democratic Alliance, vetoed the idea.

There appears to be some problem in getting the consent of the next choice, Mr. M. N. Venkatachaliah, former Chief Justice of India and former chairman of the National Human Rights Commission. Mr. Jethmalani is said to have gone to Bangalore on Monday to seek Mr. Venkatachaliah's consent; however, the former Chief Justice is aware of the view that the members of the bench ought not to be seen as seeking post-retirement office.

Mr. Venkatachaliah's stewardship of the Human Right Commission was praised widely and it is argued that should he now accept an appointment with the Government, it would not help the credibility of the Human Rights Commission.

## Venkatachaliah's terms

Later, Mr. Justice Venkatachaliah is reported to have told a news agency that he would be willing to accept the chairmanship only if the Constitution's "basic features" and "parliamentary system of democracy" were treated as inviolable.

In view of the considerable controversy that has arisen over the motives and intentions behind the review panel, the Government is keen

on ensuring that the membership of the panel is wide-based.

Not only does the Government want to have an eminent constitutional personality such as Mr. Justice Venkatachaliah, it is also reportedly looking for other "jurists", including those who could possibly be termed as "left of the centre". Obviously the Union Cabinet felt compelled to declare itself bound by the "basic structure" doctrine; it would appear that after the Cabinet announcement, Mr. Venkatachaliah's major conditions have been met. In other words, the Vajpayee Government has found itself constrained to renounce the idea of "presidential form" of government, an idea that has been at the core of the Sangh Parivar's thinking on an ideal governmental structure.

Mr. Mahajan, however, told reporters that the names of the panel members would be announced in the next few days; besides a chairperson, there would be a member-secretary and not more than nine other members. The Minister also said that the members would be hopefully eminent persons from different walks of life; according to him, political persons were neither *ipso facto* excluded nor necessarily included.

According to Mr. Mahajan, the panel should complete its work within a year; he added, rather needlessly, that its recommendations would be placed before Parliament for consideration.

# Govt. will set up commission to review working of Constitution

*Any change will be within the framework of the parliamentary form of democracy*

By Askari H. Zaidi

The Times of India News Service

NEW DELHI: Brushing aside the opposition from some political parties, the Union cabinet on Tuesday decided to constitute an 11-member "national commission to review the working of the Constitution within the framework of parliamentary democracy".

Revealing the terms of reference of the proposed commission, parliamentary affairs minister Pramod Mahajan said it would examine "in the light of the experience of the last 50 years, how best the constitution can respond to the changing needs of an efficient, smooth, effective system of governance and the socio-economic developments of modern India within the framework of parliamentary democracy".

Making it clear that the government had no intention of introducing a presidential form of government, as was feared in some quarters, the terms of reference noted that the national commission would recommend changes, if required, in the provisions of the constitution "without interfering with the basic structure or features".

The cabinet decision has come against the backdrop of a controversy in political circles that the purpose of the review is to 'saffronise' the constitution. Congress circles were apprehensive that the government wanted to ban the entry of persons of foreign origin to high constitutional office in order to finish Sonia Gandhi politically.

The President and the Prime Minister had differed last week on the manner of reviewing the constitution. At a function in parliament house on the occasion of the fiftieth anniversary of the constitution on January 27, K.R. Narayanan had cautioned against changing its basic philosophy, adding, "We have to consider whether it's the constitution that has failed us or whether it is we who have failed the constitution."

On the other hand, Atal Behari Vajpayee justified the review, say-

ing even the "mightiest fort needed repair".

Interestingly, the ruling NDA does not have a two-thirds majority in the lower house which is necessary to pass the amendments. The NDA seems to be keen to start the process to gain political mileage even if the move is defeated in parliament.

Mr Mahajan said the commission will have a one-year term and comprise a chairperson, a member secretary and nine eminent persons from different walks of life.

However, he refused to give out the names of the chairperson and the members saying these "may be decided within a week's time".

Asked if justice M.N. Venkatchaliah had been selected to head the panel, Mr Mahajan said no, but admitted that "he had been spoken to through government channels".

He said, "The commission will be constituted through a government resolution passed by the cabinet and it will obviously be gazetted."

Mr Mahajan said the members would "come from different walks of life concerning the constitution. They would be eminent persons who would enjoy everybody's faith".

In reply to another question, he said, "We have not thought of giving proportional representation to political parties in the panel." However, he said, the commission would interact with political parties to ascertain their views.

**Agencies add:** Former chief justice of India M.N. Venkatchaliah has said he had given his consent to head the proposed Constitution review commission subject to the condition that its basic features and parliamentary system of democracy would be treated as inviolable.

"I have told the channels through which the government contacted me offering the chairman's post of the review panel that I would head the commission only if my terms were accepted," justice Venkatchaliah said on phone from Bangalore.

# Venkatachaliah to head panel

HT Correspondent  
New Delhi, February 2

FORMER CHIEF Justice of India M. N. Venkatachaliah is understood to have agreed to head the proposed National Commission to review the Constitution. Names of the other 10 members are being finalised and an announcement is expected in a day or two.

Speaking to *The Hindustan Times*, Law Minister Ram Jethmalani said today that whatever apprehensions Mr Venkatachaliah might have had, have been cleared with the Union Cabinet's approval of the terms of reference for the review panel last night.

Mr Venkatachaliah, who was till

recently the chairman of the National Human Rights Commission, had set his own terms when approached by the Government for the key assignment - That the "basic features" and "Parliamentary system of

## Review of Constitution

democracy" would be treated as inviolable.

In any event, the Government has met these conditions on its own, the Law Minister said. All the same, no room for ambiguity has been left with the sort of terms of reference that the Union Cabinet

has approved.

As per the terms of reference, the Review Commission will examine the working of the Constitution over the last 50 years within the framework of Parliamentary democracy.

Its recommendations on changes, if any, will have to be strictly within the parameters of protecting the basic structure and features of the Constitution.

Mr Jethmalani, emerging out of a meeting of the Group of Ministers on the proposed Right to Information Bill, said the names of some eminent personalities and Constitutional experts have been short-listed. The announcement will be made after securing their concurrence, he said.

THE HINDUSTAN TIMES

- 3 FEB 2000



## Venkatachaliah to head Constitution review panel

**STATESMAN NEWS SERVICE**

NEW DELHI, Feb. 2. — Former Chief Justice of India MN Venkatachaliah will head the commission to review the Constitution, Mr Ram Jethmalani said today.

Law Commission Chairman Mr Justice BP Jeevan Reddy would be one of the members, he said. He was speaking to reporters after releasing a book written by member-secretary of the Law Commission, Mr Subhash C Jain. But he refused to disclose the names of the other members.

There was, however, no official announcement on the appointment of the chairperson or members of the review panel but Mr Jethmalani said a formal letter would be issued to Mr Justice MN Venkatachaliah in a few days.

Mr Chandrababu Naidu today supported a review, adds SNS from Hyderabad.

**THE STATESMAN**

- 3 FEB 2000

# Come clean on Constitution review, Cong. tells Govt.

By Our Special Correspondent

NEW DELHI, FEB. 3. The debate over the Constitution review Commission proposed by the Vajpayee Government took a new twist today when the Congress (I) admitted that it too had instituted a similar Commission when Indira Gandhi was Prime Minister.

Even as the Congress(I) Working Committee demanded that before proceeding any further, the Government should clarify its intentions and delineate the specific areas that any Constitution review Commission would go into, CWC member Mr. Pranab Mukherjee was forced to address the question of whether there was indeed a difference between the present Commission and that of the Swaran Singh Commission set up by Indira Gandhi.

"The Congress(I) had a clear-cut majority in both Houses of Parliament," Mr. Mukherjee said in a press conference on this evening's CWC meeting. The clarification could be broadly interpreted to mean that should a party enjoy a majority in Parliament, it is justified in making any amendments to the Constitution.

After the intensive two-and-a-half-hour meeting, the CWC issued a statement reiterating what the party has been saying for the last two days: that only after the Government issued these clarifications would the Congress(I) be in an informed position to respond to the proposed changes in the Constitution.

Any attempt to amend the Constitution by bypassing major political parties would not be accept-

able to the people of India, the statement added, pointing out that the process of amending the Constitution could only be a political process.

The Constitution had served the country admirably for the past 50 years. The statement said that the Congress (I) would continue to support amendments to the Constitution which were in the interests of the poor, socially, and economically backward. Congress (I) leaders, Mr. P. Shiv Shankar, Mr. H. R. Bharadwaj and Mr. Kapil Sibal, who are lawyers, were invited to the meeting as constitutional experts to brief CWC members.

Mr. Mukherjee said that although the Government had stated that the basic features of the Constitution would not be tampered with, these had not yet been defined. "The Government should explain what is the basic structure."

Meanwhile, Mr. P. Upendra, Congress (I) leader, is said to have written a letter to the party president, Ms. Sonia Gandhi, urging that the party reconsider its stand on the Commission in the light of the assurances given that the basic features would not be changed and that parliamentary democracy is inviolable, and to appoint Mr. M. N. Venkatachaliah as chairman of the Commission.

Mr. Upendra felt that as an Opposition party, the Congress (I) should have demanded that the Government forge a consensus on the terms of reference. While blaming the Government for its confrontationist approach, he said there were indeed 15 areas where a re-look was necessary.

THE HINDU

- 4 FEB 2000

FRIDAY, FEBRUARY 4, 2000

## MOVING TOWARDS A REVIEW

THE STRONG NOTE of caution the President, Mr. K. R. Narayanan, sounded the other day — rather unconventionally though — has failed to restrain the Vajpayee Government from embarking upon a review of the Constitution. This of course is hardly surprising, given that the BJP has been hell-bent on undertaking the exercise for its own reasons. In an attempt to soften criticism, the Government has chosen to set the scope of the review in broad terms. The proposed 'National Commission' is to examine the document from the standpoint of its responsiveness to the changing needs of an "efficient, smooth and effective system of governance and socio-economic development of a modern India" and in the light of the experience of the past 50 years. Care has been taken also to specify that the whole exercise would be within the "framework of parliamentary democracy" and that whatever changes the panel might suggest would not interfere with the "basic structure or features" of the Constitution. The idea obviously is to allay the apprehensions that the Government was pushing for a switchover to the Presidential form of governance in the name of stability, an idea the BJP has been toying with and articulating for quite some time. An explicit commitment to parliamentary democracy — a concept deemed to be as much a basic feature of the Constitution as for instance sovereignty, federalism, judicial review and secularism are — was apparently necessitated by the imperative of carrying the other coalition partners with it, apart from that of complying with the conditions the former Chief Justice of India and nominee for the chairmanship of the Commission, Mr. M. N. Venkatachaliah, was reported to have set for taking up the assignment.

Although the areas to be reviewed have not been spelt out precisely as yet — it is not known whether the Government would set specific terms of reference or leave it to be determined by the panel itself — quite a few of the propositions being canvassed vigorously by the BJP are

unacceptable, going as they do against the grain of parliamentary democracy. The reference is to the concepts of 'fixed parliamentary tenure' and 'constructive vote of no-confidence', which are trotted out as the panacea for governmental instability of the type witnessed in recent years. In effect, they will amount to grafting an artificial stability into the system through the statute, whereas the real remedy lies in evolving healthy parliamentary conventions and a party system that is truly democratic, ideology-based and accountable to the people. The task of reviewing the Constitution involves much more than what is envisaged by the amending process and differs in its basic character and sweep. Again, whether it is empowerment of women, the question of preventing the abuse of Article 356, revamping of the panchayati raj setup or reordering the Centre-State relations — some of the other areas being mentioned by the pro-reviewers — the problem has very little to do with any perceived deficiency in the Constitutional framework. The stark reality is that the lack of political consensus on implementing some of the salutary recommendations of the Sarkaria Commission and on the safeguards needed to be built into Article 356 (to accord with the Supreme Court's guidelines) account for much of the ills in this domain. This goes for women's empowerment too.

What exactly does the Vajpayee regime want to achieve by setting up the review panel? Apart from the fact that the Commission would be lacking parliamentary sanction, there is no way the Government could get the Commission's recommendations incorporated in the Constitution without the support of the Opposition, given the composition of the Rajya Sabha. In fact, one will not be surprised if a consensus proved elusive even within the ruling coalition on some of the crucial areas, considering the disparate nature of the combine. The labours of the Commission are thus destined to end up as no more than an academic exercise.

THE HINDU

4 FEB 2000

# The Telegraph

SATURDAY 5 FEBRUARY 2000 VOL. XVIII NO. 211

## TAKING A CONSTITUTIONAL

It is a pity that thinking, meant to be the distinguishing marker of the human being, is becoming such an elusive exercise. As the dust rises thicker in the controversy over the projected review of the Constitution, the basic point has been completely drowned by shouting voices. The point is simple: there is a real need for a fresh look at the Constitution. Not a re-examination mired in accusations of political interest, but a disinterested review of certain key concepts to see if the practices in place answer India's needs. The simmering debates regarding various provisions of the Constitution are a sure sign that there are questions which need to be answered or, at least, tackled.

The Indian Constitution did not spring fully armed from the makers' minds like Pallas Athene from the head of Zeus, it was derived chiefly from the British parliamentary system, with bits from the constitutions of certain other countries. Each of the countries had its own history and therefore its own needs.

Their constitutions reflected their preferred mode of governance within this context. The Indian Constitution, willynilly, has retained ossified bits of the history of other countries. A look at a few key concepts in it would not only illustrate this, but would also tap the roots of confusion it often evokes.

For example, the place and function of the president of India has always been an area of muted puzzlement. The idea of the president derives directly from the British structure of constitutional monarchy. This is something that nation evolved in order to accommodate its kings and sceptres when the parliamentary system creaked into place. India must decide whether the democratic structure appropriate for itself can give a meaningful place to the president. This purely intellectual exertion will clear up a lot of vagueness, and clarify the structure as well as the function of various provisions of the Constitution.

Obviously, if the Bharatiya Janata Party led National Democratic Alliance

undertakes such an inquiry, the investigation will be put down to the BJP's attempt to implement its hidden agenda. Political suspicion softens the grey cells and makes intellectual activity impossible. That is a pity, because there are other concepts that can be discussed. For example, the three arms of a democracy — the judiciary, the legislature and the executive — should ideally be independent of one another. Yet in India, the executive is drawn from the legislature. Given the size of the country and the number of representatives it throws up, this may be a practical system. But it has to be asked whether the principle of checks and balances is best served by such

a structure, and whether an alternative is possible and, perhaps, desirable.

The bicameral system, derived from the upper house for landed gentry in British parliament, is another example. Since India is lacking in *maharajas* now, what should be the principle behind the Rajya Sabha? That house was conceived as another form of balance, be-

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**Drawn from the British model, the Indian Constitution is a patchwork of other documents. There is a real need for a fresh look at it**

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cause it offers a particular type of apolitical representation. But the nominating system in place has gradually allowed the same political equations as those in the lower house to permeate it. Surely it is necessary to see that the Rajya Sabha does not become an emasculated extension of the Lok Sabha. Even the system of privileges and whips can be reassessed. These were developed in Britain as a protection against possible encroachments on the part of the crown. Are they irrelevant or anachronistic here? There may be times, for example, when a member finds that his loyalty towards the party which nominated him and the constituency which elected him are in conflict. A party whip would simply hijack the functioning of his conscience and make him act against his best intention. Noticeably, the BJP does not seem to have any such queries on its agenda. It is bound to be suspected of political motives, just as the president is being suspected of bias. The casualty in all this is the simple human exercise of thinking.

THE TELEGRAPH

5 FEB 2000

# BJP appreciates Cong's stance

HT Correspondent  
New Delhi, February 4

THE BJP today expressing happiness at the "positive note" in Congress party and change in its "tone and tenor" on the controversial issue of Constitutional review reassured that it did not want to impose Presidential system of Government nor was it interested in tinkering with the "basic structure" of the Government.

Dismissing any misgivings on the question of taking opposition parties and people into confidence, party spokesman and All India General Secretary Venkaiah Naidu said Constitutional amendments were not possible without a consensus as it required two-third majority in Parliament and no single party or group enjoyed that.

He said it is clear that Congress has realised the need for certain amendments to be made after thorough study and discussion. There was strong public opinion in its favour against which the Congress did not want to go, he pointed out.

Urging all parties to "join the endeavour", he remarked that the exercise cannot happen without "consulting all political parties,

taking the views of MPs and the public". Suggestions from all quarters will be welcome, he said.

The effort is to "strengthen" the Constitutional system and "remove aberrations" if any. Some areas of concern had been specified like misuse of Article 356, judicial appointments, decentralisation, imposition of Emergency, he added.

As far as consulting the opposition parties on the question of the chairman or members of the

## Constitution debate

Commission for Constitutional Review, he said, no Government does that and neither the Congress did this when it had appointed a Commission for the similar purpose under late Mr Swaran Singh, former External Affairs Minister.

The purpose of the erstwhile Swaran Singh Commission was to study the Constitution to "erode judicial power", "amend basic structure", and for "destruction of democracy" by extending five-year term of the Government to six-year term without the mandate of the people as done during the Emergency, he alleged.

Reacting to Mr V. P. Singh's plea on the composition of the Commission and involvement of MPs, he said deciding the terms of reference and members of the Commission was the prerogative of the Government. BJP, CPI or CPM were not consulted by the Congress when it decided members of Swaran Singh Commission, he added.

He said perhaps Mr V. P. Singh was not aware of the fact that Constitutional review formed part of the NDA manifesto and was also suggested in the Presidential address to Parliament last year.

He said the BJP delegation today met Chief Election Commissioner during his visit to Bihar. The BJP central party has also sent a representation to the Chief Election Commissioner to take all necessary steps for the conduct of a free and fair poll in Bihar.

He alleged that besides the need for deployment of forces, there was need for proper utilisation of those forces in view of past experience of "misuse of authority" and "electoral violence" in Bihar. "RJD always believes in rigging the polls," he alleged. The EC should keep this aspect in mind in view of past experience, he added.

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- 5 FEB 2000

SARKARIA, NARIMAN, PARASARAN MAY FIND A PLACE

# PM for non-partisan experts on review panel

By Harish Khare

NEW DELHI, FEB. 4. In an attempt to broaden the proposed Constitution Review Commission, the Prime Minister, Mr. Atal Behari Vajpayee, is believed to have instructed that to the extent possible first-rate, non-partisan constitutional experts should be appointed as members.

Accordingly it is expected that a couple of former Attorney-Generals and one or two academicians could figure among the review members; also, the instruction is that the membership should reflect the country's social plurality.

The names being considered are Mr. K. Parasaran and Mr. Ashok Desai, both former Attorney-Generals; also, the eminent Constitutional expert, Ms. Lotika Sarkar (with a reputation of being a "left-leaning" scholar) as well as the former Supreme Court judge, Mr. Justice R. S. Sarkaria (of the Sarkaria Commission fame, and whose presence could be seen as politically correct on Centre-States relations). The inclusion of Mr. Justice B. Jeevan Reddy, now Chairman of the Law Commission, is almost certain. There is keenness to include the eminent lawyer, Mr. Fali Nariman. And it is almost official, that the former Chief Justice of India, Justice M. N. Venkataswami, would be the Chairman.

Sources in the Prime Minister's Office suggest that Mr. Vajpayee himself is overseeing the process of the "review" panel; and, the accent is to settle for a slate of membership that would defuse the doubts about the commission, even if it is not possible to accept the Congress's suggestion that political parties' representatives be included.

It is believed that the Law Minister, Mr. Ram Jethmalani's suggestions and advice are not being given much weightage; instead, the Attorney-General, Mr. Soli Sorabjee's views are getting considerable respect.

In fact, the search is on to find "constitutional masons" from the Scheduled Castes, the Scheduled Tribes and the minorities categories. Also, allies in the National Democratic Alliance are also being encouraged to give suggestions; already, the DMK has spiked the almost-certain chairman's job for Mr. R. Venkataraman, the former President of India.

Mr. Vajpayee is anxious, according to the sources, to dispel doubts in the country at large that the review panel would tinker with the "secular" elements in the Constitution or could be the format for the "Sangh Parivar" to put into operation surreptitiously its "hidden agenda." Hence, the Prime Minister's directive is that the composition of the review panel should be such as to invoke instant accept-

ability and to command widespread credibility.

Accordingly, the idea is that just as the terms of reference for the Commission have helped in addressing some of the apprehensions, the composition of the panel should itself be such as to leave little scope for doubt about the Government's intentions. It is the view at the highest level that the Cabinet-approved terms of reference have already met the "objections" voiced by the President of India on the panel and its usefulness.

It has also been noted that the voice of the largest Opposition party, the Congress(I), has already become somewhat muted after the terms of reference have enjoined that there would be no departure from the Parliamentary form and that there would be no tinkering with the "basic structure."

It is learnt that there was a strong view within the Union Cabinet that wanted the review panel's terms of reference to be left open-ended; in this view, it should have been left to the review panel whether or not to recommend a switch to a Presidential form of Government. However, Mr. Vajpayee put his foot down and insisted that the "review panel" should not become a cause for any erosion in his image or that of his Government or of the National Democratic Alliance.

# 'It is not an omnibus review'

By S. K. Ramoo

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BANGALORE, FEB. 4. The former Chief Justice, Mr. Justice M. N. Venkatachalaiah, who heads the National Commission for the review of the Constitution, has made it clear that the 11-member body would not sit in judgment over the collective wisdom of the Constituent Assembly which framed the Constitution.

In an interview to *The Hindu* here on Friday, Mr. Venkatachalaiah, who was also the Chairman of the National Human Rights Commission, said the Constituent Assembly which comprised experts and legal luminaries had done an "excellent job". He clarified that the task of the Commission was not to review the Constitution, but to take a look at the manner in which it had worked over the years. The basic structure of the Constitution and the country's parliamentary framework could not be altered by anyone. The Supreme Court had also made this point clear.

The Commission would take up an academic exercise to see

how the Constitution had worked in the last 50 years and identify the areas of inadequacies if any. Although a product of the Government, the Commission derived power and legitimacy from the people. It would be inappropriate to pre-judge its working, as its findings or recommendations would be subjected to the "fire of parliamentary debate".

Mr. Venkatachalaiah said that ultimately it was left to Parliament to accept or reject the Commission's recommendations, and this depended on the credibility of its exercise. Its findings should be judged only in hindsight.

The Commission would have representatives from the linguistic, religious, minority and ethnic groups

and, although he had no final say on its composition, the Government had agreed to consult him before nominating its members.

Mr. Venkatachalaiah said that feedback would be obtained from all sections of society. He preferred the distribution of a comprehensive questionnaire to various sections of the people to get their opinion about the working of the Constitution.

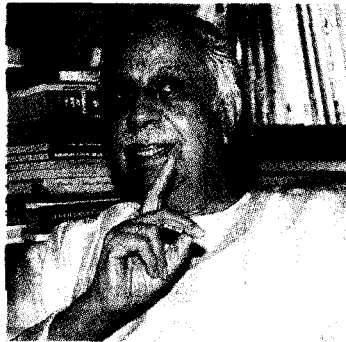
Parliament had already carried out about 80 amendments to the Constitution and it only indicated that there was nothing wrong in carrying out amendments whenever necessary. All countries wedded to democracy had reviewed their Constitutions.

It was not the Commission's aim to make an omnibus review, but try to enforce a ceiling on government spending, and deal with issues related to budget deficit, Centre-State relations, intellectual property rights, human rights and the rights of women and children. The judiciary could not remain independent without financial autonomy and the Commission would consider whether this could be incorporated into the Constitution. There was need to take steps to tackle the "all-pervasive corruption" in the government and its agencies.

He said that in the last 50 years, changes had taken place in all spheres of activity, particularly in science and technology, especially in medical science, biotechnology and DNA engineering. The economy had been opened up and all these compelled one to have a fresh look at the working of the Constitution.

The Commission was not concerned with the ideological differences among various parties and its findings would be an academic exercise standing on its merit. It might also try to find out the reasons for the decay in public life. The credibility of the whole exercise should be evaluated after the submission of the recommendations.

There was nothing wrong in taking a new look at how the various provisions of the Constitution had been implemented in the last five decades. An exercise aimed at an objective appraisal could not be faulted or viewed with needless suspicion. In his view, the country could learn a lot from the recently-drafted South African Constitution. The Commission would also find out how the Constitution had stood the test of time, Mr. Venkatachalaiah said.



Mr. Venkatachalaiah

THE HINDU

5 FEB 2000

# 'Criticism of statute review baseless'

STATESMAN NEWS SERVICE

CALCUTTA, Feb. 6. — The BJP general secretary, Mr Govindacharya, said today that criticism of the Vajpayee government's decision to review the Constitution is not based on facts.

The whole exercise is not prompted by any hidden agenda, but aimed at "harmonious development" of the nation, he asserted.

Directive Principles, like education up to 14 years, remain promises on paper. Over 120,000 villages lack drinking water, while 40 per cent of the country's population live below the poverty line.

"Such a plight of the nation, after 50 years of independence, calls for a review or a second look at the Constitution, to find out remedies for its ills," Mr Govindacharya said.

The BJP general secretary asserted the review is not an attempt to change the Constitution's basic structure. "It is an irony that the destroyers of democracy are finding in the review a threat to democracy," he said, referring to the critics who fear a communal twist is sought to be given to the Constitution. The President's remark has given a new dimension to the issue, he said, adding that it becomes all the more necessary to review the Constitution and find out whether it has failed, or those who swear by it have failed.

The Forward Bloc's central secretariat, which concluded its two-day meeting today, described the uproar about the review as a tactic to divert people's attention from the Centre's "all-round" failure.

"The BJP government lacks

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two-thirds majority in Parliament, yet it has launched a media propaganda to review the Constitution," the FB said in a statement.

Neither the BJP, dominated by the Sangh Parivar, nor the Congress, which suppressed the Constitution during Emergency, has the moral right to talk about its review, it added.

Asked to comment on the Gujarat government's lifting of the ban on government employees joining the RSS, Mr Govindacharya said the RSS is a socio-cultural organisation. The ban thus becomes obsolete.

"When even Jawaharlal Nehru, Sardar Patel and Lal Bahadur Sashtri, described the RSS as a patriotic organisation, who are they trying to issue certificates to the organisation?" he asked.

The BJP general secretary accused film maker Deepa Mehta of trying to "market social evils" through films like Water. "This is not the right approach to social reform. The Benaras widows' plight warrants introspection. Efforts should be made to alleviate their sufferings. The maker of Water should have noted the sentiments of the people," he said.

He denied that RSS activists had burnt the sets of Mehta's film. "The incident was an expression of the people's anger. The Vajpayee government sorted out the problem to the film maker's satisfaction. No one can accuse it of being intolerant to the freedom of expression," he asserted.

Mr Govindacharya claimed the BJP has not fielded any criminal to contest the Bihar elections.



PM WANTED SORABJEE INCLUDED

## Review panel by weekend?

By Harish Khare HD-1

NEW DELHI, FEB. 7. The Vajpayee Government is likely to announce the names of the Constitution 'review' panel later this week. The names would be finalised after consultation with the designated Chairman, Mr. Justice M.N. Venkatachaliah, former Chief Justice of India, who is expected to come here this week.

It is learnt that despite strong opposition from the Law Minister, Mr. Ram Jethmalani, the Prime Minister has approved the inclusion in the panel of the current Attorney-General, Mr. Soli Sorabjee. Mr. Vajpayee has already approved the idea of having a few former attorneys-general in the panel; now, it seems, Mr. Sorabjee will also be a panel member. Mr. Sorabjee is widely respected at home and abroad as a champion of civil liberties, judicial independence and integrity.

Another name under consideration seems to be that of Mr. Anil Diwan, a leading lawyer, who has been appointed *amicus curiae* in a number of cases in the Supreme Court. At the same time, there appears to be some reconsideration about having Dr. Subash Kashyap, a former secretary-general of the Lok Sabha, as the member-secretary of the panel; as a constitutional expert, Dr. Kashyap is considered by many to be a light-weight and as someone who will not pass the "Venkatachaliah yardstick".

The search is on for a 'political' name who would invoke no partisan response. For a while the Government toyed with the idea of including Mr. P.A.

Sangma, former Speaker of the Lok Sabha and a leading figure in Mr. Sharad Pawar's Nationalist Congress Party; however, since Mr. Sangma is also the most vociferous critic of Mrs. Sonia Gandhi's suitability to be the Prime Minister of the country, the possible hostile reaction from the Congress(I) to his name has led to a reconsideration.

In his many public utterances, Justice Venkatachaliah has already indicated his preference for a non-partisan, broad-based panel. Given the controversy that the idea of review panel has evoked, the Government is reconciled to having as credible a Commission as possible. Mr. Justice Venkatachaliah's argument is quite acceptable that if the Commission is not to get overwhelmed with controversy it must have constitutional experts of eminence and stature.

Interestingly enough, the Government finds itself subject to organised pressure on behalf of this or that 'expert'. Today, the Prime Minister's Office received a petition in behalf of 'those rooted in the soil of the nation'; translated into plain English, the plea is to have someone with 'rural background'. The petition is signed by pro-Government personalities, among others, like Professor M.L. Sondhi, recently appointed Chairman of the Indian Council of Social Sciences Research, Mr. Sahib Singh Verma, former Chief Minister of Delhi, and Mr. Virender Verma, former Governor of Punjab and Himachal Pradesh. In the next few days, there will be similar claims and counter-claims.

THE HINDU

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# Constitutional Review

## Keep the Basic Structure Intact

By MADHU DANDAVATE

11-14 11/2  
**P**RESIDENT K R Narayanan's speech at the function in the central hall of Parliament on January 27, to commemorate the golden jubilee of the republic, had a far deeper significance than what the spokesmen of the Union government imagined.

The pronouncements made by the present government are generally full of ambivalence and, therefore, rouse a lot of suspicion. It is more so in the case of the proposal to set up a committee of experts to review the entire Constitution.

### Legitimate Fear

The proclaimed agenda of the National Democratic Alliance led by the BJP is only a pale shadow of the party's hidden agenda. For instance, some of the spokesmen of the BJP in the Union cabinet, when asked whether the Babri Masjid-Ram Janmabhoomi issue, Article 370 regarding special status for Jammu and Kashmir and a uniform civil code were given up by the BJP, with some embarrassment and considerable shrewdness, the reply given was that these issues were not on the NDA agenda though the BJP is still committed to them. Only when the BJP secures a clear majority can the party's policies on these issues be implemented. Recently, the BJP chief minister of Uttar Pradesh, RP Gupta, unequivocally stated that he would not prevent the construction of the Ram temple at Ayodhya as long as it did not create any law and order problems.

Are these observations consistent with Article 25 of our Constitution which categorically states, "All persons are equally entitled to freedom of conscience and the right freely to practise and propagate religion?" Against the background of these utterances, there is a legitimate fear in the minds of several democrats that under the cover of reviewing the entire Constitution, which according to various Constitutional experts, "has stood the test of time" efforts will be made to destroy, what the president of India has described as 'the basic philosophy' of the Constitution.

The president has rightly made a distinction between 'amending the Constitution' and subjecting it to a comprehensive review. To allay the doubts and fears in the minds of critics, the prime minister, in his speech on January 27, gave an assurance that the basic structure of the Constitution would not be altered.

The thrust of the speech of the president was that the structure of

parliamentary democracy has stood the test of time because it accepted the primacy of collective accountability to Parliament over stability, whereas in a presidential system, the stress is on stability with accountability or responsibility taking a backseat.

It is argued that since Prime Minister Atal Bihari Vajpayee has assured that the basic structure of the Constitution will not be changed, by implication it is sought to be suggested that the system of parliamentary democracy will not be changed. Doubts have been raised about this aspect also. Some time ago, Union Home Minister L K Advani had argued that the Keshavanand Bharati judgment of 1973, which clearly stated that no amendment of the Constitution would be valid if it sought to alter the basic democratic structure of the Constitution, did not mention parliamentary democracy as a feature of the basic democratic structure of the Constitution. Thus, in a roundabout way, the home minister had suggested that transition from parliamentary democracy to a presidential system would be perfectly in order even after the Keshavanand Bharati judgment.

### Authoritarian Rule

As regards the Keshavanand Bharati judgment of 1973, it had clearly stated: 'The basic structure is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizens nor the Parliament would be able to understand it are unfounded. If the historical background, the Preamble, the entire scheme of the Constitution, the relevant provisions thereof including article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the Constitutional structure:

(1) The supremacy of the Constitution (2) Republican and democratic form of government and sovereignty of the country (3) Secular and democratic character of the Constitution (4) Demarcation of power between the legislature, the executive and the judiciary (5) The dignity of the individual secured by various freedoms and basic rights in Part III and the mandate to build a welfare state contained in Part IV (6) Unity and integrity of the nation.'

Since the judgment specifically mentions that these basic elements of the constitutional structure are only illustrative, L K Advani's con-

textion that parliamentary democracy is not a part of the basic structure of the Constitution only because it is not mentioned in the basic features illustrated in the Keshavanand Bharati judgment is not correct.

If any step is envisaged to transform the system of parliamentary democracy to a presidential form of government, we must keep in mind the historical experience of other countries in Africa, Latin America and Asia where the installation of a presidential system had led to some form of authoritarian or dictatorial rule.

### Flexible Procedure

It is surprising that some of the ministers like L K Advani and Arun Jaitley, who are quite aware of the law and parliamentary procedures have made flimsy public statements that President K R Narayanan had supported the idea of a review of the Constitution in his address to the joint session of Parliament. Both the ministers have forgotten the constitutional reality that the presidential address is the blueprint of the policies and programmes of the government and is always formulated by the Union cabinet. The views in the presidential address thus do not always reflect the personal views of the president. At all other functions organised by parliamentary, judicial, educational, scientific or literary forums, the president retains his freedom to give expression to his views.

A number of parties have publicly expressed their opposition to the move to go in for a comprehensive review of the Constitution through a committee of experts. Obviously the Union cabinet will have to apply its mind to the review committee report and then formulate its proposals to be placed before Parliament for discussion. Parliament will then act as a miniature constituent assembly. While the original constituent assembly which adopted India's Constitution had a rare unanimity, the new 'Constituent Assembly', which will discuss the review of the Constitution is likely to be vertically divided and, therefore, there are no prospects of much emerging out of the new move. The best course would be to use a flexible procedure for amending the Constitution, whenever a specific situation at a given point of time demands suitable amendments.



## Names for statute review panel to be finalised today

By J. Venkatesan

NEW DELHI, FEB. 10. The Union Government is expected to finalise tomorrow the names for the multi-member Constitution Review Committee to be headed by the former Chief Justice of India, Mr. Justice M.N. Venkatachalaiah.

Accordingly, the Prime Minister, Mr. A.B. Vajpayee, has convened a meeting tomorrow with the Law Minister, Mr. Ram Jethmalani and senior officials in the Law Ministry. The Government is keen to complete the task of setting up of the committee notwithstanding opposition from various political parties.

The Union Cabinet had on February 1 approved the setting up of the committee and it was announced that the panel would be decided in 10 days.

It is in this context that the meeting has been convened by the Prime Minister and the meeting is slated to discuss the broad terms of reference for the committee. Mr. Justice Venkatachalaiah is expected to visit New Delhi this evening and the names and the terms of reference will be finalised after consulting him.

According to Law Ministry sources, besides the chairman, the other names being considered include Mr. Justice B.P. Jeevan Reddy, Chairman of the Law Commission, Mr. Soli Sorabjee, Attorney General of India, Mr. Ashok Desai, former Attorney General, Mr. F.S. Nariman, Mr. Justice R.S. Sarkaria, Mr. Justice Kondapalli Punnayya, retired Judge of the Andhra Pradesh High Court and Dr. Subash Kashyap, former Secretary-General of the Lok Sabha. The non controversial political name that figures is that of Mr. P.A. Sangma, former Lok Sabha Speaker and leader of the Nationalist Congress Party.

Meanwhile there is pressure on the Law Minister to give representation to a woman. The chairperson of the National Commission for Women today met Mr. Jethmalani and urged that a woman should be included in the panel.

According to the sources, the Prime Minister is not interested in packing the panel with too many lawyers. There must be representation from all sections without giving room for any controversy.

THE HINDU

11 FEB 2000

# The Constitution as a toy

By Rajeev Dhavan

*Having tried — and failed — to secure an overall majority in the Lok Sabha in 1996, 1998 and 1999, the BJP wants to re-design the Constitution to better its chances. If you cannot win the game, change the rules.*

CONSTITUTIONS ARE not made to political measure. They are not toys — to be kicked around for sport, or manipulated to suit the party in power. The BJP's agenda for constitutional change was directly linked to its intimations about its electoral prospects. Having tried — and failed — to secure an overall majority in the Lok Sabha in 1996, 1998 and 1999, the BJP wants to re-design the Constitution to better its chances. If you cannot win the game, change the rules. But for the response of the President, the chorus of skeptical protest and the firm stance taken by Mr. Justice M. N. Venkatchaliah, an untidy and divisive debate would have started. If the BJP succeeded, it anticipated a windfall of political dividends. If it failed, it would have blamed the Opposition for undermining the quest for stable governance. Either way it stood to gain from this exercise.

The very fact that some 80 amendments have taken place with impunity suggests that the Indian Constitution has a flexible approach to constitutional change. As a Supreme Court judge put it: "The constitution is not in a state of 'being' but 'becoming'." The sheer *tour de force* of these amendments has occasioned jokes. Indeed, in my book, "The Amendment: Conspiracy or Revolution", there is a cartoon of a Government book-seller exasperatingly refusing to sell the Constitution because he did not stock periodicals! But, the Constitution theory of change is now tolerably clear.

First, the Constitution makers provided for adaptive change in certain areas — especially federalism. The changes in 1956, 1960, 1967, 1971, 1975, 1987 on the status and boundaries of India's States creatively evolved a linguistic and cultural federalism.

Second, the Constitution provided for a facilitative reformism — to strengthen the institutions and processes of democratic governance according to the rule of law. This class of amendments included the anti-defection change of 1985 and the Panchayat amendments which introduced a unique multi-tier federalism in

1992. Third, is the principle of structural sacrosanctity whereby all constitutional change is subject to the substantive limitation imposed by the Supreme Court's decision in the Fundamental Rights case (1973) that the 'basic structure' of the Constitution was inviolate from constitutional amendment.

The exact content and contours of the 'basic structure' of the Constitution remains elusive. So far, the Court has declared 'judicial review' and 'secularism' to be part of the basic structure. No doubt, 'democracy' is also 'basic' to India's Constitution. It is a moot question as to whether a particular form of democracy (as, for example, the parliamentary, as opposed to the Presidential system) is part of the inviolate basic structure.

What the Constitution makers had not envisaged are politically usurpatory amendments to suit the political party in power. Indira Gandhi's 'Emergency'. The Emergency amendments (1975-76) including the infamous 42nd Amendment, which immunised Indira Gandhi's election, extended the life of a 'lame duck' Parliament and re-worked governance to suit the Congress, were clearly usurpatory and a fraud on the Constitution. The BJP's hidden agenda which hinted towards exploring a Presidential system, fixed term Prime Ministerships, proportional representation, plans to take over judicial appointments and re-devising the federal system is no less politically motivated. This, too, is a fraud on the Constitution to achieve BJP purposes.

The parallel between the Emergency amendments of 1975-76 and the BJP's conspiratorial initiative of 1999-2000 is almost exact. Both seek to legitimate con-

stitutional change in the name of poverty (*garibi hatao*) and social justice to demand a concentration of power in the hands of the party in power in the name of stability.

The President was unnecessarily castigated when he was doing no more than his job to "encourage, advice and warn" consistent with the Supreme Court's view that he was not a cipher. Every speech or broadcast by the President (other than the address to Parliament) does not have to be written by his Cabinet. The people have a right to hear the President's views. What strikes one about the BJP's plans for constitutional change is their total lack of transparency. Even proposals for changes of such import are a serious business. Since this was to be a Government commission, the BJP should have published, and even now needs to publish, a White Paper outlining the need for change before kite-flying nebulous proposals laced with political intent.

It is Mr. Justice Venkatchaliah who seems to have brought the proposals into a dignified conspectus. Legitimacy would have eluded the proposed constitutional commission if the Chairman had been a politician (like Swaran Singh who chaired the "Emergency" proposals). Mr. Justice Venkatchaliah's 'conditions' for accepting the Chair or the proposed Constitution Committee are significant because he has (a) demanded a rigorous framework, (b) insisted that the parliamentary framework not be disturbed and (c) no less firmly implied hinted that Constitutional change is not a political free-for-all but requires prior vetting.

However, even after the BJP's masterly move to induct Mr. Justice Venkatchaliah into the Commission, the BJP's opportunistic agenda remains. The Law Commission's skewed proposals for enlarging Parliament to reflect the popular vote, introducing the German system of democracy operated solely through political parties and various other proposals are consistent with the BJP's bid for manipulating its hegemony.

Fourth, the demand for constitutional change is a hotch-potch — including matters concerning the judiciary and federalism. The grandness of a constitutional review should not eclipse a piecemeal examination of many issues — many of which can be achieved by statutory and other means. Why open up the whole system for grabs when shorter and more incisive issues require focus?

There is a hypocritical irony in all this. In effect our politicians are saying: "We have ruined the working of the present Constitution. Give us a new Constitution. We'll try not to ruin it. And, if we do, we will ask for another." We just have to look at what has happened in Pakistan, Sri Lanka, Burma and Bangladesh before we treat the Constitution as a toy.

# The Constitution and change

By Mukund Padmanabhan

With the blanket assurance that the parliamentary framework of the Constitution will not be altered, some of the sting has been taken out of the debate on the Government's proposal to review it. The appointment of someone as eminent and non-partisan as Mr. M.N. Venkatachaliah, former Chief Justice of India, as Chairman of the Constitution Review Commission has also helped mitigate fears that it will act as a partisan body.

While suspicions about the BJP majoritarian machinations persist, it is extremely important to ensure that any debate on the proposed review is marked by neither political prejudice nor constitutional naivete. After all, the Constitution is above politics and simple-minded analyses should have no place while debating it.

The fierce opposition to the proposed review has rarely — if ever — been based on the standpoint that the Constitution is sacrosanct or inviolable. Rather, the focus of the arguments has revolved largely on just who should be making these amendments. This is odd, because in debating any amendment, the focus ought to be on what the alteration is about and not who is altering it.

We are asked by the anti-reviewers whether those who contributed to the pulling down of the Babri Masjid or disrupted the shooting of the film 'Water' should be allowed to tinker with the Constitution. However much one loathes such acts, the plain fact is that such considerations are simply irrelevant. When it comes to making amendments, the Constitution does not distinguish between the BJP and other parties — all it recognises is the existence (or otherwise) of requisite parliamentary majorities. Whether the move to amend the Constitution is by Government initiative, a private member's bill or a Constitution Commission, all that counts in the end are the numbers.

The failure to recognise this has skewed the debate about the proposed review and provoked some odd responses. The Congress

(which, during Indira Gandhi's reign, did more to undermine the dignity of the Constitution via amendments than any other party) rushes to defend the sanctity of the document. And dyed-in-the-wool Marxists suddenly discover the virtues of a bourgeois document and a Westminster-style democratic framework.

Such reactions perhaps are not surprising when they come from professional politicians. But the really unfortunate thing is that right through the debate, the most fundamental questions relating to the Indian Constitution and the procedures for amending it have gone unasked. Are the procedures for amending the Constitution not rigid enough? Do the procedures allow the legislature too much freedom

## NEWS ANALYSIS

to alter whatever it wishes. In other words, is the Constitution much too easy a prey for our politicians?

Any real concern about the dignity of the Constitution or any genuine fear that massive changes may be wreaked upon it would have naturally led to such questions. In any debate relating to constitutional change, the general issue is whether it is the judiciary or the legislature which should be the principal agent for introducing changes in order to keep pace with the changing exigencies. In many countries, the process of formally amending the Constitution is so difficult that it is the judiciary (through interpretation) that has become the vehicle of adapting the Constitution to a society's shifting needs or requirements. In India, the founding fathers of the Constitution decided, in their wisdom, to lean heavily on the legislature as the agent for constitutional change.

So much so, the Indian Constitution is possibly one of the most easily alterable documents of its kind. In Switzerland, amendments require a referendum; in the United States, they may be proposed only by Congress and must be approved by both Houses and sub-

sequently ratified by State legislatures; and Australia has a procedure which includes both legislative majorities and referendums.

By contrast, the procedures here are startlingly easy — a simple or a two-third parliamentary majority is sufficient to amend most Articles in the Constitution. The Constituent Assembly debates suggest that, oddly enough, many members found even these relatively slack conditions much too restrictive. Could an unelected body such as the Constituent Assembly make constitutional amendments so difficult, it was asked? Dr. Ambedkar's reply was directed at persuading members that our Constitution was among the easiest to change.

As a result, Governments with the requisite majorities have rammed constitutional changes through at will — sometimes with no other motive than amassing more powers for the legislature. It is open for any future Government with the requisite numbers to do likewise.

The only check on the legislature is the judiciary — thanks to the rulings that the basic structure of the Constitution cannot be amended and that judicial review is one of the basic features of the Constitution (in the Kesavananda Bharati and Minerva Mills cases). Those who feel that such a check is insufficient ought to direct their attention at lobbying for tightening the procedures for making amendments — by making suitable alterations in Article 368.

No political party, however, is likely to lend its support to a proposal that reduces the legislature's powers. That is the irony in the debate over the proposed Constitution review. Everybody is disposed to defend the legislature's supreme privilege of altering the Constitution and nobody is prepared to adopt measures which will actually protect the Constitution against legislative mischief. This is why some arguments against the proposed Constitution review have sounded as simple-minded and partisan as they did; just as if someone were saying, 'my amendments are okay, but yours are not'.

# 'Constitution review must be transparent'

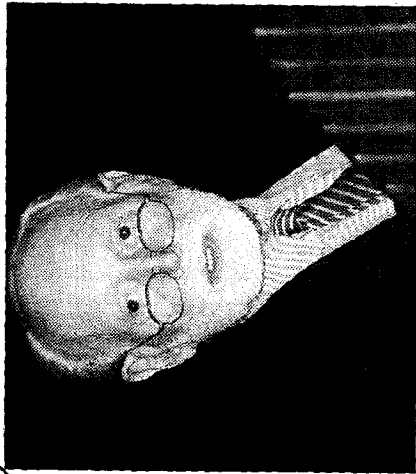
HT Correspondent  
New Delhi, February 11

AN EMINENT authority on the Indian Constitution, Dr Granville Austin, today expressed the opinion that any exercise to review the Constitution must be conducted in a transparent manner by those who undertake it and should focus only on specific areas instead of covering the entire document.

If the reviewers arrive at the conclusion that certain parts need to be changed, they must also seriously consider whether this would be in the national interest, Dr Austin felt. All possibilities should be explored before making any changes in the constitutional document that had guided the country's polity during the past half of the century, he stressed.

The American scholar who specialises in the Indian constitutional law is currently visiting India on the occasion of the release of his latest book 'Working a Democratic Constitution: The Indian Experience'. He spoke on the subject today at a public lecture session organised by the K K Birla Foundation and the India International Centre.

Confessing himself to be a 'fan' of the Indian Constitution, Dr Austin stated that the country had come "a long way" during the past 50 years of parliamentary democracy provided under the



Dr Granville Austin delivering a lecture on "Working a Democratic Constitution: The Indian Experience, in the Capital. Photo: HT

Constitution. And he was confident that India would go very much further under the system which, in his opinion, was best suited for it.

If the country's polity and system of administration had not functioned according to expectations, it was not necessarily due to the failure of the Constitution, he emphasised. It was more due to a failure to implement the provisions of

the Constitution, the scholar said. Dr Austin stated he had serious doubts that the current state of affairs in the country would improve if changes were made in the Constitution.

Dwelling upon the four decades of the working of the Indian Constitution, Dr Austin pointed out that the abounding concern of various political leaders who governed the country was its unity. Prime Minister Jawahar Lal Nehru's anxiety in this regard had perhaps led him to centralise the country's administration much more sharply than was required, he felt.

Dr Austin sees the emergence of coalition governments at the Centre in recent years as a very healthy development for the Indian democracy. He noted that this was something that was not envisaged by the founding fathers of the Constitution.

Legal luminary Fali S Nariman speaking on the occasion stressed upon the need to consider whether the constitutional functionaries had performed their duties according to its letter and spirit during the past five decades of its existence.

"Any country where the constitutional functionaries do not perform cannot survive. Whenever there had been a failure in the country, it had been due to the failure of the constitutional functionaries," he stated.

# Lanka close to consensus on Constitution

P K Balachandran  
Colombo, February 11

HP 11-19

THE TAMIL and Muslim parliamentary parties have so far held two rounds of talks with the Sri Lankan President Mrs. Chandrika Kumaratunga on her constitutional proposals. They say that she has accepted many of their amendments and suggestions.

They are now looking forward with hope to the third round on April 15, when the all-important issue of a referendum on the merger of the North and East to form a single North Eastern Tamil province will be discussed.

Speaking to *The Hindustan Times*, the Eelam Peoples' Democratic Party (EPDP) spokesman, Mr. Thavarajah, said that at the end of the second round of discussions, the President had

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agreed to go back to the October 1997 proposal to designate Sri Lanka as a "Union of Regions". But to tackle criticism about this paving the way for secession, she suggested that the country be known as an "indissoluble Union of Regions". The minority parties agreed to this.

The President had wanted to put the description of Sri Lanka as a "multi-ethnic" society and the attendant promise to see that this character was reflected in the organs of the state, to be put in Chapter 6, which was not justiciable. This was because government did not want to be flooded with court cases on the ethnic character of its departments. But the Tamils and Muslims felt let down and wanted the whole thing to be put in Art I. The President finally said that she would place the description "multi-ethnic character" in Art I, but the rest would continue to be

in Chap 6. The minority parties gave their nod to this.

On the appointment of the Governor, the President had proposed that the provincial Chief Minister should only be "consulted". But in view of the opposition of the Tamil parties, she said that "due consideration" would be given to the view of the Chief Minister.

The government side had wanted all plantations and forest reserves to be in the Central list, but now, except for tea, rubber and coconut, all commercial crops would be in the provincial list. And only some forest reserves will be in the Central list. On the provinces' right to borrow funds abroad, the stipulation now is that the approval of the Central Finance Ministry will not be required, so long as the borrowing falls within the stated national policy.

THE HINDUSTAN TIMES

12 FEB 2000

# New proposal further adds to confusion

Anil Anand  
New Delhi, February 11

THE ISSUE of regional autonomy has once again become alive in Jammu and Kashmir where deep-seated regional discrimination over the years has been agitating the public mind in one or the other manner.

A new dimension has been added to the decades old controversy with the State Government-sponsored Regional Autonomy Committee recommending further extension of the Jammu and Kashmir's administrative set-up to eight regions as against the existing three. The suggestion has been made by the committee on the plea to assuage the feelings of sub-regional ethnic groups hitherto neglected.

The very existence of this committee was marred by a controversy resulting due to unceremonious dismissal of its working chairman Balraj Puri.

Mr Puri's removal was interpreted by the political observers as a blatant effort by Chief Minister Farooq Abdullah to ensure that a tailor-made report was delivered by the panel.

The present official report (Mr Puri had earlier released his report in a book form) signed only by three out of the originally appointed six members of the committee, has recommended further division of the sensitive state more or less on religious lines. This recommendation which is the central theme of the report, has already created a storm in many parts of the State.

The existing Jammu and Ladakh regions are up in arms as the proposed division on ethnic lines is being perceived by the people as an attempt to further divide the two regions.

The committee, for instance, has suggested carving out a Chinab Valley comprising Doda district and Mahore Tehsil (at present part of Jammu region) and Pir Panchal region consisting Poonch and Rajouri districts.

By suggesting the creation of these Muslim dominated regions, it has also finally advocated coming into being of a Hindu dominated Jammu region.

It will comprise Jammu, Kathua and

Hindu dominated parts of Udhampur district.

Notwithstanding the existing regional discriminations and distrusts, the committee has further recommended separation of Leh (Buddhist majority) and Kargil (Muslim majority) into two regions.

It has proposed dividing Kashmir into three regions: Karaz containing Baramullah and Kupwara districts, Nundabud comprising Budgam and Srinagar districts and Maraz consisting of Anantnag and Pulwama districts.

Interestingly, the report has counted on the virtues of a federal and democratic set-up and based its hypothesis of creating sub-regional ethnic identities on the lines of administrative set-ups existent during the Mughal or Dogra rules.

It has questioned the suitability of the existing administrative system without delving into the causes behind its failure, which led to widespread regional discriminations. The committee has sharply contradicted

itself in its 28-page report. While counting on the virtues of a federal and democratic system, its 8-region theory is the true replica of the administrative systems followed by monarchy at different times in the past.

Finally, it denounced the same very basis of its hypothesis by commenting: "The goal of people's participation in governance at different levels cannot be achieved by remaining tethered to the arrangements and systems created by kings and monarchs."

Carrying forward its argument of federalism, the committee has recommended formation of Regional/ Provincial Councils for devolution of power, which in turn is to be followed by a system of district councils.

The entire exercise is to be capped by the constitution of Financial Commission at the State level, to suggest means for fund raising and its distribution at various levels in the proposed administrative set-up.

Significantly, the committee has also suggested changes in the existing format of the State Academy of Art, Culture and Languages on similar regional lines to provide an impetus to the culture of different ethnic groups.

(To be concluded)

J&K Autonomy Issue-II



There is a real need for a review  
of the non-basic aspects of the Constitution

# Time for another look

T-10 12/2

N.R. MADHAVA MENON

There have been at least three kinds of reactions to the proposed constitutional review. One set of reactions almost blindly opposed the move largely on the assumption that nothing good could happen from a Bharatiya Janata Party led government initiating the reform process. All right-thinking people would probably dismiss this approach with the contempt it deserves. The second category of reactions may be characterized as ill-informed, misconceived or motivated opposition, mainly coming from opposition political parties and select minority groups apprehending some invidious prospect of restricting their respective spaces for socio-political manoeuvrability. A section of the media played up this view and almost killed the initiative, aggravating the suspicion and apprehensions.

The third is a sober concern of informed sections of the people which the president in his address to Parliament spoke about. The terms of reference which ultimately emerged — excluding basic features and parliamentary democracy from the scope of the proposed commission — is a statesmanlike response from the government, which is to be welcomed by all citizens.

After all, it is only a review to diagnose constitutional reasons, if any, for the prevailing bad governance in the country which the citizens are entitled to know. If there is nothing wrong with the instruments, as some contend, people can now put the blame squarely on the politicians and civil servants and do something to extract greater accountability from them. Looked at from this perspective, a review of the non-basic features of the Constitution is to be welcomed, whichever government is in power at the Centre or in the states.

It is to be remembered that review or reform has been proposed time and again with regard to different aspects of constitutional governance, not only by experts but also by politicians of different hues and political parties of all shades. The Sarkaria commission did its work mainly in one area, namely Centre-state relations; and that too, two decades ago. The 79 amendments already made and several others proposed on different occasions indicate the widespread perception of the malaise and the commonly held belief that at least some aspects of it are curable by appropriate constitutional amendments.

The liberalization of the economy in the context of globalization, the advent of another tier of governance at the grassroots through *panchayat raj* institutions, and continuing demands for higher levels of human rights compliance and accountability from institutions of governance have brought about a situation in which Constitution review has become a necessity. Review is not reform; it is only the first step towards deciding

whether to reform or not. Therefore all the media hype we have had recently has not been in the right spirit. The burden is on those who are dissatisfied with the state of affairs and still contend that review is mischievous and unwarranted.

The presidential remarks do raise an important issue for the review commission to address and that is the plight of half of Indian humanity which has not been able to achieve the fruits of freedom even after half a century of democratic governance. To my mind the commission should give priority to the implementation of the directive principles of state policy which Article 37 declares as fundamental in the governance of the country.

For almost three decades, the governments both at the Centre and in the states got away by avoiding independent review of their actions in this regard on the ground that the directive principles are not judicially enforceable and, as such, left entirely to the executive to decide. When the judiciary interpreted the fundamental right under Article 21 (right to life) as comprehending some of the directive principles (like free and compulsory education for all children up to 14 years), some politicians even spoke against the judiciary as usurping the legislative and executive domain and sought constitutional amendment to "discipline the judges".

Obviously, basic needs regarding health, education, employment and environment cannot any more be left to the political convenience of governments but must be fulfilled with the priority they deserve. If non-enforceability is the cover under which they escape accountability, it is time to review the constitutional provisions to ensure compliance to those principles "fundamental in the governance of the country" and on which depend the survival of the teeming millions about whom the president lamented.

To my mind, making them judicially enforceable is not perhaps the only choice or the desirable course of action. Nor is the deletion of the word "socialism" in the context of the new economic policy, as the Union law minister suggested, the solution. It is my view that the Indian Constitution in its basic features is socialist in structure and content, if not in methods

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and policies. So long as equality informs all actions, directive principles illuminate all policies and "We the people of India" remain in command of the processes of governance, the soul and spirit of the Constitution will remain socialist whatever changes the economy may assume. Furthermore, in the context of the decentralized, participatory panchayat raj administration, development is no more a question of Centre-state relations but a complicated system of three tier democracy with its attendant administrative and financial arrangements.

The Sarkaria commission report could not obviously advert to this democratic revolution which was brought about much later. This cannot to my mind be adequately addressed by legislative and administrative measures alone. They require a reexamination of the distribution of powers among the three tiers of government, a change in the structure of decisionmaking and a commitment to fulfil basic needs of people with constitutional compulsions.

Again, sometime ago, the president expressed his displeasure with the system of judicial appointments in which social justice considerations seem to have been ignored or not given adequate weightage. Others have criticized the way the judiciary has interpreted and reinterpreted the consultation requirements under constitutional provisions, excluded executive involvement and monopolized all authority for higher judicial appointments. It is only on a constitutional review and mature reflection on comparative experiences that one can decide whether the object of judicial independence can be achieved by leaving the process as it is or by amending the relevant constitutional provisions to strike a constitutional balance and democratic accountability.

**M**uch of the Indian Constitution is nothing more than ordinary law amendable by Parliament at will in exercise of its constituent powers according to the procedures laid down in the Constitution itself. They are expected to be changed as often as necessary in the interest of good governance in changed circumstances. In fact, these are the provi-

sions which require review and reform.

These precisely are provisions which have been changed time and again in the majority of constitutional amendments in 79 occasions in the past. They relate to the distribution of powers, the checks and balances in the system and the management of power relations in the democratic spirit. I think nobody familiar with Indian constitutional law and the problems the country is facing today in respect of democratic governance would argue that these non-basic organizational aspects of the Constitution do not require a review and revision. After all a constitution, from the legal point of view, is an instrument of governance, nothing more, nothing less.

**F**or the people it is a social document reflecting their will and aspirations. It is this part which the Supreme Court rightly declared as "basic features" and therefore unamendable by Parliament excepting through extraordinary processes like perhaps a revolution or a referendum. What the review commission is being asked to do is to reexamine, in the light of experience, those non-basic aspects of governmental organization at the Central, state and local levels.

In doing so, the commission is bound to review the process of appointment of governors, their role in relation to Article 356 and legislative powers of the state, and so on, the arrangements regarding the collection and devolution of Central taxes, the role of the planning commission, the case of all India services, the executive powers of the Central government to direct states to do or refrain from doing certain things. Perhaps a total revision of the three lists in the light of experience and in the context of panchayat raj is also called for.

A similar issue which may require even constitutional amendment is in respect of political parties, political defections and the need for stability of elected governments. Many changes in the Constitution did not succeed in bringing about the minimum required level of public morality in our political class. Political parties seem to have no constitutional accountability as they are not discussed in the document. Constitutional conventions have been conveniently and selectively abandoned by all parties making constitutional government extremely difficult even for the courts to organize.

Therefore, while recommending electoral reforms, some constitutional amendments have been proposed by responsible bodies, including the law commission. The review commission may have to give serious thought to this subject without which the Constitution, whatever be its character, will not be able to deliver good governance.

Finally, a constitutional culture has to be developed among rulers and the citizenry to enable good governance under the Constitution. This requires appropriate institutional mechanisms to instil constitutional values in all constitutional functionaries and to implement fundamental duties in a manner envisaged by the Constitution. The review commission will be well advised to look into this vexed question as well.

# Centre forms Constitution review panel

STATESMAN NEWS SERVICE

NEW DELHI, Feb. 13. — The Centre today announced the names of members of the Constitution Review Commission set up to suggest changes in the Constitution "within the framework of parliamentary democracy".

The commission is headed by former Chief Justice Mr Justice MN Venkatachalaiah.

The other members of the committee are the Attorney-General, Mr Soli Sorabjee, the Editor-in-Chief of **The Statesman**, Mr CR Irani, former Secretary-General of the Lok Sabha, Mr Subhash Kashyap, former Lok Sabha Speaker, Mr PA Sangma, Law Commission Chairman, Mr Justice Jeevan Reddy, former Supreme Court judges, Mr Justice RS Sarkaria and Mr Justice K Punniah, former Attorney-General during the Narasimha Rao government, Mr K Parasaran, social activist Mrs Sumitra Kulkarni and former US Ambassador Mr Abid Hussain.

The terms of reference of the commission are to "examine the existing provisions of the Constitution in the light of the last 50 years for an efficient, smooth and effective governance and socio-economic development of modern India and to recommend changes, if any, that are required to be made in the Constitution with-

in the framework of parliamentary democracy and without interfering with the basic structure and feature of the Constitution".

The media adviser to the PMO, Mr HK Dua, announced that the terms of reference had been set up by the Union Cabinet at its meeting on 31 January.

The government will give no brief to the commission and Law and Justice Minister Mr Ram Jethmalani would shortly announce when it will begin its work, he added.

PMO officials said the names of the commission members should not create any controversy as all of them are apolitical.

The last minute replacement of Mr Rafiq Zakharia, who was first sounded to be a member, by Mr Hussain should please the Congress, PMO officials said. Mr Hussain was an Indira Gandhi National Centre for Arts board member and a political appointee as US Ambassador during the Congress rule.

While the BJP welcomed the PMO announcement, the Congress maintained opposition to the formation of a Constitution Review Committee "in principle" and maintained that there was no need for this "wasteful exercise" as the Constitution already has provisions for changes and amendments

through parliamentary procedures.

The Congress did not react on the appointment of any of the committee members except that of Mr Sangma. Congress spokesman Mr Anil Shastri said: "To call Mr Sangma apolitical is laughable. His inclusion would defeat the very purpose of the committee."

Mr Sangma had been advocating a Constitution amendment debarring Indian nationals of foreign origin to hold the posts of President, Vice-President and Prime Minister. "This makes matters complicated and vague and we would like to know officially what the terms of reference of the committee are," Mr Shastri said.

However, Mr Dua said Mr Sangma has been included in the committee as a "Christian, an eminent citizen of the North-east, a tribal and a former Lok Sabha Speaker".

He said Mr Sangma's inclusion had to do with his "personal stature" and the invitation to join the commission was sent to him individually, not to his party.

The BJP had earlier said the stipulation that the recommendations be made "within the framework of parliamentary democracy" would set to rest speculation about alleged moves in favour of a presidential form of government.

THE STATESMAN

14 FEB 2000

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## 'Fundamental rights to be reviewed'

New Delhi, February 14

PTI  
THE CONSTITUTION review commission set up yesterday will consider enlargement of fundamental rights by including freedom of Press, right to privacy and education, Attorney General Soli J. Sorabjee said today.

15/2  
"Any enlargement of the fundamental rights is most welcome", Sorabjee, a member of the commission, said, adding there were certain rights which were not expressly mentioned in the Constitution but had been declared so by the Supreme Court were freedom of Press, right to privacy, right to education and right to travel abroad.

He said there were glaring shortcomings in the working of the Constitution and added the review commission would look into various issues, including failure of anti-defection law, misuse of Article 356 and politicisation of procedure for impeachment of judges.

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However, the basic features of the Constitution would not be a subject of review, Sorabjee said.

Sorabjee, who has almost 50 years of practice mostly in constitutional and administration law, said, "We have noticed certain shortcomings in the actual working of the Constitution", but added that to review it "is a very challenging task, which imposes heavy

responsibility on each member".

In fact, the commission would consider "whether to curtail power to amend the Constitution provided under Article 368 so as to safeguard any damage to its basic structure", he said.

Sorabjee said, "Judicial interpretation may vary and so there is a likelihood of change in judicial interpretation. Hence it is worth considering whether these rights could be specifically included in fundamental rights chapter so that citizens are sure of their protection".

He said one of the glaring shortcomings was the 10th schedule of the Constitution dealing with the anti-defection law. (PTI)

THE HINDUSTAN TIMES

15 FEB 2000

## SANGMA'S INCLUSION EVOKES PROTEST

# Opposition slams review panel constitution

By Our Special Correspondent

NEW DELHI, FEB. 14. Even as the BJP today sought the cooperation of all political parties in reviewing the Constitution, saying it was intended to "strengthen" the system, the Opposition called the exercise politically motivated and questioned the choice of some of the members of the panel which would review the Constitution.

The Opposition parties were angry that the Government had decided to go ahead with the review despite widespread resentment against the move. They insisted that Parliament should have been taken into confidence, particularly after the President had so openly expressed his reservations.

The Congress(I) reacted sharply to the inclusion of the Nationalist Congress Party MP, Mr. P.A. Sangma, in the Constitution Review Commission and said the Government's definition of "apolitical" had become suspect. The CPI(M) too had reservations about him saying that his views on many issues, including a fixed term for Parliament and the Constitution review, were close to the BJP's position.

The party also objected to the inclusion of Mr. Subhash Kashyap and Mrs. Sumitra Kulkarni saying that while the former had been "openly toeing the BJP line", the latter had been a one-time BJP member. The entire move, according to the CPI(M), was dictated by "political intentions". "We are not convinced that there is a need for an overall review of the Constitution", a party leader said.

The Congress(I) spokesman, Mr. Anil Shastri, too called it "politically motivated" and said it was meant to divert attention from the harsh budget that the Government was preparing. It was "most unfortunate" that the Government had not yet outlined the commission's terms of reference. Asked about Mr. Sangma's assertion that the foreign origin issue would be discussed by the Commission, Mr. Shastri asked how he could claim this when the terms of reference had not been stated.

However, the Congress(I) made it clear that Mr. Sangma's statement would not affect the NCP-Congress(I) coalition Government in Maharashtra. Mr. Shastri said that there was "nothing new" in this as the NCP had raised the foreign origin issue last May itself.

Questioning the need for a review, the CPI called it an attempt to "subvert parliamentary democratic system" and charged the Government with "doing things behind the back of Parliament."

The Bharatiya Janata Party welcomed the setting up of the Commission and advanced several arguments in favour of a review — the suggestions of the Commission could strengthen the Panchayati Raj system and bring to fruition Mahatma Gandhi's

dream of "gram swaraj," the use of Article 356 allowing the Centre to dismiss a State Government could be reviewed, and the important question of injecting political stability into the system could be examined.

The BJP general secretary and spokesperson, Mr. M. Venkaiah Naidu, emphasised that the Commission had not been given any specific suggestion to examine or rework any specific Clause or Article of the Constitution. In fact, the Cabinet had, while finalising its terms of reference, made it clear that the suggestions would be made within the framework of parliamentary democracy and without interfering with the basic structure and features of the Constitu-

### 'Foreign origin not a priority issue'

NEW DELHI, FEB. 14 The Constitution Review Commission Chairman, Mr. Justice (retd.) M. N. Venkatachalaiah, said today that the issue of barring people of foreign origin from occupying high Constitutional offices was not a priority item.

"There are far more important issues in the national agenda, for instance the population explosion," he told Star News in Bangalore.

He was replying to a question whether he thought the foreign origin issue was a matter he would like to deal with immediately. He was also asked what were his views and whether the Commission would accord priority to it.

On the views of the former Lok Sabha Speaker, Mr. P. A. Sangma, a member of the Commission, that he would raise the foreign origin issue, Mr. Venkatachalaiah said a member was entitled to his views. — PTI

tion. Mr. Sangma had been included because of his experience as a former Lok Sabha Speaker and his status as a tribal leader from the northeast, Mr. Naidu said.

The party admitted that the BJP had opposed the Constitution amendment to bring in Panchayati Raj introduced by the Rajiv Gandhi Government, "but that was because that did not give financial powers to the panchayats."

Mr. Naidu did not deny that while it wanted "political stability" of five years at the Centre and the States for all elected governments, it had supported Jayaprakash Narayan's "right to recall" slogan in the days prior to the Emergency in 1975. Again, not long ago, it tried to impose President's Rule on Bihar. "Let the panel examine all these issues," Mr. Naidu said.

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TUESDAY, FEBRUARY 15, 2000

## A POINTLESS PROCESS *9-10-00*

THE COMPOSITION OF the 11-member Constitution Review Commission, announced on Sunday, is by and large on expected lines. Having made up its mind to go ahead with the exercise in total disregard of all the words of caution from a considerable section of legal and political opinion, not to speak of the President, Mr. K. R. Narayanan, himself, the Vajpayee Government would appear to have been overly anxious to give the Commission a non-partisan look. For the most part, it has apparently worked hard to nominate — presumably in consultation with the Commission's Chairman, Mr. M. N. Venkatachaliah — persons of a calibre that would be perceived as widely acceptable. Besides Mr. Venkatachaliah, the panel has three members drawn from the judiciary — Mr. B. P. Jeevan Reddy, Mr. R. S. Sarkaria and Mr. Kondapalli Punniiah — while two are acknowledged experts in Constitutional law — Mr. Soli Sorabjee and Mr. K. Parasaran. While Mr. Jeevan Reddy is the Chairman of the Law Commission, Mr. Sarkaria headed the panel that went into the entire gamut of Centre-State relations in the 1980s and came up with what admittedly was by far the most comprehensive report on the subject. But the irony is that quite a few of the salutary recommendations of the Sarkaria Commission in such crucial areas as appointment of Governors and exercise of powers under Article 356 remain unimplemented for want of a 'political consensus', something that is found to be invariably elusive where the vested interests of political parties came into conflict.

As for the rest, Mr. Purno A. Sangma and Mr. Subhash C. Kashyap have to their credit hands-on experience of the working of Parliament, the former as Speaker of the Lok Sabha and the latter as its Secretary-General. It has been officially maintained that the choice of Mr. Sangma had nothing to do with his being a leader of the Nationalist Congress Party and the considerations that weighed with the Government were his being a respected tribal leader from the

Northeast belonging to a religious minority, besides of course his experience as Speaker. While Mr. Sangma's credentials are indisputable, the fact remains that he has a personal agenda, as reflected in the circumstances under which he (along with Mr. Sharad Pawar and Mr. Tariq Anwar) rebelled against the Congress(I) leadership on Ms. Sonia Gandhi's 'foreign origin' issue and formed the NCP. Interestingly, the NCP has expressed itself strongly against the initiative for a Constitutional review. The inclusion of a newspaper editor (Mr. C. R. Irani), a former bureaucrat and diplomat (Mr. Abid Hussain) and a former woman MP (Mrs. Sumitra Kulkarni) was obviously in furtherance of the Government's stated objective of making the panel "broad-based" and "truly representative".

To the extent that the Government has refrained from giving any specific brief to the Commission on the areas or clauses in the Constitution which needed to be looked into, the scope of the review must be said to be open-ended, subject of course to the condition the coalition regime had felt compelled to stipulate because of Mr. Venkatachaliah's insistence and pressures from within the combine — that the framework of parliamentary democracy and the basic features of the Constitution would not be altered. But the basic question about the end-result (in practical terms) of the proposed exercise remains. Having set up the Commission, the National Democratic Alliance regime, particularly its leading constituent (the BJP), can of course flaunt it as an 'achievement' or as a redemption of its poll pledge. The recommendations of the panel cannot be concretised without the sanction of Parliament. Given the arithmetic in the Rajya Sabha, there is no way the ruling coalition can push through any Constitutional amendment. As has been pointed out earlier in these columns and as Mr. Venkatachaliah himself conceded in a media interview, the whole exercise is bound to be only an academic one.

THE HINDU  
15 FEB 2000

# Advani's shadow on review panel

By Harish Khare

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**NEW DELHI, FEB. 14** Though the announcement about the composition of the "Constitution Review Commission" was made on Sunday, in the name of the Prime Minister, many others, including Mr. L.K. Advani, Mr. Ram Jethmalani, Mr. Soli Sorabjee and Mr. Justice (retd.) M.N. Venkatachalaiah had their say. The Union Minister for Information and Broadcasting, Mr. Arun Jaitely, himself a leading lawyer, was also consulted. In the process, the final slate is a compromised byproduct, and stands, in the process, deprived of the services of some eminent potential members.

Given the fact that for the BJP establishment the "Constitution Review" was, and remains, a political exercise, the Union Home Minister, Mr. L.K. Advani, had quite a say in the making of the Commission. Both the Attorney-General, Mr. Soli Sorabjee, and the Law Minister, Mr. Jethmalani, felt compelled to seek Mr. Advani's guidance in the matter.

On January 30, the Attorney-General chose to inform Mr. Advani that "I have done a little exercise with regard to the preamble and draft terms of reference of the Review Committee and its suggested composition." Mr. Sorabjee cautioned that "favorable public opinion and positive response to the proposed Review Committee will depend upon its composition".

Mr. Sorabjee then went on to suggest the following composition: Mr. Justice Venkatachalaiah (Chairman), Mr. Justice B.P. Jeevan Reddy, Mr. P.A. Sangma, Mrs. Sumitra Kulkarni, Mr. Justice R.S. Sarkaria, Mr. Soli J. Sorabjee, Mr. Rafiq Zakaria, Mr. K. Parasaran, Prof. P.K. Tripathi, Mr. C.R. Irani, Mr. Krishnan (former Secretary, Welfare Ministry), and Mr. Sub-

hash Kashyap. But the Attorney-General and the Law Minister were on different wavelengths. The day Mr. Sorabjee had written to Mr. Advani, the Law Minister flew to Bangalore to consult Mr. Justice Venkatachalaiah, obviously to prune Mr. Sorabjee's list.

On February 2, Mr. Jethmalani informed the Prime Minister of the outcome of his consultation with Mr. Justice Venkatachalaiah; as per the consultation, the following names were suggested: Mr. Fali Nariman, Mr. Ashok Desai, Mr. Kashyap, Mr. Parasaran, Mr. Justice Sarkaria, Mr. Madhav Godbole (former Union Home Secretary), Dr. Paranthikar, Mr. P.M. Sayeed, Ms. Najma Heptullah, Mr. Sangma, Chairmen of the Law Commission, Human Rights Commission, and the SC/ST Commission, Dr. Rafiq Zakaria, Prof. Uppendra Baxi and Mr. Anil Diwan. In his letter, dated February 2, to the Prime Minister, Mr. Jethmalani wrote: "I then discussed the (above) list with Shri Advaniji. He suggested and I agree with him that we must include Mr. Justice Rama Jois and Mr. C.R. Irani."

[Mr. Rama Jois, as a lawyer, had defended Mr. Advani in a habeas corpus case during the Emergency, and was subsequently jailed; during the Janata regime, he was made a High Court Judge, and subsequently elevated as the Chief Justice of the Punjab and Haryana High Court. Mr. Justice Rama Jois later resigned when he was overlooked for promotion to the Supreme Court.] That at the end of the day, Mr. Justice Rama Jois does not figure in the final list offers a clue to the Vajpayee-Advani relationship.

According to Mr. Jethmalani, the Union Home Minister was against Mr. Ashok Desai, Dr. Paranthikar, Mr. Sayeed, Ms. Heptullah,

Prof. Uppendra Baxi and the Chairman of the Human Rights Commission (Mr. Justice J.S. Verma). Mr. Advani was also against Mr. Dilip Singh Bhuria, who had not long ago joined the BJP and has since been rewarded with the Chairmanship of the SC/ST Commission. According to the Law Minister, Mr. Advani believes that "somebody who commands the confidence of this major section of the population should be on the Commission."

The Law Minister himself was dead set against Dr. Zakaria: "I have strong reservations about Mr. Rafiq Zakaria. He is rabidly anti-BJP." Mr. Jethmalani had his way, but he had to eat humble pie in the matter of Mr. Sorabjee.

Not averse to taking a stand, Mr. Jethmalani wrote in his letter to the Prime Minister: "Mr. Sorabjee is very keen to be on this Commission. Advaniji supports him, so does Arun Jaitely and very strongly. In my opinion, a Law Officer of the Government does not fit into what substantially is a high-powered political body."

What is curious is that in the final round, Mr. Justice Verma's name was eliminated despite a strong desire on the part of Mr. Justice Venkatachalaiah to have him. "I am strongly in favour of the Chairman of the Human Rights Commission, Mr. Justice J.S. Verma being on this Commission. Mr. Venkatachalaiah wants him." However, the Prime Minister was believed to be against packing the Commission with too many legal personalities. Also, Mr. Justice Verma did not have any major political backing. Hence, Mr. Anil Devan and Mr. Ashok Desai had to be dropped; Mr. Nariman had politely conveyed his reservations about the panel.

THE HINDU

15 FEB 2000

# Review panel's terms of reference vague: Cong

STATESMAN NEWS SERVICE

NEW DELHI, Feb. 14. — The Congress today dubbed the formation of the Constitution review panel as "politically motivated" and demanded the government make the terms of reference specific instead of keeping them "open-ended".

Congress spokesman Mr Anil Shastri said: "Without casting aspersion on any member of the commission, the panel seems to be politically motivated."

He said the very purpose of review would be "defeated" as the government has kept the terms of reference "open-ended", and added the Congress did not have anything against a review of the Constitution per se "provided the government specified the areas where revision was sought".

On Mr PA Sangma's statement that he would raise the

issue of banning foreign-born Indian nationals from holding constitutional posts, he said: "Mr Sangma cannot do this as he cannot set the commission's terms of reference." On whether Mr Sangma's remarks and his inclusion in the panel would affect the coalition government in Maharashtra, he said: "The two issues are separate."

(Review panel chairman Mr Justice MN Venkatachaliah today said the foreign origin issue was not a priority item. "There are far more important issues in the national agenda, for instance the population explosion," he told Star News).

The BJP has appealed to the Opposition to support the panel. Party spokesman Mr M Venkaiah Naidu urged political parties "not to oppose the panel for the sake of opposing". He said: "No one should have any apprehension as the members

are experts representing different walks of life."

On Mr Sangma's inclusion, he said: "Mr Sangma was one of the best Lok Sabha Speakers the country ever had. His rich experience could be useful for the commission."

Janata Dal-U vice-president Mr Jeevaraj Alva slammed the Opposition, particularly the Congress, for its "disinformation campaign" against the panel. The Congress has "no moral right to criticise the commission" after what it did during the Emergency, he said. "The Congress has been relentlessly assaulting the Constitution." PTI adds: The panel will consider the enlargement of fundamental rights by including freedom of Press, right to privacy and education, said Attorney-General Mr Soli J Sorabjee. "There are glaring shortcomings in the Constitution's working.

THE STATESMAN  
15 FEB 2000



# The Constitution: some stray thoughts

By H. R. Khanna

*Even though the presidential system in the U.S. and in France has operated well, the experience in Asian and African countries has been that hardly any President has gone out of office as a result of elections.*

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IN THE context of the review of the Constitution, one of the questions that arose was about the suitability of the presidential system of government. Now, of course, it has been decided that we shall continue with the parliamentary system. Even though the Presidential system, in the United States and under the Fifth Republic in France has operated very well, the experience in Asian and African countries has been that hardly any President has gone out of office as a result of elections. Only death or a coup has resulted in his displacement. As against this, in our Parliamentary system, Indira Gandhi could be thrown out of office in the 1977 elections because of the excesses committed during the Emergency. It was also again in the parliamentary system that she could return to office in the 1980 elections because of the wranglings of those in power then.

No doubt, stability at the Centre is vital. This was not important in the early years as the party in power normally had an absolute majority in Parliament. No serious peril can arise and no great harm can be done to the nation by the lunging, failures and weakening of the administrations of some States. As against that, weakening of the Central Government can imperil our very existence as an independent nation. One of the most important causes for the weakness of the German Republic was the instability of the Governments which were formed during the years between the end of World War I and the rise of Hitler. The chaos resulting from political divisions was reflected in the Reichstag. There were 21 Cabinets in 14 years.

In West Germany, after World War II, a scheme synthesising the need for a stable Government with a system of parliamentary democracy was devised. Now, 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 is in a position to form the Government. Once a Chancellor has been elected, it is difficult to remove him dur-

sanction for what may perhaps be called its lawful harakiri. Such subversion or destruction cannot be described to be amendment of the Constitution as contemplated by Article 368." It would, therefore, appear that the secular character of the polity would remain intact.

In the context of the way the Constitution actually worked, it would be worthwhile to remember the words of Dr. Rajendra Prasad who was the Chairman of the Constituent Assembly and was the last speaker in that august body: "Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the government it deserves."

"Our Constitution has provisions in it which appear to some to be objectionable from one point of view or another. We must admit that the defects are inherent in the situation and the people at large. 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, a Constitution like a machine is a lifeless thing. It acquires life because of 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. There is fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large, for the sake of smaller groups and areas and who rise above the prejudices which are born of these differences."

(The writer is a former Supreme Court Judge.)

catholicity of approach. They must also be attached to the basic values which underlie 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 Constitution, as of every Constitution, is that each succeeding generation must share the faith and allegiance to the values which inspired its drafting. Once this basic condition is lacking, the working of the Constitution is bound to run into rough weather.

Fears have been expressed in some quarters that the present review may affect the secular character of our polity. These apprehensions are ill-founded because it has been expressly made clear that the review would not affect the basic structure of the Constitution. Regarding the concept of the basic structure, I quote from my judgment in Kesavananda Bharati's case which has been accepted as laying down the correct connotation of the words "amendment of the Constitution" in relation to the basic structure of the Constitution. It reads: "It would not be competent under the garb of amendment to change the democratic government into dictatorship or hereditary monarchy nor would it be permissible to abolish the Lok Sabha and the Rajya Sabha. The secular character of the State according to which the State shall not discriminate against any citizen on the ground of religion only cannot likewise be done away. Provision regarding the amendment of the Constitution does not furnish a pretence for subverting the structure of the Constitution nor can Article 368 be so construed as to embody the death wish of the Constitution or provide

ing 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 the old one step aside. This is quite difficult because the majority which might be formed against a Government is frequently a negative one and is limited more by dislike for the incumbent and not by any agreement on a substitute.

In France earlier, ideas were sometimes set afloat of adopting a presidential system as is now in vogue under the Fifth Republic since 1958. The suggestion was not initially well received by a good many of the French who thought that it was an attempt to introduce "Caesarism" under the garb of presidentialism. Their apprehensions were based on the fate of the Second French Republic, when the Presidential Constitution was used by Prince Louis Napoleon to later emerge as Napoleon III.

The success of a Constitution depends not so much on having well-drafted and nobly-worded provisions; it depends on the way these are worked. There are few Constitutions in the world which when drafted were hailed as more liberal in character and as enshrining more cherished values than the Weimar Constitution of Germany drafted soon after World War I. Yet the manner in which it was worked created tremendous disillusionment amongst the people. The way was thus paved for the rise of Hitler.

This would show that the ultimate success of a Constitution depends upon the persons who work it. This postulates that these persons should be people of calibre, endowed with vision and possessed of

# Questioning the Constitution

By P. V. Indiresan

HOSE WHO have lived for long in the cookhouse should not complain about the cooking. Quite uncharacteristically, of all people, the President has fallen into this common error by stating that the Constitution of India has not failed the people, it is the people who have failed the Constitution. Mr. K. R. Narayanan's argument implies that even good people like him are powerless to keep the nation in good shape. His argument is also similar to the position adopted by the National Rifle League of the United States that guns do not kill people; it is people that kill people. This is a kind of reasoning that can be used to justify anything, good or bad! From the President's words, it appears that bad people are driving the Constitution and the Constitution is unable to discipline them. Is it wise to be satisfied with such a Constitution?

A good Constitution should be like the traditional Tanjore doll (not much seen these days) which, however much it is pushed and tilted, will automatically right itself. As Prime Minister after Prime Minister has demonstrated, once a two-thirds majority is obtained, the entire tenor of the Indian Constitution can be transformed without any difficulty. In that situation, all arguments about the sanctity of the Constitution become theoretical. If the BJP were to get two-thirds majority, the President will become a rubber stamp. So will he be if the Communist Party or the Congress Party or any other were to get such a majority. Irrespective of which party gets that power, even if that happens momentarily, it acquires the power to change the Constitution to suit its whims and fancies. It is no doubt important that a constitution should be flexible but that does not mean that it should be like a weathercock.

The Tanjore doll is robust and stable because of two reasons. One, lower portions of the doll are heavier than upper ones. Likewise, for a Constitution to be self-stabilising even after being disturbed by bad or foolish people, it should ensure that the people below carry greater weight than do officials and leaders above. Likewise, local leaders and offi-

cials should be empowered to stand up to Central leaders and officials until even the Prime Minister is confined within the strict bounds of the law. The Tanjore doll has yet another feature that helps it to correct itself promptly. Its base is well-rounded permitting smooth recovery however much the doll is tilted. In a like manner, a good constitution should maintain a well-rounded society without sharp cleavages. Thus, a low centre of gravity and a smooth surface are two essentials of a self-stabilising structure.

Does our Constitution satisfy these two scientific criteria? Is it not a fact that the Constitution has empowered top people (even extra-constitutional busybodies) to contravene laws with impunity? Is it not a fact that over a period of time, it has passed on more and more powers to criminal elements? Is it not a fact that whatever the theory may be, in practice, there is no way anyone can check such misuse of power? These flaws are inherent to the way the Indian Constitution has been designed. In the American Constitution, whatever is not specifically stipulated devolves on the States and on the people. In our Constitution, whatever is not stipulated devolves to the Centre (ultimately to the Prime Minister). That has made our polity top-heavy and the people impotent against misuse of power. Even in the case of the Emergency, we recovered not because the Constitution helped but because Indira Gandhi, to her credit, volunteered to hold elections. If truth be told, the way our laws operate, our politicians do not have to wear even a fig leaf, they can pursue naked power without let or hindrance.

A stable constitution should also iron out differences among the people as and when they erupt. How good is the Indian Constitution in this respect? Basically, as a matter of social justice, it has enshrined privileges and penalties on the basis of

caste and religion. Undoubtedly, that is the most direct approach to check the injustices of the caste system. However, does that in any way help people to accommodate each other, genuinely respect each other? Does the way provisions have been made to help the Scheduled Castes and Scheduled Tribes enable them to integrate themselves with the rest of the society or has it set them apart as conspicuous targets for one and

***It is no doubt important that a constitution should be flexible but that does not mean that it should be like a weathercock.***

all to shoot at? Is it not a fact that over the past five decades, these people (and the minorities too) have been systematically alienated from the caste Hindus and from one another? On paper, backward groups have acquired considerable political clout but in practice they are in no position to use them!

The fundamental flaw of the Indian Constitution lies in the fact that it identifies good and bad qualities not with behaviour but with birth. It identifies strengths and weaknesses not with individual capabilities but with birth. It breeds disaffection and hatred based on birth. Because no one can choose their parents, it perpetuates discrimination for and against some groups forever. When passions get inflamed thereby, it offers no means to douse the fires of hatred. In a short span of fifty years, people in Kashmir, in the Northeast, in tribal belts have all been alienated and embittered and so are the Dalits. Yet, they are all supposed to be beneficiaries! Instead of making them happy, the benefits specially designed for them in the Constitution has actually embittered them! The irony of this situation where the groups that are supposed to be benefited most are also the most disillusioned has been lost on our policy-makers. Neither are the upper castes satisfied. Abraham Lincoln said that a nation divided against itself cannot stand. Then, what sanctity can a Constitution have that sets one part of the nation against another,

and for all time to come? It is fashionable to say that the Constitution is sacrosanct. Yet, how many of our people, even those right at the top, have faith in it? For instance, Mrs. Sonia Gandhi, supreme leader of the Congress Party, has courted arrest in Ahmedabad to force attention on the activities of the State Government. It is difficult to think of many people in the country who are as powerful as she is. Yet, she cannot conceive of any constitutional way of challenging a State Government. She has so little faith in the due process of law that she takes recourse to extra-constitutional methods. In a like manner, Ms. Uma Bharati has resigned from the Cabinet to pursue a minor strife in Bhopal. She too is not confident of getting redress in a constitutional way. If this is the view of the top people, what hope can ordinary people like us have?

Basically, the Indian Constitution suffers from the following faults: it concentrates power at the top and emaciates the people below. It sharpens cleavages in society instead of cementing them. It has no capability to discipline those who misuse power. It has spawned a legal system that does not command confidence, thereby forcing even top people to resort to extra-constitutional methods to redress grievances. Experts point out that most of these can be rectified simply by changing the rules. The point at issue is not that it can be done easily but why it does not get done even when that is easy. Why does the (watch) dog not bark?

We do not need a Constitution that will work only when leaders are good and law abiding. We need a Constitution that will work even where leaders are crooked. The story of the Indian Constitution is like that of the king who wore no clothes. It does not protect us! That is why we need a free-ranging public debate (that is not confined to politicians and lawyers only) on how to redesign our Constitution to empower people below and discipline people above, and to restore social harmony. Above all, we should enquire what should be done to establish the majesty of the law, make it so credible that the likes of Sonia Gandhi and Uma Bharati will not take to the streets at the drop of a hat!

# POLITICAL CULTURE

## So-called Elite Has Failed Constitution

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**T**HE proposed review of the Constitution is an opportunity to consider the historical circumstances and genealogies which framed the political context in which the Indian Constitution was written. The thing to remember is that Western political institutions and conventions were introduced under colonial rule. They operated within the framework of an arbitrary and authoritarian regime, rather than an open democratic regime.

As a result, under colonial rule the groundwork for democracy was not laid at all, as happened during the evolution of democratic and parliamentary institutions in the United Kingdom, from the sixteenth century onwards. Constitutional codes had to function in India, thus, in something close to an ideological vacuum, through fragile institutions.

This became obvious in the immediate aftermath of the transfer of power when a tussle between the Congress organisation and government was triggered off. All over India, Congressmen tried to impose their will on the administration at various levels. They tried to "interfere" in general administration, in the police, in the functioning of licencing and rationing committees and even in the working of the judiciary. The lower down one went, the more fraught the struggle between "legitimate" authorities and Congressmen became.

### 'INTERFERENCE'

The Congress leadership, which held the reins of government, responded to this tussle for power by issuing a stream of circulars from the AICC office instructing partymen not to "interfere" with the functioning of "legitimately constituted authority". Their solution was liaison committees at provincial and district levels where grievances about the functioning of the administration could be discussed and forwarded to appropriate authorities for redressal. But, the leadership hammered home, there could be no countenancing "indiscipline" and "interference".

There was, however, a subtlety to notions of "interference" or, indeed, "legitimately constituted authority". With the transfer of power and more particularly the promulgation of the Constitution, the Congress was engaged in a transition that entailed a displacement of their idea of sovereignty. During the struggle against colonial regime, Congress sought legitimacy on the basis

By SUHIT SEN

of the argument that it was the sole repository of legitimate political authority, as the organised expression of the national will — the microcosm of the nation — and not the state, especially the colonial state. The colonial state was created on the foundation of the conquest of "India". By the yardstick of Western political theories of self-determination, the colonial state had no legitimacy to rule India. After all, as

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John Stuart Mill said, good government was no substitute for self-government.

After the transfer of power, however, the Congress leadership was saying that Congress was just another party, while the state and its apparatus was the "legitimately constituted" sovereign political authority. This argument was especially disingenuous in the immediate aftermath of the transfer of power, when the contest between organs of state and the Congress organisation was most intense, because the organs of the state remained in many senses the organs of the colonial state. Between August 1947 and January 1950, India was a dominion. At the apex of "legitimately constituted" authority was the interim government, which was not an elected government and functioned under the colonial Government of India Act of 1935.

The point to note is that the Congress leadership was asking the rank and file to suddenly accept as legitimate people and agencies which had been construed as oppressors — the bureaucracy and police at all levels — and against whom they had struggled. They became legitimate bearers of power in the "new order". And simultaneously the government was reworking its equation with the bureaucracy. The strategy that the "Congress-as-government" used was to show the bureaucracy a vision of an institutional set-up in which the bureaucracy, broadly defined, would have to share power with non-officials.

### NEW EQUATION

In Uttar Pradesh, for instance, a militia — the Prantiya Raksha Dal — was formed with joint official and non-official control and policing powers. Village Defence Committees were set up under joint panchayat and official control. It was never seriously envisaged that a substantial non-official role would be sustained. The point was to work out a new political equation — in which the arrogant colonial bureaucracy would accept the ministerialist arm of the Congress as the new master.

This is one facet of the context in which the Constitution was framed. There were perceptive men in the Congress who noticed the conflict. Unfortunately, none of them realised that the tussle between the Congress organisation and the bureaucracy indicated a constitutional grey area. The leadership was looking at the emerging polity through the lens of tacit conventions, practices and

codes, developed (and indeed still evolving) over at least 400 years. There had no universal currency in India — since the colonial regime was authoritarian and bureaucratic, and not inclined to foster a culture of democracy.

There was no call to assume that the unspoken constitutional niceties which lay at the heart of the Westminster model would somehow transplant themselves in the emerging political culture, which in fact was constituted by a variety of practices and networks, only some of which could shake hands with parliamentary democracy.

This historical conjuncture imparts a different significance to President KR Narayanan's allusions to the constitutional review in his "Republic Day address". The President is right, in a sense, when he says that the Constitution has not failed the people. The Constitution has not failed the people inasmuch as it opted for a modernist — and state-ist — paradigm of political and social development. The dynamics of that

paradigm, it seems by hindsight, quite clearly were meant to cut "India" adrift from obscurantist and traditional moorings and set it on a route that would take it in the direction of a system of ordered and rationalistic social, political and economic transactions. A systemic dynamic that would propel "India" towards the "good life" as conceived in a universalistic framework of material, effective and intellectual well-being.

### UNTENABLE

So far, so good. But the President went on to say that it was the people who had let down the Constitution. What emerges from the foregoing is that this is somewhat untenable. The "people" may not be passive objects of state-ist manoeuvres, but in the late capitalist world of monster governance (whether in the former Soviet bloc or in the libertarian regimes of the Western world) the state predominantly moulds public culture — in social and political domains. Throw in the fact that in India the role of the state is centrally inscribed in the task of socially and politically transforming the nation-state, and the conclusion that the state has to play a much more interventionist role in propagating the modernist values enshrined in the Constitution is inescapable.

So it is not the people who have failed the Constitution. It is the political class — the politicians and political managers (in broader terms the managers of the institutions that make up civil society) who have failed both the Constitution and society.

The "organic intellectuals" made their compromises with the ruling bloc. Both have done well. In the process the Constitution has been the casualty. If there is a way forward, perhaps, it is embedded in a deepening of the crisis. After all, Indian democracy is only 50 years gone.



THE STATESMAN  
17 FEB 2000

## NEEDLESS CONTROVERSY

### Imaginary worries over constitutional reforms

ON day one, when the panel on Constitutional reforms was announced, the Congress objection was limited to the inclusion of P A Sangma for fear that he would pursue, from within, his position that the three top positions in the country be open only to natural born citizens. On day three they up the ante. The whole exercise is unnecessary at best, against the President's wishes and an undisguised attack on the Constitution at worst. They do not even stop for breath. The media hype on television may have added to the stir.

We have had 78 amendments to the Constitution we gave to ourselves in 1950. Many were conceived behind closed doors to suit the very private ends of successive prime ministers, like the panic that gripped Rajiv Gandhi that his huge majority in Parliament might desert him. Hence the Tenth Schedule which has not stopped traffic between different parties, merely created new obstacles to be overcome. At another level it can be urged that frequent floor crossing will continue until candidates for election cease to depend on politics as their only source of livelihood. There is also the thought that you cannot legislate for decency and good conduct.

There is a suggestion that the committee should have been set up by resolution of either House of Parliament, if not a Joint Select Committee. To hear some criticisms voiced, it would seem that the right to amend the Constitution has been handed over lock stock and barrel, to a group of individuals selected at random and Parliament has been bypassed. To state the proposition is to expose it to ridicule.

All that has happened is that a committee will consider possible amendments and although procedures are not yet finalised, it is likely that evidence will be taken, experience collated, lessons learnt and issues debated outside the glare of publicity. Matters not considered by the Committee are not beyond the pale, nor are their proposals, even unanimous ones, binding on anyone, least of all on Parliament. The Report will present arguments and supporting evidence for and against, pose issues and make recommendations for consideration of Parliament and the nation. The difference is that for the first time there will be a basis for discussion in the shape of the Committee's report. This seems a clear improvement in procedure compared to what we have had these past 50 years. On two major issues there are firm and satisfactory assurances. The parliamentary system will remain and the basic features of the Constitution will be respected, but it is useful to remember that even the landmark judgment in the Keshavananda Bharati case rests on a majority of seven to six. The Report could help to buttress our liberties. The quality of the Report will determine the respect it commands. In any event, as an exercise of sovereign power, it is within the competence of Parliament to throw the Report out of the window.

It is early days yet. The Government Notification has not yet been issued, the Secretary of the Committee has not been appointed, the secretariat has not been set up, the first meeting has not been held to settle procedures. There will be plenty of time later for controversies, even histrionics. Will Sonia Gandhi who set up Priya Ranjan Dasmunshi, show some patience?

THE STATESMAN

18 FEB 2000

# Review to target turncoats, says PM

ATUL SANGAR  
STATESMAN NEWS SERVICE

AMBALA, Feb 20. — The Prime Minister has identified the checking of defections by lawmakers as a major objective of Constitution review.

"The malaise of defections has to be ended," Mr Atal Behari Vajpayee told an election rally in support of the BJP-INLD here today.

"Some areas of our Constitution need to be strengthened because even those who framed it could not visualise that problems like defection would assume such an ugly shape in Indian democracy."

The unprincipled switching of sides by MPs and MLAs for the lure of office had "polluted politics" in the country, the Prime Minister said.

Calling for poll reforms, Mr Vajpayee said individuals and parties not hav-

ing massive resources cannot contest elections. He wondered how a system where money plays a vital role could work for the benefit of the common man.

The Prime Minister went hammer and tongs after Mrs Sonia Gandhi for alleging at Narwana yesterday that his government was out to ruin the Constitution Dr Babasaheb Ambedkar had drafted.

"There can be no bigger falsehood than this," he said of the Congress chief's charge. She has been trying to mislead the Scheduled Castes and Scheduled Tribes.

"We respect Ambedkarji, but he too would never have claimed that no further improvement to the Constitution was possible".

Mr Vajpayee repeated the Constitution's basic structure

— including principles of secularism and parliamentary democracy — wouldn't be changed, and that the Review Commission's recommendations would be put to vote in Parliament. "The Commission includes those who have been judges of the Supreme Court and High Courts, are above party politics and well-known for their independent opinion."

He urged all political parties to shun needless controversies and help the government in reviewing the Constitution.

According to the Prime Minister, the Congress had perfected the art of political opportunism: going in for coalitions when it suited its interests, vowing to keep away when it did not.

"In Bihar, the party supported Mr Laloo Yadav when murder and mayhem, the industry of abductions, and menace of Naxalism

were at their peak."

The Congress wanted all political parties, castes and sections of society to keep quarrelling so it could reap the benefits, Mr Vajpayee said. It had propped up parochial interests during the language movement in the South, and lent support to other separatist interests at other times.

He advised Congress leaders to "do some penance and sit on Opposition benches for some time as the BJP and Jan Sangh had done for the past 40 years."

Flanked by the chief ministers of Haryana and Punjab, Mr Om Prakash Chautala and Mr Parkash Singh Badal, the Prime Minister stressed on the need for all-round development in Haryana, which he claimed could be ensured only by the INLD-BJP combine.

■ 'Poll ploy now, real review later', page 8

THE STATESMAN

21 FEB 2000

# Congress to oppose review panel

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STATESMAN NEWS SERVICE 22

NEW DELHI, Feb. 21. — The Congress will oppose the government's decision to form a Constitution review panel in Parliament and has decided to coordinate with "like-minded parties" on the issue.

However, whether the principal Opposition party in Parliament would go to the extent of staging walk-outs and disrupting the proceedings of the House or simply ask for a government reply after a full-fledged debate, will depend on the decision that is taken by the executive of the Congress Parliamentary Party, which is likely to meet on Wednesday after the President's address to the joint session.

Some senior leaders of the party are of the view that since the Congress did not vote against the motion of thanks on the President's address in the winter session of Parliament, the party should not go against the decision per se, but should question the "lack of clarity" in the terms of reference of the panel.

The President's address in the winter session of Parliament had the promise that the government would review the Constitution "in the light of the experience of the past 50 years".

The Congress spokesman, Mr Ajit Jogi, today said, "We'll oppose the government's decision of forming a Constitution review panel in Parliament. We have seen that several parties have opposed the panel and, therefore, we will coordinate with them."

Besides the Constitution review commission, the Congress has also decided to ask for a full-fledged debate on the Kargil conflict, in the light of the government's decision to table the Kargil report in Parliament.

The Congress made its intentions clear that while discussing the Kargil conflict, it would focus on Mr Atal Behari Vajpayee's bus-ride to Lahore exactly a year ago.

**THE STATESMAN**

**22 FEB 2000**

# Govt. will not bow to pressure: Jethmalani

By J. Venkatesan

NEW DELHI, FEB. 23. The Union Law Minister, Mr. Ram Jethmalani, today said that the Government would not "succumb" to the threat of lawyers to go on a nationwide strike tomorrow to protest the amendments to the Civil Procedure Code.

Conveying this here to the representatives of the Akhil Bhartiya Adhivakta Parishad, senior advocates practising in all courts of Delhi, Mr. Jethmalani said the Government was, however, prepared for a dialogue.

He described the strike call as "unjustified" and according to a Supreme Court judgment, "illegal", and appealed to the lawyers to give up the strike plan.

The delegation expressed its support to the recent changes in the CPC and said the exercise was a rational and effective step towards reducing the chronic and disgraceful delays in the legal system. It condemned the practice of lawyers going on strikes as a means of representing the grievances of the Bar.

Referring to the apprehensions among lawyers about holding of periodic examinations and the

participation of foreign lawyers in India, Mr. Jethmalani told the delegation that the two proposals were floated in a working paper prepared by the Law Commission. There would be a nationwide debate before any final decision was taken.

According to Law Ministry sources, the Centre has warned Central Government standing-counsel in various High Courts, in all numbering over 2000, against participating in the strike. The warning comes in the wake of reports that even Government counsel were not attending the courts. The Government said if they participated, they would be removed from service.

**Bar Council plea: Page 15**

## Puran Singh disbands World Sikh Council

AMRITSAR, FEB. 23. In a sudden move, the Akal Takht Jathedar, Giani Puran Singh, today disbanded the World Sikh Council and nominated a 12-member interim committee, headed by him, to look after its affairs with immediate effect. — PTI

**Details on Page 9**

THE HINDU

24 FEB 2000

# Constitution review for better results: President

By Our Special Correspondent (H)

NEW DELHI, FEB. 23. The President, Mr. K. R. Narayanan, today went along with the Vajpayee Government's decision to review the Constitution while making the point that it had "served us well". It had been a "reliable guarantor of parliamentary democracy, secularism and fundamental rights which all of us cherish", he said while addressing a joint session of Parliament here to mark the start of the Budget session.

The Constitution had also inspired the spread of democratic consciousness in our society, empowering Dalits, adivasis, backward classes and women and making our system of governance more participative and progressive."

However, he pointed out that it had become necessary to examine the experience of the past 50 years while keeping the Constitution's basic structure inviolate. The intention was to "better achieve the ideals enshrined in the Constitution" and therefore the Government had set up a "broad-based Constitution review commission" whose recommendations would be placed before Parliament which, he emphasised, was "the supreme decision-making body in Indian democracy".

While addressing a special session of Parliament to mark the 50th anniversary of the adoption of the Constitution last month, the President had strongly opposed tinkering with it saying the recent political instability at the Centre was not reason to throw away the baby with the bathwater.

The President's 45-minute address today was interrupted twice — once by a group of Shiv Sena members protesting the Election Commission's decision to disenfranchise the party chief, Mr. Bal Thackeray, for six years following a Supreme Court judgment, and later by two members from the northeast demanding a separate Bodoland.

Mr. Narayanan dwelt at some length on Pakistan's "policy of hostility towards India" saying there had been a "marked increase" in Pakistan-sponsored cross-border terrorism after the military coup in Islamabad.

Pakistan, he said, had shown "no inclination to end its policy of aiding and abetting cross-border terrorism, and its hostile anti-India propaganda." Pakistan's role in "acts of terror" had been underscored by the hijacking of the Indian Airlines plane from Kathmandu.

There was a need for "constant vigil" and



The President, Mr. K.R. Narayanan, accompanied by the Prime Minister, Mr. A.B. Vajpayee and others, arrives in Parliament to address the opening day of the budget session in New Delhi on Wednesday. — Reuters

the Government for its part was "fully alert" to all threats to India's external and internal security.

On the relations with Washington, Mr. Na-

pansion" of bilateral relations. India, he said, had continued to "engage" the U.S. in a serious dialogue on security, non-proliferation and disarmament issues "predicated on India maintaining a credible minimum nuclear deterrent."

The President made a warm reference to China saying he was looking forward to his visit to Beijing in May. India, he said, also attached importance to its "time-tested" relations with the Russian Federation and awaited the visit of the Russian Federation President.

Mr. Narayanan gave a detailed overview of the economic situation which, he said, had shown a "distinct upturn" in recent months with the economic growth expected to be around six percent in 1999-2000.

In an oblique reference to the concern among the minorities, the President gave the assurance that the Government was "fully committed to preserving and further strengthening the secular ethos of our country." The communal harmony had improved "remarkably" in the past few years.

Later, copies of the President's address were tabled in both Houses which met briefly and adjourned after paying homage to the former President, Dr. Shankar Dayal Sharma.

## Kerosene, LPG price hikes deferred

NEW DELHI, FEB. 23. The Government tonight deferred the proposed hike in petroleum product prices till the middle of next month bowing to pressure from the allies including the TDP and the Trinamul Congress which expressed strong reservations on the move.

"The proposal for hiking the prices of products like kerosene and cooking gas has been deferred by more than a fortnight," highly placed sources told PTI. The hike was expected to be announced in Parliament tomorrow.

rayanan hoped that the U.S. President, Mr. Bill Clinton's visit next month would pave the way for a "broad-based and multi-dimensional ex-

THE HINDU  
24 FEB 2000



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2/21/2000

## WRONG ADVOCACY

TWO THINGS NEED to be clearly separated when addressing the flaming controversy over the amendments to The Code of Civil Procedure Act. First, whether lawyers across the country should resort to such extreme steps as boycotting courts while opposing the notification of the amended Act. And second, whether the amendments — which are generally directed at the speedier disposal of cases — deprive litigants of their legitimate rights and interfere with the course of justice. The agitation, by advocates and their associations, which has led to the virtual paralysis of Tamil Nadu's courts for over a week has assumed a national dimension with the proposal to stage an all-India strike today. Such conduct goes against the Supreme Court's observations on advocates and strikes, but this is not the only reason why the angry lawyers should be behaving less like trade unionists and more like a body of professionals.

To begin with, the protests have come much too late in the day — after Parliament has unanimously passed the amended Act and after the President has ratified it. The text of the amendment Bill has been in circulation since 1997 and although it is true that some Bar associations had objected to certain changes at that time, there was nothing like the concerted and fierce protests we have been witnessing now. At a time when all that remains is the notification of the Act, to claim that the piece of legislation has been hurried through sounds totally unconvincing. Those Bar associations which entertain specific objections against particular amendments would be best advised to keep lobbying for either having them scrapped or suitably modified. The tactics of boycotts and noisy demonstrations will only serve to further the impression that this protest has more to do with the loss of revenue advocates may incur than the larger issues such as the autonomy of the legal profession and the course of justice.

Most of the amendments to the Code of Civil Procedure are unexceptionable. Quite obviously,

such amendments will not somehow radically change the judicial system. But, in a climate where faith in this system is constantly tested by inordinate delays, any move to speed up the delivery of justice deserves to be welcomed. At the same time, not all the fears expressed by lawyers are illusory. For instance, it is arguable that the restrictions on the amendment of pleadings would unreasonably prevent the submission of fresh facts which sometimes emerge after the institution of a suit. Worries have been expressed that the removal of the remedy of writ appeals against the orders of a single judge of the High Court will undermine the existing judicial checks and balances. There are also legitimate concerns about the proposals to amend the Advocates Act, particularly the one regarding the renewal of licences for lawyers. While there is no problem with the general idea that lawyers (just as other professionals) should undergo a periodic assessment, it is absolutely essential that any mechanism for doing this should be fair, transparent and free from political or other kinds of interference.

On the flip side, some of the fears are grossly exaggerated. The amendment restricting second appeals to decrees with amounts exceeding Rs. 25,000 is not as draconian or sinister as it has been made out. Earlier, second appeals were restricted to decrees above Rs. 3,000 and the only real question is whether the enhancement to Rs. 25,000 is much too steep and restrictive. Whether the lawyers' agitation will persuade the Union Government to hold back the notification of a few controversial amendments remains to be seen. On the whole, however, the amended Civil Procedure Code Act — which is the result of recommendations made by many judicial experts who sat in more than one committee — is a step in the right direction. It would be a shame if the general thrust and the overall spirit of the amended Act were to be undermined by lawyers and their boycott calls.

**THE HINDU**

**24 FEB 2000**

# Review panel notified

By Our Legal Correspondent

**NEW DELHI, FEB. 23.** The Centre finally issued the notification setting up a 11-member National Commission to review the working of the Constitution. The panel has been asked to make its recommendations within a year.

The gazette notification constituting the Commission, with its headquarters in Delhi, was issued late on Tuesday night in view of the fact that in the President's address today to the joint session of Parliament there is a mention that the "Commission has been set up".

Another notification was issued today giving the composition of the Commission. Besides the Chairman, Mr. Justice M.N. Venkatachaliah, the members of the Commission are: Mr. Justice B.P. Jeevan Reddy, (Chairman of the Law Commission); Mr. Justice R.S. Sarkaria (former Supreme Court Judge); Mr. Justice Kondapalli Punniiah (former Judge of the Andhra Pradesh High Court); Mr. P.A. Sangma, MP (former Speaker and presently leader of Nationalist Congress Party); Mr. Soli J. Sorabjee (Attorney General of India); Mr. K. Parasaran (senior

advocate); Mr. Subash Kashyap (former Secretary General of the Lok Sabha); Mr. C.R. Iyani (Editor-in-Chief of *The Statesman*), Mr. Abid Hussain (former Ambassador to the United States) and Mrs. Sumitra Kulkarni (former MP).

On February 1, the Cabinet had passed a resolution to set up a 11-member panel including a Member-Secretary.

But when the announcement of setting up of the Commission was made on February 13 by Mr. H.K. Dua, Press Adviser to the Prime Minister, it was mentioned that the panel would have 11 members and a Secretary.

In view of this departure from the original resolution, the Cabinet passed a fresh resolution yesterday to enable the Government to issue the notification.

The appointment of Secretary to the Commission will be notified later. The research and other staff will be provided separately as part of the Department of Legal Affairs.

The funding of the Commission will be through separate budgetary allocation by the Government under the relevant budget heads of the Ministry of Law, Justice and Company Affairs.

THE HINDU  
24 FEB 2000

# Government defends Constitution review

HT Correspondent  
New Delhi, February 23

**T**HE GOVERNMENT today utilised the opportunity provided by the President's address to Parliament to defend its decision to set up a commission to review the Constitution. In the process, it sought to allay fears about the exercise by declaring that the panel's recommendations would be presented before Parliament, the final authority to decide on any changes.

Reading from a text authored by the Government, as part of the customary beginning to the Budget session of Parliament, President K R Narayanan said the review had become necessary to examine the experience of the Constitution's working since independence.

In his address, the President also attacked Pakistan for the increased cross-border terrorism following the military take-over and asked Islamabad to reverse its hostility.

On the economic front, he hinted at tough measures to contain the growing fiscal deficit and to put the country on a higher growth path. Expenditure control, downsizing of Government and austerity measures were the need of the hour.

Mr Narayanan's remarks on Constitution review were regarded as significant since he had voiced reservations over a review during his address in the Central Hall on January 27 to mark the golden jubilee of the Republic.

"While keeping the basic structure and salient features of the Constitution inviolate, it has, however, become necessary to examine the experience of the past 50 years to better achieve the ideals enshrined in the constitution," Mr Narayanan said today.

The importance accorded by the Government to its defence of the review was signified by the fact that it was set out prominently, almost at the outset of the President's address, lasting 45 minutes.

In his earlier address on January 27, Mr Narayanan had spoken of the need to ponder "whether it is the Constitution that has failed us or whether it is we who have failed the constitution."

His address today, echoing the

## President's speech to both Houses

Government's views, noted that the Constitution had served the people well and had been a reliable guarantor of parliamentary democracy, secularism and fundamental rights.

"It has also inspired the spread of democratic consciousness in our society, empowering Dalits, adivasis, backward classes and women and making our system of governance more participative and pro-

gressive," he said. address warned that the growing fiscal deficit needed to be contained to move on to a higher growth rate of over 7 per cent. "Higher growth alone will ensure that we can mobilise larger and larger resources for the social sector, particularly for those living in the villages and in urban slums."

"We have to adopt measures to curb the rising trend of non-plan expenditure. These require difficult decisions on expenditure control, downsizing of government and austerity in spending," Mr Narayanan said.

Giving policy prescriptions, Mr Narayanan said the tax system must be modernised to improve the tax-GDP ratio and added that the government would accelerate the public sector disinvestment programme.

Expressing concern over the "worrisome" financial condition of the States, he said this was needed to be urgently reversed as gross fiscal deficit of states had touched a record Rs 75,000 crore -- 4.3 per cent of the GDP.

The burden of interest payments continued to be large at above 4 per cent of the GDP, he said, adding increased government borrowing limited the government ability to expand health and education services and anti-poverty programmes.


Among the other important points made the President's address was especially on ties with Pakistan.

The President attacked the military regime in Pakistan for "marked increase" in cross-border terrorism, targeting security forces and asserted that India was prepared to face any challenge to its territorial integrity.

Stating that Islamabad shown no inclination to end its policy of aiding and abetting cross-border terrorism and its hostile anti-India propaganda, Mr Narayanan said terrorist violence had been most pronounced in Jammu and Kashmir after Pakistan's defeat in Kargil and the military coup.

He said Pakistan's role in acts of terror had been recently underscored by the hijacking of the Indian Airlines Airbus from Kathmandu.

Picture on back page



**HIGHLIGHTS OF THE PRESIDENT'S ADDRESS**

- Parliament to have final say on statute review
- National agricultural policy soon
- National policy for empowerment of women on anvil
- National commission for children soon
- Every child between 6 and 14 to go to school
- Economic growth in 1999-2000 projected at 6 per cent
- New law to replace Telegraph Act of 1885
- Private companies to undertake coal mining
- Austerity, downsizing on anvil
- Subrahmanyam panel's findings to be acted upon
- Schemes to attract youth for science and technology research
- Narayanan to visit China in May

gressive," he said.

The President's address also touched upon the economic reforms -- another subject on which Mr Narayanan and the Government had appeared to be on different wavelengths.

"Our vision of achieving a higher growth is not aimed at benefiting only the rich or the middle-class. On the contrary, the poor are at the centre of all our developmental efforts," Mr Narayanan noted in the address, which reflected the Government's keenness to show that it shared the President's concern that fruits of development must percolate to the grassroots.

Indicating that the general budget would be harsh, the President's

# Centre notifies Constitution review panel

2A/2 59-5  
STATESMAN NEWS SERVICE

NEW DELHI, Feb. 23. — Scrambling to beat the deadline of the Presidential address, the law, justice and company affairs ministry issued a gazette notification late last night setting up the constitution review panel for a year.

The 11-member panel is headed by Mr Justice M N Venkatachaliah. The other members, are Mr Justice (retd.) BP Jeevan Reddy, Mr Justice (retd.) RS Sarkaria, Mr Justice (retd.) Kondapalli Pun- niah, Mr PA Sangma, Mr Soli J Sorabjee, Mr K Parasaran, Mr Subhash Kashyap, Mr Abid Hussain and Mrs Sumitra Kul- karni and the editor-in-chief of **The Statesman**, Mr CR Irani.

The appointment of the secre- tary will be notified later. The law ministry has forwarded the panel of names to the Cabinet Committee on Appoin- tments. The legislative depart- ment secretary, Dr Raghbir Singh, is likely to get the post.

The notification says the panel fulfils the pledge in the national agenda for govern- ance, stating that a commis- sion would be appointed to review the Constitution ... to make suitable recommenda- tions for any possible changes. This pledge had been affirmed in the President's address fol- lowed by a motion of thanks from both Houses.

The panel will decide its own procedure and hear and enter- tain all persons, representa- tions and communications which, in its opinion, facili- tates its work and final recom- mendations.

Details of emoluments are spelt out in the notification. The chairperson will get a con- solidated honourarium of Rs 30,000 a month subject to ded- uction of pension, along with government accommodation. The secretary will get Rs 25,000 a month subject to ded- uction of pension and be enti- tled to government accommo- dation. The other panel mem- bers will be paid a daily allowance of Rs 1,000 only while on duty. The chairman will be the controlling officer for travelling allowance at the rates and rules applicable to government servants of the highest grade.

Research and other staff for the Commission would be pro- vided separately as part of the department of legal affairs. Supervisory control over them would be vested in the secre- tary who will discharge his functions under the overall control of the Chairman.

The funding of the Commission will be through a separate budgetary allocation under the relevant Budget heads of the Ministry of Law.

**THE STATESMAN**

24 FEB 2000

# Lawyers lathicharged in Delhi

28/2  
By J. Venkatesan #0-1

NEW DELHI, FEB. 24. The nationwide strike by lawyers to protest against the amendments to the Civil Procedure Code today turned violent resulting in a lathi-charge by the police injuring over 20 advocates and two senior police officials.

In a statement in the evening, the Union Law Minister, Mr. Ram Jethmalani said "the Government will be prepared to have any inquiry instituted forthwith, at whatever level responsible leaders of the bar want."

Hundreds of advocates from all over India converged on Parliament Street this afternoon and clashed with the police when they attempted to proceed towards Parliament breaking the barricades.

## Sonia demands judicial probe

9 - Condi...  
NEW DELHI, FEB. 24. The Congress(I) president, Mrs. Sonia Gandhi, today condemned the "unprovoked brutal assault" by police on lawyers peacefully protesting in the capital and demanded a judicial inquiry by a sitting Judge of the Supreme Court.

"It was a blatant show of force against a totally defenceless gathering of intellectuals from all over the country," she said. — PTI

The police said, in view of the prohibitory orders, the lawyers were stopped near the Parliament police station. They were per-

sueded not to march ahead, but the appeal was ignored. Vehicles were parked across the road to prevent them from proceeding further. The police then used water-cannons and teargas against the lawyers.

Enraged, the processionists threw stones at the police, injuring the Assistant Commissioner, Mr. T.S. Bhalla, on his chest and the Deputy Commissioner, Mr. Pranab Nanda, on his leg.

They were rushed to the hospital, where the condition of Mr. Bhalla is stated to be serious.

The police retaliated with lathi-charge in which over 20 advocates sustained bleeding injuries and four photographers, including the photographer of *The Hindu*, received minor injuries.

Regrettable, says  
Jethmalani: Page 13

THE HINDU  
25 FEB 2000

# No monetary interest behind the stir

25/2 By V. Prakash H0-14  
The agitation by lawyers against the notification of the amendments to the Civil Procedure Code (CPC) has not been viewed in the proper perspective, giving rise to the impression that the legal profession is a stumbling block to reforms expected to expedite proceedings and the motive behind the resistance to the amendments is money-mindedness and not the larger public interest.

As the CPC is in the concurrent list, there should have been a broad consensus among the States about the need to amend it. However, the views of the State legislatures were not gathered in respect of the present amendments. The Tamil Nadu Law Minister, Mr. Aladi Aruna, confessed, when the representatives of the bar met him, the other day, that the State Law Ministers had not been taken into confidence on the exact amendments.

One of the amendments is the substitution of the present Section 100 A, whereby the appellate remedy against any writ, direction or order issued under Art 226 or under Art 227 has been curtailed. Now, writ petitions are heard by single judges and an appeal against it may be preferred under Clause 15 of the Letters Patent before a Division Bench. It is only after exhausting this provision, parties who can afford to move the Supreme Court under Art. 136 do so, if they still have a grievance. Now, an internal appeal and driving the litigants to Delhi is an expensive exercise especially for people who live far away from Delhi. The deletion of the appellate remedy under Clause 15 is therefore not in the public interest.

Sec. 102 of the C.P.C now restricting second appeals to decree of Rs. 3,000 or more has been substituted by a new section wherein the remedy has been restricted to amounts exceeding Rs. 25,000. Therefore if a person wants to pursue the appellate remedy for a decree of less than Rs. 25,000, straightaway, he would have to go to the Supreme Court under Art.

136, while decrees of amounts exceeding Rs. 25,000 would have the benefit of an appeal before the High Court by way of second appeal subject to there being a substantial question of law. In a country where a majority of the transactions are of less than Rs. 25,000, restricting second appeals only to decrees above Rs. 25,000 is an attempt to affirm an appellate remedy only for those who are rich.

The first proviso to Sec. 115 of the C.P.C. has been substituted by a new one. The earlier proviso (b) conferring jurisdiction on the High Court to revise an order has been deleted. This

## OPINION

will curtail the jurisdiction of the High Court under Sec. 115 C.P.C. to interfere even with an unjust order though the remedy under Art. 227 is still available.

Under the present Code, no party can, as of right, seek amendment of the plaint. Allowing such amendment is at the discretion of the court and a litigant cannot put forward a new case. Sometimes, costs are levied for such amendments at the discretion of the courts. Therefore, even today it is not as if there is a *carte blanche* for amendments of the plaint for the mere asking. Any such amendment is subject to the law of limitation. What is left to the discretion of the court is now sought to be shut-out by the amendments. Should this be the legislative policy that the court ought not to have any elbow room to determine whether or not to permit amendments to do substantial justice between the parties? Is it a legislative condemnation that subordinate judiciary cannot be trusted with such discretion?

In respect of filing documents the position is that the appellate court, even now, would have the discretion to receive an additional document in appeal, whereas the trial court cannot which discretion, if it has, may eliminate even the need for an appeal. Therefore,

to take away this discretion from the trial court is irrational and not in the interest of justice.

The amendments with regard to the time being granted for filing written statements, pleadings, etc., are superfluous or unnecessary as the grant of additional time for filing such pleadings is now at the court's discretion. If judicial officers are strict in respect of granting adjournments, that would be far more effective than these amendments.

One of the very commended amendments is that of Sec. 89, wherein the trial court is vested with the power to formulate the terms of settlement and give them to the parties for their observation and reformulate the terms after taking note of the observations and refer it for arbitration, conciliation, Lok Adalat etc.

Pre-trial conciliation, if engineered by the judge, could have adverse consequences in terms of bias.

The amendment providing for examination of witnesses through commissioners appointed by the court may save the court's time but they may not make a public trial.

The amendment providing for service on parties by e-mail or fax, though ostensibly progressive, is not without its problems especially with regard to proof of service.

Selective meddling without understanding the innate character of the existing C.P.C. is not going to serve the cause of justice and is not going to expedite proceedings. The test question is whether, within the existing code it is possible for the legal community to provide speedy justice to the public and answer is 'yes'.

The criticism, that it is monetary interest which is behind the lawyers' agitation is crude and shallow. The legal profession is agitating not because it does not want speedy justice for litigants, but it certainly does not want speedy injustice.

(The writer is Senior Advocate, Chennai).

THE HINDU  
25 FEB 2000

## *Govt. will probe lathicharge on lawyers in Delhi*

**The Times of India News Service**

NEW DELHI: The lawyers' agitation on Thursday had its reverberations in Parliament with the opposition accusing the government of "brutally" handling the protest action. Law minister Ram Jethmalani said that the government would order an inquiry into the incident.

When the Rajya Sabha met after the adjournment, members from the Left and Congress benches stood up, deploring the police lathicharge on a group of lawyers marching towards Parliament.

Former law minister S.R. Bhardwaj (Cong) said the government was being insensitive to the grievances of lawyers. He regretted the attitude of law minister Ram Jethmalani to the agitation and said the government had "brutally" cracked down on the protesters.

Members said that instead of adopting a conciliatory approach, the government became unduly confrontational in its response to the lawyers' agitation over the amendment to the Civil Procedure Code.

F.S. Nariman (nominated) condemned the police action on the lawyers as unprovoked. "There should not have been a lathicharge on the lawyers who were peacefully agitating," he said. He hoped the government would not go ahead with implementing the proposed changes in the Advocates' Act without a proper dialogue with the Bar Council. Kapil Sibal (Cong) said that lawyers were genuinely concerned about certain aspects of the Civil Procedure Act. He insisted on a dialogue between the government and lawyers before any steps were taken in this regard.

Responding to the members' concern over the situation, Mr Jethmalani said he would immediately order an inquiry into the lathicharge. He assured the members that if there had been any mishandling of the situation by the police, adequate measures would be taken.

Meanwhile, the Bar Association of India, at a meeting of its executive, hoped that the government would defer the implementation of the amended law for a dialogue with lawyers. Bar Association general secretary Lalit Bhasin said that the proposed changes "need to be discussed and debated before a decision is taken".

**THE TIMES OF INDIA**

**25 FEB 2000**

# Constitution review panel on the cards

AUNOHITA MOJUMDAR  
STATESMAN NEWS SERVICE

NEW DELHI, Jan. 4. — The Vajpayee government has initiated moves to set up a commission to review the Constitution.

A note on its composition and terms of reference is being formulated by the Ministry of Law, Justice and Company Affairs.

Ministry sources said the note, still under preparation, will be sent to the Cabinet soon for a final decision. Once the Cabinet gives the go-ahead, the hunt for members will begin.

Sources said the commission will be a multi-member body and headed, most probably, by a serving or retired Chief Justice or judge of the Supreme Court.

Its members will be drawn from different strata of society with proven ability in understanding of the Constitution and the rule of law.

However, the law ministry feels the review must take cognisance of the two Supreme Court judgments, Shamsher Singh versus the State of Punjab and the Keshavanand Bharati case. The court said that while Parliament could amend the Constitution, it had no power to distort its basic features.

While any overhaul of the Constitution might face stiff opposition, the government's move is in pursuance of the agenda of the National Democratic Alliance, which had spelt out the intention to review working of the Constitution.

Seminars on the issue in the past month have seen the participation of Cabinet ministers, legal experts as well as senior leaders of the ruling coalition.

While the government may not be able to touch the Constitution's fundamental features, including the possibility of a presidential form of government over which even the National Democratic Alliance is divided, a major area of focus will be those areas on which the Constitution is silent.

Prof Mool Chand Sharma of the Law Faculty of Delhi University feels an overview would arrive at the conclusion that the Constitution is a great historical accident.

It is not necessary to tinker with the Constitution as it exists, Prof Sharma says. He only points to the need to give voice to the silent areas and clarify the grey ones.

These, he says, include the President's prerogative to invite a leader for the vote of confidence, the Speaker's role in defections, how to assess whether the government enjoys confidence of the majority, exercise of Article 356 and the role of Governors.

**THE STATESMAN**

**- 5 JAN 2000**



# Amending the Constitution

By Rajindar Sachar

THE GOVERNMENT has been announcing its intention to constitute a Commission to undertake a review of our Constitution and doubts are being expressed about its motives. Therefore, the exercise this should be undertaken in such a manner that no one may accuse the Government of trying to squeeze in any hidden agenda.

I am not suggesting that some amendments to the Constitution are not overdue. The appointment of a Commission *per se* may not be objectionable, but the real test of bonafide would be its terms of reference. It is not enough to say, as the Home Minister, Mr. L. K. Advani, once did, that the Commission will decide its own terms of reference. Such an unrestricted mandate can raise legitimate doubts.

Before appointing a Commission, the matter should be discussed in Parliament, which should give directions to the Government that no amendments are necessary on certain matters and hence the terms of reference should not include a review (excepting for a few additions) of the following:

The preamble which the Supreme Court calls the key to the Constitution. That would mean that there is no scope to seek to define what is secularism (the definition of it in Bommai's case fairly represents the ethos of the Indian people).

The question of change to Presidential system. This to me, raises a question of change of basic structure, and hence unamendable. Even otherwise, I believe the diversity of our country demands a federal structure and dispersal of political power which position may be jeopardised if the power was to be vested in elective presidency.

Part III containing Fundamental Rights. Excepting for a change in Article 19(1)(2) to delete public order which restricts the sweep of free speech. Also to specifically mention the freedom of press in Article 19(1)(a). The right of privacy should be included in Part III, because of the somewhat different interpretation given by different Supreme Court Benches. The right to education has been held to be a fundamental right by the Supreme Court but by a very narrow majority; this needs to be

placed beyond danger by including it in this part. The right to work, without which Article 21 would remain a pious wish, needs to be included because though the Supreme Court does mention Article 21 to include right to shelter and livelihood, it understandably steps back and contents itself with hopes, expressing inability to do anything about implementation of these rights.

Part IV containing the Directive Principles needs to be retained as such. Notwithstanding the bug of globalisation hitting our middle classes, the danger of globalisation is evident all around, and we

bulwark of our Constitution — namely the independence of the judiciary. Amendment is necessary to provide that no transfers shall take place except with the prior consent of the judge concerned.

The present talk of a fixed tenure of five years for the Lok Sabha and State Legislatures is unacceptable and undemocratic. This goes against the grain of our glorious precedents — the J.P. movement on the right of people to demand early dissolution of the legislature when the legislators have disgraced themselves by their conduct of corruption, and misfeasance. After all legislatures are only a prac-

of the party whip, excepting in a vote of confidence or a vote of no-confidence or voting on a money bill. In all other cases, the member's right of free speech and voting should be maintained.

The Legislative Councils in the various States are a needless financial burden and serve only the purpose of providing for political favourites. These should be abolished. A long time back, Parliament had passed a resolution suggesting amending the Constitution so that the maximum strength of Ministers should not be more than 10 per cent of the members of the Lok Sabha and one per cent of the Rajya Sabha; the same provision was also to be applied in the States. This needs to be suitably amended. In the States, legislators are appointed chairpersons and directors of public sector units. This leads to nepotism and inefficiency and must be prohibited. There is also a suggestion that before general elections (at least in States), there should be a caretaker Ministry to avoid political interference. This a debatable proposition, though the Bangladesh Constitution has such a provision and it is working satisfactorily.

Because of the continuous misuse of Article 356 by all political parties without exception it is too risky to retain this provision. This should be deleted. The apprehension that in cases of grave national crises, the Centre may not be able to act without it is without any foundation, because the defence powers of the Union Government. The U.S. Constitution does not contain Article 356 but the Federal Government has interfered in the South by sending its armed guards to enforce the mandate of the U.S. Supreme Court in the matter of integration of schools for Afro-Americans and white children.

According to the Constitutional provisions interpreted by the Supreme Court, the Prime Minister can be even a member of the Rajya Sabha. In my view, in all democracies, the Prime Minister is by convention and practice a member of the House of the People. For India — the biggest democracy — the position cannot be otherwise.

*(The writer is a former Chief Justice of the Delhi High Court)*

## *Before appointing a Commission to review the Constitution, the matter should be discussed in Parliament which should give directions to the Government on the terms of reference.*

tical mechanism to carry out the mandate of the real sovereigns in a democracy — the people. Legislators cannot arrogate to themselves the right to continue even after their real masters, the people, have lost confidence in them. That almost half of the members in the present Lok Sabha are new goes to show how unrepresentative the previous House had become.

There is, of course, the need to amend the Constitution to provide for reservation for women in the legislatures — one of the objections raised is that if women's constituencies are rotated personal contact with the constituents will not be possible. This can be overcome by increasing the strength of the Lok Sabha to 750 and having 250 double-member constituencies which would keep seats reserved for women non-rotational.

There should be a simple provision namely that if an MP or an MLA elected on one party's ticket joins another political party, his seat would automatically stand vacated. All this pretence of conscientious objection to a particular change of policy is nothing but a sham in most cases, especially now when we are in the era of coalition politics. However, there should be no disqualification attached to disobedience

# Centre to set up panel for Constitutional review

Anil Anand  
New Delhi, January 10

HT-12  
THE UNION Government has decided to set up a multi-member high powered Commission to review the Constitution and suggest changes based on the evaluation of its functioning during the last five decades.

According to Law Ministry sources, a comprehensive note has already been drafted and circulated among the members of the Cabinet for its formal approval. The note touches upon broad terms of reference of the proposed Commission.

The Commission that is to be headed either by a retired Chief Justice of India or a sitting retired judge of the Supreme Court, is likely to have experts from different strata of the society and the political spectrum as its members. These include representatives of Opposition parties in Parliament, human rights groups, Bar associations and the academicians.

The move for a comprehensive review of the Constitution is one of the items set out in the ruling National Democratic Alliance's manifesto.

It is also based on the premise that such a review would not be out of place when the Constitution had already been amended 79 times.

A broader aim of such an exercise, the sources said, was to ensure wider distribution of power, making the administration more responsive, ensure accountability at all levels and decentralise the system of resource mobilisation with the ultimate motive to evolve a politico-administrative structure based on merit and fair play.

Apart from addressing the significant issue of poll reforms, the terms of reference of the proposed Commission reportedly provide for a review of the Centre-State relationship to ensure that the Centre was strong enough to solve the inter-State disputes while ensuring that the States became strong constituents of the federal

set up. The issue of political stability in view of a disintegrated polity was another key area which the Constitution review committee would delve into.

This included discussing a provision to ensure a fixed five-year term for Lok Sabha and State Assemblies.

The scope and powers of the President in the event of a political uncertainty created by a government, losing vote of confidence on the floor of the House, is another key area which the Commission would be required to look into.

The total absence of any specific provision in the Constitution to deal with such a situation has made it imperative to further redefine the scope and extent of President's powers, the Ministry sources felt.

The move to set up a review Commission has also come against the background of suggestions made by some intellectuals, including an "Overview Committee" headed by Prof Mool Chand Sharma of Delhi University.

THE HINDUSTAN TIMES  
11 JAN 2000

# Constitution review panel may tackle several grey areas

Kalyani Shanker  
New Delhi, January 15

HT-10  
164

THE MUCH-AWAITED Constitutional Review Commission may go into various grey areas and also the desirability of switching over to Presidential form of government. It may also study controversial subjects including Uniform Civil Code, Article 356, role of governors, emergency provisions, creation of new States, Centre-State relations, reservation and affirmative action, practice of Sati, role of bureaucracy, judicial activism and who is a public servant.

It is not clear when the commission will be announced. While a Cabinet note in this regard is under circulation, the PMO sources express ignorance of any forward movement or who will head the commission.

Former President R. Venkataraman's name is doing the rounds. The Cabinet note pushes almost all the controversial issues to the Commission.

The setting up of the commission to coincide with the golden jubilee

of India's adoption of its Constitution is part of the NDA agenda which says, "We shall appoint a commission to review the Constitution of India not only in the light of experiences and developments since 1996, but indeed, of the entire post-independence period and to make suitable recommendations."

During the past 50 years, many questions have cropped up and the commission is expected to study these grey areas in depth.

The Cabinet note has suggested that the proposed commission should go into stable, effective and clean government, electoral reforms, representation in legislative bodies, delimitation of constituencies and form government that switch over to Presidential form and expanding/limiting of the powers of the President.

This is particularly important in view of the recent experience when the Vajpayee Government lost its majority but continued as caretaker government for six months during when Kargil crisis occurred.

Although it was the Congress

leader Vasant Sathe, who flagged the idea of switch-over to Presidential form of government in the late seventies-when he is said to have found support from Mr Vajpayee at that time.

Perhaps keeping the JMM case in mind, the commission may also go into the misuse of power and constitutional accountability besides, who is a public servant, corruption in high places, abuse of power, also Lok Pal and Lokayukhta.

The JMM case has raised an important issue whether MPs are public servants or not.

There are several zones of silence and vagueness, and uncertainties in Articles 73, 74, 191, 163, 166, 167 and 356. The commission would be going into these aspects and come up with clear-cut answers.

Two crucial aspects specially need the attention-appointment and role of governors and Article 356. There has been a lot of debate on Article 356 despite the Sarkaria Commission recommendations on Centre-State relations.

THE HINDUSTAN TIMES

16 JAN 2000

## 79th amendment to Constitution gets Presidential assent

New Delhi, January 24

PRESIDENT K R Narayanan has given assent to the Constitution (79th Amendment) Act 1999, extending reservations for SCs and STs in the Lok Sabha and State Assemblies. The reservations will be for a further period of ten years beyond January 25, an official release said here today.

The Act also seeks to extend the provisions for nomination of Anglo-Indians to the Lok Sabha and State Legislative Assemblies for the same period or up to the 60th year from the commencement of the Constitution on January 26, 1950, the release said.

The Constitution Amendment Bill, passed during the first session of the present Lok Sabha, was sent to the States for ratification by a majority of State Legislative Assemblies. (PTI)

THE HINDUSTAN TIMES  
25 JAN 2000

# Leave the Constitution alone

By Harish Khare

*The unstated burden of this plug-the-aberrations argument is to shift the blame of the BJP-led Government's deficiencies and non-performance on to the Constitution.*

IF MR. Ram Jethmalani is to be believed, then it would appear that the Vajpayee regime is determined to monkey around with the Constitution of India. The Union Law Minister insists that the coalition Government is committed to implementing its wacky idea of having a Commission to review the Constitution. Later, after judgments prevail, the Vajpayee regime could find itself starting a thoughtless process of unheeding the constitutional edifice of our Republic that has served us well these last 50 years.

What is disquieting is that except a 35-word mention in the National Democratic Alliance manifesto, no one has yet made a case — leave alone a convincing case — that the Constitution needs to be reviewed. The NDA manifesto reads: "We shall appoint a Commission to review the Constitution of India, not only in the light of experiences and developments since 1996 but indeed of the entire post-Independence period, and to make suitable amendments." That is all. To the extent the NDA partners could barely cobble together a parliamentary majority to form a Government, this 35-word formulation is now being trotted out as a "mandate" to fool around with the Constitution.

At one level it would have been understandable if the sangh parivar wanted to use the forum of a Constitution Commission to debunk the achievements of the last fifty years and to rewrite into the Constitution its own vision of "cultural nationalism" (or, of the latest buzzword, "integral humanism"). But so far none of the spurious "intellectuals" and "constitutional experts" who choose to identify themselves as sangh parivar partisans has produced a coherent argument as to which aberrations of our Republic need to be corrected.

And who will man the Constitution Commission? We do not have the Rajendra Prasad and the M. C. Setalvads; we will have to do with much, much lesser men. Certainly we cannot be turning to the wisdom and sagacity of the L. K. Advanis of this world who only a few years ago were arguing that the rampaging Ayodhya sadhus were "reversed saints" and could not possibly be expected to defer to the Supreme Court in a matter of "faith". What is

by petty battles of the past, are out to undo the basic constitutional scheme, an arrangement that reflects the wholesome impulses of a post-Independence leadership still infused by the idealism of a glorious national movement.

At the same time, it should be obvious to one and all that the Vajpayee Government would not be able to get the review recommendations past the present Lok Sabha. By needlessly cranking up a debate about the correctness of our constitutional arrangement, the ruling establishment would be hastening a corrosive process. The great danger is that the BJP crowd is putting into practice a stratagem that can only lower the sanctity of the Constitution, and thereby encourage uncomfortable thoughts among hot-heads in uniform.

A written Constitution is an elaborate tapestry of intentions and institutional structures; the Constitution we gave ourselves fifty years ago is the first-ever attempt in the last 2,000 years of our collective civilizational existence to put in place a quintessentially egalitarian polity and a pluralistic social order. It is this promise of egalitarianism that garnered for the Indian state a modicum of democratic legitimacy and popular acceptance, despite all the aberrations and anti-poor biases in the ruling and governing classes. Any attempt to tinker with the basic structure would be tantamount to an assault from above on the legitimacy of the Indian state. Simply put, the Vajpayee regime does not have the credentials to review the Constitution because it lacks the legitimacy that accrues to a leadership either on account of participation in a nationalist struggle, or from an overwhelming popular acceptance, or from a demonstrated outstanding performance and competence.

After all, the efficacious exercise of any constitutional authority is to be negotiated through the democratic idiom. Only through a vigorous democratic engagement can we temper our constitutional arrangement against political expediencies. The clamour for a Constitution review is a subterfuge for non-democratic temptations; but, this authoritarian project will also fail because it is intended to bypass the egalitarian assertiveness from below. India is not Pakistan.

surrender at Kandahar or can a "reviewed" Constitution ensure the requisite mixture of guts and gumption at the highest level of political leadership in times of a hostage crisis? Can the Constitution be amended to outlaw "cowardice" of the kind spoken of recently by the RSS chief, Mr. Rajendra Singh? Can the Constitution be reviewed to put an end to a million tyrannies that are inflicted daily on the citizens by the micro-level bureaucracies? Can Mr. Jethmalani's Constitution-reviewers stipulate that the Uttar Pradesh police will not shoot down innocent citizens as they did the other day in Meerut? Will the Constitution-reviewers be able to erect institutional barricades against the kind of alienation that has infected Jammu and Kashmir and the Northeast? The plain answer to these and thousand other questions is a resounding "no."

## STATECRAFT

The second argument advanced by pro-reviewers is the presumed paramount need for "stability" at the Centre. It is suggested that the fragmentation of political parties is producing a systemic instability and that this is bad, indeed very bad, for economic growth. The politics of vote-banks is seen to be bad for the Republic; the Constitution must be converted into a bulwark against the excesses of the Laloo Prasad Yadavs, the Mulayam Singh Yadavs, and the Mayawatis. Given half a chance, the Constitution Commission-crowd would be delighted to outlaw a Kalyan Singh-type rebellion. The pro-reviewers hardly make any attempt to disguise their hidden agenda: they want to prevent the replication of the April 1999 experience when the Vajpayee Government fell by one vote. More disturbingly, there is a great impatience with the corrective and balancing role played by Rashtrapati Bhavan during the caretaker days of the Vajpayee Government; the Constitution Commission would be an attempt to get even with an activist President. Small minds, scarred

worse perhaps is that the appointment of a Constitution Commission is being seen as a way of obliging certain individuals who have lent their presumed "bipartisan credibility" to help the BJP and the sangh parivar cross over the respectability hump. Surely our system has enough patronage at its disposal to accommodate the cravings of a former President and of a couple of former High Commissioners without having to let them loose on the Constitution.

Those who want to "review" the Constitution argue, first, that the 50-year-old document has not been able to stop "aberrations" and, second, that it needs to be fixed to produce "stability". It can be contended that the Constitution-based political system has not produced the kind of satisfactory governance that would have transformed India from a feudal economy and fragmented polity into a first-rate industrial economy and modern governing arrangement; the dissatisfaction on this count cuts across party lines. But no one has yet explained how a remulching of the constitutional arrangements will yield a better crop of governance.

The unstated burden of this plug-the-aberrations argument is to shift the blame of the BJP-led Government's deficiencies and non-performance on to the Constitution. The intellectual meagreness and the administrative ineptness of the BJP are all too obvious; but, a Constitution Commission is being waved around as a magic wand to keep up the potency of the "BJP is a distinct party" slogan. The BJP came to displace the Congress on the centre stage of Indian politics because the electorate believed it would deliver good governance. Now, the BJP crowd is discovering it has neither the inspiration nor the ability nor the inclination to deliver; hence the Constitution review sleight-of-hand.

Could, for example, a different constitutional arrangement have prevented the

## Review plan based on NDA agenda: BJP

HT Correspondent

New Delhi, January 27

IN AN allusive but quick response to President K R Narayanan coming out against the proposed review of the Constitution, the BJP today "reminded" the opponents of the move that Prime Minister Atal Behari Vajpayee was acting on the basis of the NDA's Agenda of Governance that "won the mandate of the people in the Lok Sabha polls of 1999."

BJP spokesperson M. Venkaiah Naidu said, "It is for the Government, which has received the people's mandate and Parliament to decide this issue. We have the highest respect for the President and his views."

"Those opposing the review are aware that the Constitution was amended 79 times. In the last 50 years, the Constitution has been amended 20 times every nine months during this period."

Keen to avoid creating an impression that the Government and the President were on a collision course, the BJP spokesperson said the Prime Minister had been assuring all concerned that the basic structure of the Constitution would be kept intact and there were no plans to switch over to the Presidential system of governance.

"What has been proposed is only a committee to review the Constitution and have a debate in the country," Mr Naidu said.

THE HINDUSTAN TIMES  
28 JAN 2000

# Opposition cries foul, backs President fully

HT Correspondents  
New Delhi, January 27

OPPOSITION PARTIES across the political spectrum backed President K.R. Narayanan's speech today and said the Government's proposal to set up a commission to review the Constitution was sinister.

**Ajit Jogi (Congress):** The Constitution has stood the test and scrutiny of time for the last 50 years. We hope that the President's address would be lamp unto our feet and light unto our path. The BJP, in seeking to alter the basics of the beautiful document, wants to communalise and saffronise the country's polity. Any attempt to change the Constitution would be an insult to the memory of its founding fathers. Our views are the same as the President's. We are extremely grateful to our revered President and, indeed, the entire nation will forever remain indebted to him for his address.

**Gurudas Das Gupta (CPI):** The President's speech was a retort to those who seek change to the Presidential system in utter disregard of India's national tradition. The speech also nailed politicians who have

not lived up to the spirit of the Constitution.

**Hannan Mollah (CPI-M):** The President's speech is a timely warning to the nation that we should not allow any subversion of the spirit of the Constitution. By contradicting the PM, the President has started a nationwide debate.

**Mulayam Singh Yadav (Samajwadi Party):** The observations of the President are a warning to those who want to change the Constitution. It is regrettable that the Prime Minister had on the occasion given a speech in a foreign language.

**Raghuvansh Prasad Yadav (RJD):** There is no need to review the Constitution. The President is the custodian of the Constitution and his stand is Constitutional. The PM's stand is un-Constitutional.

**Madhu Dandavate (Janata Dal):** The President's observations mean that the baby should not be thrown out with the bathwater. Such attempts in many countries had led to authoritarianism.

**G. M. Banatwalla (Muslim League):** The President's speech was welcome and there was no need for a review of the Constitution.

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# Govt's differences with President began 2 yrs ago

Udayan Nambodiri  
New Delhi, January 27

**T**HE SHARP difference of opinion between President K. R. Narayanan and Prime Minister Atal Bihar Vajpayee on the question of reviewing the Constitution was believed to have been provoked by two reasons.

First, Rashtrapati Bhavan had been noting with alarm the fast pace of the government's moves towards setting up a review commission under former president R. Venkataraman -- a known votary of the Presidential form of government. In fact, there was speculation that Mr Vajpayee would be announcing the formation of the commission at the function, held to commemorate the golden jubilee of the Republic, today itself. As the Prime Minister postponed that announcement, a collision, which could have caused far greater damage, was narrowly averted.

Secondly, ever since Law Minister Ram Jethmalani announced a six-month time limit for such a commission to come out with its recommendations, there had been apprehension in non-

BJP quarters that the Vajpayee Govt was out to guarantee for itself a secure five-year term and thereby insulate itself from the sceptre of another truncated term.

Sources said that a non-vetted speech to the Members of Parliament, at a joint session on the occasion of the golden jubilee of the Constitution, was deemed the best opportunity by the President to speak his mind out on a matter that had been exercising him for some time. Unlike a speech delivered to a joint session of Parliament, which has necessarily got to be vetted by the government, today's speech was composed by the President himself with the help of a few aides.

The Vajpayee Government, though enjoying a majority in Parliament, is thought to be under pressure from the Sangh Parivar to change the Constitution with a view not just to fortify its claim to a full term. There is also the "hidden agenda" -- perceived or otherwise -- in terms of Article 370, Uniform Civil Code and Ram Janmabhoomi -- which the government's fringe supporters would like it to push through.

This is not the first time that

President Narayanan has expressed an opinion causing embarrassment to the BJP dispensation. He skipped the routine address to the nation on the eve of the Independence Day, 1998, saving his speech (one in which he lashed out against morality in the House) for the he address to parliamentarians on the conclusion of the year-long celebrations of Independence. The President attracted attention by giving an interview to Mr N. Ram, the editor of 'Frontline' magazine, also an unprecedented step.

Relations between the government and Rashtrapati Bhavan plummeted after the former reportedly leaked a letter by the President, in late 1998, in which he had urged reservation for backward castes in the lower judiciary. Subsequent developments like the murder of the Staines family and the persecution of Christians alleged Sangh Parivaar activists in its aftermath, the telecom policy and, most importantly, his giving Mrs Sonia Gandhi the opportunity to form a government after the fall of the second Vajpayee coalition, further exacerbated the already sour relation.

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# Exercise to review whole Constitution unnecessary

HT Correspondent  
New Delhi, January 27

CONSTITUTIONAL EXPERTS are generally of the view that an exercise to review the whole Constitution would be unnecessary and the need of the hour is only to examine certain grey areas while concentrating on more effective implementation of its provisions.

Echoing President K.R. Narayanan's sentiment, many of them opined today that there was nothing wrong with the Constitution. Rather, it was a dismal failure on the part of the politicians to honour its letter and spirit that had brought about the current crisis.

Some of them, however, agreed upon the need for a judicious amendment of certain portions of the Constitution to rectify its shortcomings.

"In the life of a country's Constitution, 50 years is not a sufficiently long period to call for its replacement. If the idea is to review the Constitution in its entirety, I am afraid it is premature. But if the objective is to review certain grey areas only,

that may be a different matter," former Chief Justice of India A.M. Ahmadi said while referring to the PM's announcement about setting up a commission to review the Constitution.

Sharing the President's view on the issue, he said, "A vast majority of informed people believe that there is nothing basically wrong with our polity; it is the political leaders who are responsible for failing the Constitution.... The blueprint for achieving our constitutional objectives has virtually remained unattained on account of the failures of those incharge of implementation."

SC Bar Association president K.K. Venugopal said, "Constitutions can fail if the people who implement them are not efficient or honest.... What we see here is a beautiful machinery being destroyed because of people who are administering it."

He too recalled the prophetic words that the first President of India, Dr Rajendra Prasad, uttered at the time of adopting the Constitution. He had expressed the apprehension that the politicians of succeeding generations could succumb to the greed of

"loaves and fishes of office" and bring woe upon the country, Mr Venugopal said. But he felt that some of the provisions needed to be amended in view of the "abuse of the Constitution" in certain areas. Article 356 was one such provision which had often been misused to disrmiss "hundreds" of state governments but rarely those belonging to the party in power at the Centre, he emphasised.

Senior counsel A.M. Singhvi said, a wholesale fundamental review of the basic law was not only unnecessary but may indeed prove counterproductive. "Is such a review going to solve any of our basic problems like criminality, corruption and communalism? Is it going to remove poverty and make India a rich prosperous nation overnight?" he asked.

As opposed to a general review, he said, consideration of some amendments would be desirable so as to provide a specific solution. Citing instances, he said a committee could be set up to decide whether to make frequent dissolution of Parliament constitutionally more difficult or declaration of President's rule under Article 356 subject to a higher threshold.

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# Cong.(I) hails President's 'wise words'

By Our Special Correspondent

**NEW DELHI, JAN. 27.** The contradictory views expressed by the President and the Prime Minister on the Government's intention to set up a Commission to study and suggest a review of the Constitution today found a reflection in the diametrically opposite stances of the Bharatiya Janata Party and the Congress(I) on the issue.

The BJP defended the Prime Minister's view suggesting the need for studying and reviewing the functioning of the Constitution over the last 50 years. The Congress(I) hailed the President's "wise words" of caution and said its views were the same: that there was no need to review or revise the Constitution which reflected the quintessence of the freedom movement and had stood the test and scrutiny of time.

The CPI(M) politburo member,

Mr. Prakash Karat, lauded the President's view as the "correct position" — changes can be made within the existing framework, but there should be no "tinkering" with the Constitution.

## BJP's arguments for a review

The ruling party extended several arguments in favour of a review. Without offering any comment on the views of the President, Mr. M. Venkaiah Naidu, BJP general secretary and spokesperson, pointed out that the Constitution had already been amended 79 times, every nine months on an average. The intention of setting up a commission to review the Constitution was in the National Agenda for Governance (NAG), the NDA manifesto, and had thus been "approved" by the people. Moreover, on October 25,

1999, the President's address to the joint session of Parliament mentioned the Government's intention, and by adopting the motion of thanks to the Presidential address, Parliament also signalled its approval.

The other view, expressed strongly by Mr. Ajit Jogi, Congress(I) spokesperson, was that "ours was one of the best Constitutions in the world," and the attempt of the BJP-led Government was aimed at "saffronising" the polity. He made it quite clear that his party would not support in Parliament any move to alter the basic structure of the Constitution. The Congress(I) would only support those Constitutional amendments which were in national interest.

The BJP "welcomed" the announcement by the Prime Minister that a commission would be

set up to review the functioning of the Constitution, and Mr. Naidu said that while the "basic structure" would not be changed, "some areas needed to be strengthened." He identified the weaknesses as use of Article 356 imposing President's rule on the States, the anti-defection law which had not rooted out the evil of defections, the need to strengthening local bodies and streamlining the system for judicial appointments. He added that it was "our democratic obligation" to fulfill the intention made in the NAG. Mr. Naidu promised a "totally transparent" procedure and added that finally it would be up to Parliament to accept or reject the suggestions made by the commission.

## Opposition uneasy

But clearly, the Opposition parties are uneasy. They smell a big-

ger conspiracy, a conspiracy to undermine the very foundations of the Republic, that too in the year when India should have been celebrating the sacred document that has served it well.

"We hope the President's address today will be a lamp unto our feet and light unto our path," Mr. Jogi said, quoting the scriptures.

He put on record the Congress(I)'s gratitude to the President for making his views known, and said the entire nation would remain indebted to him.

NOT IMMUTABLE, NEEDS CHANGES: VAJPAYEE

# Leave the Constitution alone, says President

By Our Special Correspondent

**NEW DELHI, JAN. 27.** The President, Mr. K. R. Narayanan, today strongly opposed any tinkering with the Constitution even as the Prime Minister, Mr. Atal Behari Vajpayee, defended his Government's decision to re-view it, bringing into the open the differing views of the President and the Government on the issue.

They were speaking during a function held in the Central Hall of Parliament here this morning to commemorate the 50th anniversary of the adoption of the Constitution.

In his brief speech, Mr. Narayanan spoke at length on why the Constitution should be left alone saying the recent instability in the Government was not sufficient ground for discarding the parliamentary system in favour of the presidential or any other form.

Turning the Government's argument for reviewing the Constitution on its head, he said: "The possibility and facility of a change in the Government is itself a factor in the stability of the political system in the long-term because then the people will be more inclined to tolerate a political situation they do not approve of or find difficult to cope with for long."

On the other hand, the Prime Minister, speaking shortly before him, invoked the "need for stability both at the Centre and in the states" to justify a review. Citing this and the "pressing challenge" to speed up the development process, Mr. Vajpayee said, "that is the purpose for which a commission to review the Constitution is proposed to be set up." However, he said the Constitution's basic structure and core ideals would remain "inviolable".

Mr. Narayanan, in an obvious reference to the Government's move, said that when there was "so much talk about revising the Constitution or even writing a new Constitution we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution."



**The Prime Minister, Mr. A. B. Vajpayee, receives a copy of the calligraphed Constitution in Hindi from the Lok Sabha Speaker, Mr. G. M. C. Balayogi, in the Central Hall of Parliament in New Delhi on Thursday as the President, Mr. K. R. Narayanan and the Vice-President, Mr. Krishan Kant, look on.**

He quoted Dr. Ambedkar and Dr. Rajendra Prasad saying that the Constitution was flexible enough to stand the test of time.

Dr. Ambedkar, he recalled, said while speaking on the draft: "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 is vile."

Dr. Rajendra Prasad, as president of the Constituent Assembly, was equally forthright saying, "if the people who are elected are capable men of character and integrity, they should be able to make the best of a defective Constitution. If they are lacking in these, the Constitution cannot help the country."

For emphasis, the President added: "I believe these are wise words which we should pay heed to." He stressed that the Constitution was adopted after a thorough

should not throw out the baby with the bath water."

The Prime Minister, however, did not think the Constitution was immutable and said "even in the mightiest fort one has to repair the parapet from time to time. One has to clean the moat and check the bastions... the same is true of our Constitution." While the Constitution had stood the test of time, five decades after its adoption, India was faced with a "new situation."

Apart from the "acutely" felt need for stability both at the Centre and in the States, people were "impatient" for faster socio-economic development; and the "country is also faced with a pressing challenge to quickly remove regional and social imbalances by re-orienting the development process to benefit the poorest and the weakest." All this, the Prime Minister felt, warranted another look at the Constitution.

The speeches of the President and the Prime Minister on the need for a constitutional review lent significance to an otherwise largely ceremonial occasion. The highlights included an audio visual presentation on the Indian Republic and a re-play of the speeches of Dr. Rajendra Prasad, Jawaharlal Nehru, Dr. B. R. Ambedkar and Sardar Vallabhai Patel.

The President released an album of the national anthem, while the Prime Minister received from the Lok Sabha Speaker Mr. G. M. C. Balayogi a copy of a calligraphed constitution in Hindi. The Vice-President and chairman of the Rajya Sabha, Mr. Krishan Kant released a commemorative stamp showing cartoonist Ranga's sketch of Mahatma Gandhi.

Those at the hour-long function, marked by a rendering of "Vande Mataram" and the national anthem, included members of the Union Cabinet, the former Prime Ministers, Mr. P. V. Narasimha Rao, and Mr. I. K. Gujral, and the Congress(I) president, Mrs. Sonia Gandhi.

# President, PM differ on Constitution review

HT Correspondent  
New Delhi, January 27

**T**HE PRESIDENT and the Prime Minister, the two highest constitutional authorities, today differed sharply on the question of reviewing the Constitution, with Mr K.R. Narayanan coming out strongly against any move that seeks to replace the present parliamentary form of government with a presidential system.

Even as the government and the ruling combine were left acutely embarrassed by it, the President, as the custodian of the Constitution, set the tone of the debate by questioning the NDA coalition's reasoning for seeking a review. He emphasised the Constituent Assembly's preference for responsibility and accountability to stability and the need to ensure that the statute's basic philosophy and socio-economic soul remained sacrosanct.

Significantly, the divergence in views was spelt out at the special function in Parliament's Central Hall to celebrate 50 years of the

Indian Constitution. Both Mr Narayanan and Mr Vajpayee spoke from prepared texts and from a common platform they shared with Vice-President Krishan Kant and Lok Sabha Speaker G.M.C. Balayogi. Since it was a special function and not a special session as such, the President's speech did not require the Cabinet's clearance.

Mr Vajpayee, speaking ahead of the President, emphasised the need for a commission to review the Constitution. The reasons he cited included the acute need for stability at the Centre and in the states, the people's impatience for faster development and removal of regional and social imbalances.

While giving an assurance that the basic structure and core ideals of the Constitution would remain inviolate, Mr Vajpayee remarked: "Even in the mightiest fort one has to repair the parapet from time to time, one has to clean the moat and check the banisters. The same is true about our Constitution."

Five decades after the adoption of the Constitution, India is faced

What the President said



• We have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution.

• Instability in government is perhaps not sufficient reason to discard the parliamentary system in favour of the presidential or any other system.

• The drafting committee preferred more responsibility to stability which could slip into authoritarian exercise of power.

• Shortcomings can be rectified by Parliament without too much difficulty.

• We should ensure that the basic philosophy behind the Constitution and fundamental socio-economic soul of the Constitution remain sacrosanct.

What the PM said



• Even in the mightiest fort, one has to repair the parapet from time to time, one has to clean the moat and check the banisters.

• India is faced with a new situation. The need for stability, both at the Centre and in the States, has been felt acutely.

• The Constitution's basic structure will remain inviolate while undertaking the proposed review.

• Our resolve should be to leave institutions—above all, our Parliament and our State Legislatures—for the coming generation in a condition vastly better than what we found them in.

parliamentary democratic system because they preferred more responsibility to stability which could slip into authoritarian exercise of power".

Virtually carrying over from where he left off in his Republic Day-eve address to the nation (when he raised queries on the economic reforms), Mr Narayanan today appeared to launch a direct attack on the kind of governance delivered down the years.

"Today, when there is so much talk about revising the Constitution or even writing a new Constitution, we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution," he said. He also distanced himself from moves to fix a five-year term for the Lok Sabha.

Stating that "we should not throw the baby with the bath water", the President averred that the parliamentary system was best suited for India, given its variety, diversity and population.

Any shortcomings or lacunae in the Constitution could be tackled through amendments, he said and

pointed out that the founding fathers had provided for an easy amendment process. Similarly, changes could be brought about in the electoral law or the functioning of political parties, he said, while rejecting the contention in certain quarters that the statute was not sufficiently rooted in India's traditions.

Mr Vajpayee, in his address, applauded the Constitution for serving the needs of India's diversity and innate unity, and strengthening its democratic traditions.

However, in the end, a Constitution is only as good as the ones who work the institutions set up by it, he said. He bemoaned the "widespread apprehension today that our institutions are not working as the Constitution intends, that the conduct of those who run them is not what the proper functioning of those institutions requires". He called for a resolve that "we shall leave our institutions, above all our Parliament and state legislatures for the coming generation in a condition vastly better than the condition in which we found them".

# Constitutions and the judiciary

By Rajeev Dhavan

*If judges do not stand up for legality, who will? Or, are others to lead so that judges can follow?*

HERE IS yet another coup d'etat in Pakistan. Governance in Pakistan has become a series of military dictatorships with inclusions of constitutional governance. Part of the dismembered sub-continent, Pakistan has struggled to keep its successive constitutional systems alive. With some notable exceptions, jurists have rarely examined this amazing live laboratory of usurpatory coup d'etat.

What exactly is the legality of a coup? More significantly, how should a judiciary react to a military dictatorship which subverts the democratic constitution which the judges are sworn to protect?

Pakistan never quite got its constitutional act together. Whilst India and Sri Lanka were reasonably businesslike, thorough and quick in their efforts at Constitution making, Pakistan floundered.

As it proceeded with its Objectives Resolution of 1949 and general recommendations between 1950-52, the Constituent Assembly of Pakistan itself was dissolved by Governor-General Ghulam Mohammed. Amidst judicial ambivalence, the matter was patched up and Pakistan found itself with a republican constitution in 1956. But no sooner was the Constitution in place, the army under Field Marshal Ayub Khan took over in 1958.

If words have persuasive definitions, then it is important that military take-overs should not be called 'revolutions'. There is something noble about revolutions. There is nothing about the naked usurpation of a military take-over that is ennobling. Not all military coups are Napoleonic in their sweep or impact. The military take-overs of our times are by little people with distorted but grand designs.

When the Ayub Khan take-over took place to supplant the Constitution of

1956, the judges of Pakistan's Supreme Court were put in a quandary when they were asked in Dosso's case to adjudicate on the legality of Ayub Khan's scrapping of the two-year-old infant Constitution.

Chief Justice Munir was surely right when he said that "revolutions are not in the contemplation of those who make constitutions". If that was the case, what was legal? The military coup? Or, the old Constitution?

In many ways, Dosso's case (1958) was a turning point for Pakistan. If a Judiciary fails to meet an unscrupulous challenge earlier in its career, it is bound to falter later. People tend to forget that when reduced to its bare essentials, the Judiciary is just a unique bureaucracy of state.

People will take a Judiciary seriously, if it takes itself seriously. Indeed, when the American Supreme Court was first instituted, some of the judges appointed did not even attend court. It was too much of a bother.

The Indian Judiciary's struggle for judicial supremacy in the Fifties created a significant basis on which its future as an institution of governance in its own right was built.

But, in Dosso's case, apart from the significant dissent of Justice Cornelius, Pakistan's judges demurred, invoking the theory of the distinguished jurist, Hans Kelsen, to say that each Constitution rests on a particular basis called its ground norm (*grundnorm*). If the *grundnorm* changes, the new Constitution — albeit that of a usurper — would have to be accepted on the basis of the new *grundnorm*.

Thus, as early as 1958, Pakistani judges

es simply threw their hands up in the air, accepted coup d'etat as constitutional and agreed to grin and bear it. This laid the foundations of Pakistan's usurper jurisprudence. It also killed any hope that people could have — of respite from the judiciary.

The question before the judiciary was not to make a factual finding that a coup had occurred, but to pronounce on its legality. This was not an open and shut question. The judges could not duck the question as to the extent of legality they would permit.

In Madzimbamuto (1969), the Privy Council, hearing a case from Rhodesia after Ian Smith had made a Unilateral Declaration of Independence (UDI), rejected the claim to legality of the white usurper racist regime that flowed from the constitutional subversion. In cases from Ghana in 1966 and Nigeria in 1969, the Judiciaries of those States went through many juristic distortions to justify successive military and other coups.

Pakistan returned to this question in 1969 — following another power struggle which brought President Yahya Khan into power.

Challenged in Asma Jilani's case (1969), the Pakistan Supreme Court abandoned its brazen acceptance of military coups, reversed its view in Dosso, but now grounded the legality of the new regime under a new doctrine of necessity that there was little choice but to accept the new regime. Not to do so would create a vacuum.

But could anything and everything be justified under the doctrine of necessity?

If so, the doctrine of necessity was just another ploy for Pakistan's judiciary to save face whilst defending the claims of any and every usurper.

Ironically, small infractions of the Constitution would be punished. Large subversions were legal.

The murmur in Asma Jilani's case that the doctrine of necessity was not unlimited in its scope was too faint to strike courage in anyone's heart.

In a sense, all future strands of Pakistan's usurper jurisprudence flowed from Asma Jilani's case. President Zia took over without a significant protest from the Judiciary. Nor did Begam Nuzrat Bhutto's case stem the tide of usurper ingress.

In the Nawaz Sharif affair, the Pakistan High Court was emboldened to threaten to restore an illegally-dissolved Legislature. But, this decision, although followed in India in the President's Rule Case (1993), was a "fair weather" decision which flowed with the public current and not against the tide.

Now, in 1999, following a long line of usurpers — President Musharraf has taken over to destroy yet another Constitution.

But, given its record, and whatever its juristic acrobatics, Pakistan's courts are unlikely to go against the flow of political events. Pakistan has developed a usurper jurisprudence to invite military coups.

If judges do not stand up for legality, who will? Or, are others to lead so that judges can follow.

Is this what Hegel meant when he said that the owl of Minerva will fly after twilight? Pakistan's judiciary seems to lack a capacity for courage, craft or contention. So, democracy dies and dictators rule.

# President, PM differ on change in Constitution

KEITH FLORY  
STATESMAN NEWS SERVICE

NEW DELHI, Jan. 27. — Serious differences between the Head of State and Head of Government over moves to reform the Constitution reverberated through the Central Hall of Parliament House today, the very venue where that blueprint for the future of independent India had been adopted some 50 years ago.

Despite the Prime Minister stating that the "basic structure and core ideals will remain inviolated," the President cautioned against "throwing the baby out with the bath water" and declared "we have to consider whether it is the Constitution that has failed us, or whether it is we who have failed the Constitution."

The function to celebrate the Golden Jubilee of the Republic was thus no routine affair.

If immediate response served as a valid index of which view was endorsed by the gathering that supposedly represented the national leadership, it was Mr KR Narayanan who got the vote. His observation evoked the parliamentary version of applause — the thumping of desks — while Mr Atal Behari Vajpayee attracted only the customary applause at the conclusion of a speech.

There was one point on which their views did coincide: that the success or failure of any

## BJP MIFFED

NEW DELHI, Jan. 27. — The President's opposition to government moves to review the Constitution has raised BJP hackles and brought the Congress glee.

BJP spokesman Mr M Venkaiah Naidu hit out at "those trying to oppose the review of the Constitution." Some of his colleagues asked why Mr KR Narayanan was "time and again trying to clash with the government," and pondered his "motives behind raising the issue in the special session of Parliament."

The Congress welcomed the President's speech, copies of which it took pains to distribute. It charged the government with attempting to "saffronise and communalise the existing political system," and profusely thanked Mr Narayanan for his "timely intervention." — SNS

(Details on page 6)

policy document was critically dependent on the capability of those entrusted with its implementation. And both admitted to shortcomings in the latter dimension.

The President also addressed the issue of stability, which advocates of Constitutional reform have been advancing, and proceeded to reject the view that a presidential form of

government would be more suitable than the parliamentary system.

An equally significant observation of the President, who made his second hard-hitting presentation during the Republic Day festivity, was that "we should avoid too much rigidity in our system of government, as in a very rigid system there is the danger of major explosions in society taking place."

"The possibility and the facility of a change in government is itself a factor in the stability of the political system in the long-term, because then the people will be more inclined to tolerate a political situation they do not approve of or find difficult to cope with for long."

"At any rate, as Dr Rajendra Prasad said, the shortcomings in the people entrusted with running the system cannot be obviated by constitutional changes or provisions," Mr Narayanan emphasised.

Not that the President expressed himself against modifications.

"Amendments to the Constitution are a different matter. The founding fathers deliberately made the amendment process easy so that shortcomings or lacunae in the Constitution can be rectified by Parliament. There are other changes that can be brought about, like changes in electoral

■ See PRESIDENT: page 6

## PRESIDENT: *parliamentary system preferable*

(Continued from page 1)

law or the functioning of political parties," he observed.

Mr Narayanan hailed both the Constitution and the successful working of the democratic system, quoting national and international authorities in support.

"What makes our Constitution relevant to the conditions and problems of India and the developing world is, in fact, the socio-economic soul of it. Its uniqueness is that it has combined this harmoniously with the liberal rights and freedoms as conceived by the western democracies".

The President emphasised that the parliamentary democratic form of government was chosen by the founding fathers "after deep thought and debate ... because they preferred more responsibility to stability which could slip into authoritarian exercise of power."

Pointing out that India was a country so immense and diverse, with such a large population that the problems of social harmony and development were complex, he said "in such a predicament there must be in the body-politic a vent for discontent and frustrations to express themselves in order to forestall and prevent major explosions in society. The parliamentary system

provides this vent more than a system which prefers stability to responsibility and accountability."

"Our recent experience of instability in government is perhaps not sufficient reason to discard the parliamentary system in favour of the presidential or any other system," said the President.

"Whatever we may do, and we have a right to bring about the necessary changes in the political and economic system, we should ensure that the basic philosophy and fundamental socio-economic soul of the Constitution remain sacrosanct," he implored.

The Prime Minister too had lauded the legacy bequeathed by the founding fathers — the Constitution had stood myriad tests, "but even in the mightiest fort one has to repair the parapet from time to time, one has to clean the moat and check the banisters. The same is true of our Constitution," Mr Vajpayee said.

"Five decades after the adoption of the Constitution, India is faced with a new situation. The need for stability both at the Centre and in the states has been felt acutely. The people are impatient for faster socio-economic development. The country is also faced with a pressing challenge to quickly remove regional and social

imbalances by reorienting the development process to benefit the poorest and the weakest," Mr Vajpayee observed.

"That is the purpose for which a Commission to review the Constitution is proposed to be set up. The basic structure and the core ideals of our Constitution, however, will remain inviolated."

Mr Vajpayee also referred to the quality of governance.

"Let us not forget that in the end a Constitution is only as good or bad as those who work the institutions it has set up. There is widespread apprehension today that our institutions are not working as the Constitution intends, that the conduct of those who run them is not what the proper functioning of those institutions requires".

Having stated that, the Prime Minister said: "Let us resolve today that we shall leave institutions — above all our Parliament and state legislatures — for the coming generation in a condition vastly better than in which we found them, and that in discharging our duties in them, our conduct will be such as would have done the founding fathers proud. That would be a fitting way to repay our debt to them. That would be the one tribute worthy of them."

# President's opinion lauded

HT Correspondent  
New Delhi, January 28

THE COMMUNIST Party of India (CPI) and CPI(M) today welcomed President K R Narayanan's warning to the Govt against any tinkering with the Constitution.

CPI(M) politburo member Sitaram Yechury said the President had rightly initiated a national debate on the Constitution review. "We endorse the President's views. He has aptly put out the reasons why the country preferred the Parliamentary system to the Presidential system," he said.

India, he said, had always accorded greater priority to the

Government's responsibility and accountability to the people rather than stability. Mr Yechury said this was absolutely necessary in a country with vast diversities.

CPI central secretariat, said "It is not our view that the Constitution is immutable. There have been amendments before and there can be amendments, as have become essential, today and hereafter. But to call for a review and constitute a Review panel with a roving purpose, is to put a question mark on the Constitution itself, and bypass the political responsibility of doing good by it and serving the people's cause." The party stated that it was not usual in the country's political system for the President to speak

out critically about the Government's policies.

A couple of days earlier, the President had warned the Government against the three-way fast lane of liberalisation, privatisation and globalisation, without a "safe pedestrian crossing" for the weaker sections of the people.

Meanwhile, NCP has described the President's intervention on the Constitution Review as "timely, path breaking and of utmost historical significance". Stating this Mr R D Aggarwal Convenor of the Party's Legal Cell said, the Govt's move would also have the effect of undermining the broad-minded approach accorded by the founding fathers to the Constitution.

THE HINDUSTAN TIMES

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# Opposition echoes President

FROM OUR SPECIAL CORRESPONDENT

New Delhi, Jan. 28: The Opposition today urged the Vajpayee government to abide by the President's advice and refrain from setting up a Constitution review committee.

The Congress said the BJP-led coalition should pay heed to President K.R. Narayanan and "refrain from the futile exercise".

Senior leader Pranab Mukherjee said: "Instead of rushing to set up the commission with half-baked ideas, the government should listen to the advice of the President... who has given them an opportunity to come out of the mess."

Mukherjee warned the exercise would be fruitless as any constitutional amendment required the ruling party to have two-thirds majority in both houses of Parliament and also in half the state Assemblies.

Since the National Democratic Alliance did not have the numbers either at the Centre or in the states, "what is the need for making this faux pas", he asked.

Mukherjee said the Congress was against a fixed five-year term for the Lok Sabha and was wedded to parliamentary democracy. So

were the Left parties, he added.

The restraint on and the balance between the legislative and executive bodies would be lost by such a measure, leading to disastrous consequences, the Congress leader cautioned.

Citing post-war France, Mukherjee said the country suffered political turmoil for a decade as the President did not have the power to dissolve the house of deputies.

Supporting Narayanan's views, the CPI said the BJP was campaigning for the statute review to introduce several changes, "some openly expressed, and some as yet veiled".

In a statement here today, the CPI said: "It is not usual in our political system for the President to speak out critically about the government's policies. It is the BJP which has to thank itself for creating such a situation where the constitutional head could no longer keep quiet."

The party alleged that to call for a review was to put a question mark on the Constitution itself. It added that the President had put forth timely and strong arguments against such an attempt.

"The BJP has been campaigning for a re-

view with the avowed purpose of bringing in a number of changes (some openly expressed, and some as yet veiled) which will cripple our parliamentary system, curtail democracy, reduce accountability of the government and so forth," said the CPI.

The Republican Party of India (Athawale) also criticised the government's move and urged Prime Minister Atal Behari Vajpayee to take the President's advice.

Party chief Ramdas Athawale said the review move was a "deep conspiracy" of the Sangh parivar aimed at replacing parliamentary democracy with a presidential form of government.

He said Dalits all over the country were strongly opposed to the review as it would mean tampering with the Constitution framed by Babasaheb Ambedkar. Athawale urged all secular parties to resist this.

Indian Union Muslim League president G.M. Banatwala charged the government with proposing the review to further its "hidden agenda".

The BJP and its allies had become a serious threat to secular democracy, he told reporters in Patna.

THE TELEGRAPH

29 JAN 2000



REVIEW A POLL PROMISE, SAYS ADVANI

# Jethmalani sees no conflict with President

By Harish Khare

NEW DELHI, JAN. 28. Insisting that he was speaking for the Government, the Union Law Minister, Mr. Ram Jethmalani, today asserted that there were no differences of opinion between the President and the Prime Minister over the question of "review" of the Constitution. He said the Government would appoint a review panel and it could announce the names of the "review commission" within the next 10 days.

Wanting to put an end to what he called "an unseemly controversy" created by media reports on Thursday's function in the Central Hall of Parliament, the Law Minister told newsmen here this morning that "my reading of the President's speech is that he has approved of the process of keeping the Constitution under review and making changes where necessary".

"There is nothing sinister" about the Vajpayee Government wanting the Constitution to be reviewed by a "panel of experts", argued Mr. Jethmalani. He reassured that it was an "innocent act" and that the review was not intended to change the "basic features" of the Constitution.

It appears that Mr. Jethmalani was asked by the Prime Minister to explain the Government's position and to rubbish the suggestion that there were serious differences between the head of the Republic and the head of the Government. The Minister appealed: "The Government trusts that this controversy will not again be resurrected and the fictitious conflict between the President and the Prime Minister will find no mention in the media."

However, as a good lawyer, Mr. Jethmalani agreed with the Mr. Narayanan only to register the Government's disagreement with the burden of the President's remarks. His written statement says: "Of course, the President has rightly emphasised that we cannot blame the Constitution for the ills that afflict us or for our failures and shortcomings. Better men at the helm of affairs could have produced better results even without changing the Constitution. The President is absolutely right that no review can recommend tinkering with the basic features. Those who constitute the present Government have fully and unreservedly ac-

cepted the validity of the Keshavanand doctrine."

Mr. Jethmalani also disagreed with the view that the President was opposed to the idea of reviewing the Constitution simply to produce "stability".

He said the Congress Government in 1973 had found the Supreme Court judgment — a "revolutionary constitutional doctrine" — in the Keshavanand Bharati case "inconvenient and irksome" and had tried to use the office of the then Chief Justice, who, according to Mr. Jethmalani, "was bent on mischief" to overturn that judgment.

Mr. Jethmalani declared that the Constitution did not mean the President had to be "a rubber stamp", and that he was "glad" Mr. Narayanan was "applying his mind" before signing Government recommendations and papers. He also disagreed with the view that the President was withholding consent to the judicial appointments suggested by the Government.

Nonetheless, Mr. Jethmalani was quite willing to argue why the Constitution needed to be "reviewed". To begin with, according to him, the Supreme Court's notions of "misguided secularism", as the basis for invocation of Article 356, needed to be "reviewed"; moreover, the States were demanding greater fiscal powers, including the right to borrow in the international market. The Constitution would need to be amended if the "women's empowerment" was to become a law; but, Mr. Jethmalani reserved his most cogent argument for the review of the whole process of "appointment, transferring and removal" of judges.

Speaking for himself, he noted that there could be three grounds for overhauling parts of the Constitution. First, an altogether different situation than envisaged at the time of framing of the Constitution. Second, if a section of the Constitution was being interpreted or misused for "public mischief"; in the very first year, the Constitution had to be amended to give effect to agrarian reforms. Third, if part of the philosophy of the Constitution has been abandoned by the people; by way of example, he pointed out that the "so-called socialism" had been abandoned.

To persistent queries on whether the "review" panel would find "secularisms" also

abandoned by the people, Mr. Jethmalani said, "no". But not being the one to quit while ahead, he nevertheless went on to define "true sense of secularism".

However, there was a realistic note in Mr. Jethmalani's defence of "review" idea. "We do not have a two-thirds majority in either House; none of the recommendations can be carried out without the cooperation of the other parties, certainly not without that of the largest Opposition party."

## 'Like a health check-up'

By Our Special Correspondent

NEW DELHI, JAN. 28. The Union Home Minister, Mr. L. K. Advani, has defended the Vajpayee Government's proposal to set up a Commission to review the Constitution saying it was a commitment the National Democratic Alliance (NDA) had made to the people in its manifesto.

Speaking after inaugurating an exhibition 'We, the People of India' at the National Archives here today, he said "We were given a mandate to rule. It is not related to the numbers in Parliament. It is a proper way that the commitment given by the NDA to the people is honoured. We had said that the period of 50 years of independent rule under the present Constitution was an appropriate occasion to look at the Constitution."

Referring to the Prime Minister's speech at the Central Hall of Parliament, Mr. Advani said the "Prime Minister was merely reaffirming what was said by the Government through the President's address to the joint session of Parliament after the Vajpayee Government had come back to power... The intention is not to create a new Constitution. We do not want to create a new Constitution. There is no question of altering the essential features and principles of the Constitution."

Describing the proposal to go for a review as a "periodic health check-up", Mr. Advani said he had always opposed forming a new Constituent Assembly. Trying to narrow down on "problem areas", he named the anti-defection law, strength of some State Assemblies and Centre-State relations as spheres where a fresh look could be given.

'Ill-advised move': Page 13

THE HINDU  
29 JAN 2000

# Review panel within a week: Ram

HT Correspondent  
New Delhi, January 28

HTT 29/1  
TERMING THE reported conflict between President K.R. Narayanan and Prime Minister Atal Behari Vajpayee on the issue of reviewing the Constitution as "fictitious", Union Law Minister Ram Jethmalani today said that the proposed Constitution review committee will be set up "within a week or 10 days".

In an apparent bid to set the record straight following a controversy created by Mr Narayanan's address at a Republic Day function yesterday, Mr Jethmalani asserted that there was no conflict between the two dignitaries on the issue.

"My reading of the President's speech is that he has approved of the process of keeping the Constitution under review and making changes where necessary."

Talking to mediapersons at a hurriedly convened Press conference here, he declared: "The government has no intention whatsoever of tinkering with the basic features of the Constitution...The President is absolutely right that no

9-const  
review can recommend tinkering with its basic features. All that we have said is that we would appoint a committee to see why have we failed in the last 50 years. What is the harm in doing some introspection?" he asked.

Blaming the media for "unnecessarily" creating the controversy by quoting the President "out of context", Mr Jethmalani pointed out that "if the President was opposed to any amend-

## Constitution Issue

ment to the Constitution per se he would have been highly critical of what has been done to the Constitution almost 80 times during the last 50 years".

Justifying the President's comment that the Constitution could not be blamed for "our failures and shortcomings", he said he strongly felt that there were certain areas which required Constitutional amendments. In this connection, he referred to the misuse of Article 356

which needed to be "narrowly confined to cases of genuine failure of Constitutional machinery as at present it has become judicially unmanageable".

Likewise, he pointed out that the Centre-state financial relations and redressal of just grievances of SC-STs also needed a closer look. Other key areas requiring attention were electoral reforms and appointment and removal of judges, Mr Jethmalani said.

Lambasting the Congress for its stand on the issue, he wondered how those who had mutely watched the Constitution being amended more than 80 times, could suddenly raise their voice against amendments now. In 1973, the then Cong Govt had opposed the "basic feature doctrine" propounded by the Supreme Court in the Keshavanand Bharati case. "The same people are now opposed to even an introspection on whether or not the desired goals have been achieved."

He reiterated his Govt's resolve to "fully and unreservedly" accept the validity of the Keshavanand Bharati doctrine.

Cong questions legitimacy of move: P 14

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SATURDAY, JANUARY 29, 2000

## A CAUTIONARY NOTE

419-10

THE PRESIDENT, MR. K. R. Narayanan, has spoken out his mind on the contentious move of the BJP-led coalition regime for a review of the Constitution and the occasion he chose for the purpose was the special function held in the central hall of Parliament to commemorate the golden jubilee of the Indian Republic. The strong reservations he has expressed about the proposal do reflect a substantial segment of political and legal opinion which is convinced that the so-called weaknesses and shortcomings of the Constitution, cited by the pro-reviewers, are not attributable to its basic framework, but have to do with the way the Constitutional scheme is worked, and as such no major review of the type envisaged by the ruling establishment is called for. It is however open to debate whether the President should have gone public with his dissent the way he did, suggesting an open confrontation and rift between him and his own Council of Ministers, an impression that stood reinforced when viewed in the context of the Prime Minister, Mr. Atal Behari Vajpayee, putting forth a stout defence of Government's move at the same function. The President's remarks also are in sharp contrast to his own address to the joint session of Parliament setting out the Government's agenda though he was not on this occasion performing any Constitutionally-mandated function as the Head of State.

Substantively speaking, the position Mr. Narayanan has taken is basically sound and the note of caution, if not warning, he has struck against tinkering with the Constitution is well-merited. For his part, Mr. Vajpayee has held out an assurance that the "basic structure and core ideals" of the Constitution would remain unchanged and "inviolable". In real terms, this means nothing in view of the Supreme Court's unequivocal verdict defining constraints on Parliament's power to alter the "basic features", although what they are have not been spelt out in detail by the court. He has also chosen to buttress the case for 'review'

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by projecting the all-too-familiar 'stability' argument in the context of the "pressing challenge" to remove regional and social imbalances by "re-orienting the development process to benefit the poorest and the weakest" and the "impatience" of the people for a faster socio-economic development. The President had, in his national broadcast on the eve of the Republic Day, spoken of the persisting regional and social inequalities and the danger of the poor being ignored in the process of economic liberalisation, and capped it all with the warning "beware of the fury of the patient and long suffering people", and one finds an echo of these sentiments in Mr. Vajpayee's address.

While the contours of the 'review' the Vajpayee regime has in mind are yet to be delineated clearly, the context in which the idea came to be floated by the BJP and the pronouncements its spokesmen — Ministerial as well as organisational — make from time to time leave no one in doubt that the exercise is mainly intended to ensure (governmental) stability, the need for which, in the words of Mr. Vajpayee, has been felt "acutely" both at the Centre and the State levels. The changes being canvassed vigorously in this context include a guaranteed five-year tenure for the Lok Sabha and State Assemblies and a 'constructive' vote of no-confidence against an incumbent government, besides a more stringent anti-defection law. Fixity of term, apart from giving room for more pernicious practices, will deny an incumbent regime the eminently-sound democratic option of seeking a fresh mandate for a specific and legitimate cause. In any event, it would be unwise to rush into such systemic changes of dubious efficacy in response to what could well be a transitional phase of instability, for which much of the remedy needs to be sought elsewhere in the political system. The ruling coalition is in any case not in a position to push through any Constitutional amendment right now, given the composition of the Rajya Sabha.

THE HINDU

29 JAN 2000

## CPI endorses President's stand

By Our Special Correspondent

**NEW DELHI, JAN. 28.** The CPI today endorsed the President, Mr. K.R. Narayanan's strong reservations about the Vajpayee Government's decision to review the Constitution. The party said it "fully supports" the President's stand that the Constitution had stood the test of time and that the recent political instability was not a sufficient ground for reviewing it.

The party's central secretariat pointed out in a statement here that the BJP had been campaigning for a review to bring in changes that would "cripple our parliamentary system and cultural democracy and reduce accountability of the Government." "The President has put forward timely and cogent arguments against such attempts," it said.

The party pointed out that while it was not against making amendments to the Constitution it was firmly opposed to a "roving" review as it would amount to putting a question mark on the Constitution itself.

**THE HINDU**

29 JAN 2000

# Mixed reaction from T.N. leaders on Constitution amendment

HD-13  
29/1  
By Our Special Correspondent

**CHENNAI, JAN. 28.** While the DMK today chose to play down the reported difference between the BJP-led NDA Government and the President, Mr. K.R. Narayanan, over the issue of review of the Constitution, the AIADMK condemned what it called the "calculated move" of the Prime Minister, Mr. Atal Behari Vajpayee, to "turn the Constitution on its head".

The DMK president and Chief Minister, Mr. M. Karunanidhi, told reporters at the party headquarters that though newspapers had highlighted the "difference" in the views of the Prime Minister and the President at the special session of Parliament yesterday to mark the 50th anniversary of the adoption of the Constitution, a full reading of their respective speeches gave no such indication.

Mr. Karunanidhi said what both had expressed was not contrary to the spirit of the basic structure of the Constitution, nor had the head of the State and the head of the Government spoken of any change to the basic structure.

He said the DMK had been

pleading long for amendments to the Constitution to provide for, among others, more powers to the States, allowing States to fix the quantum of reservation to the Scheduled and Backward Classes, adopting all the national languages including Tamil as official language and removal of Article 356 that hangs like a Damocles sword over the State governments.

Mr. Karunanidhi said the power to dismiss State governments by invoking Article 356 could not be justified even during an emergency situation, as "atrocities" could take place at the Centre also.

In a statement, the AIADMK general secretary, Ms. Jayalalitha, appealed to the Prime Minister and his "cohorts" to pay heed to the "sound advice" of the President, Mr. K.R. Narayanan, against tampering with the Constitution.

"I strongly condemn Mr. Vajpayee's calculated move to take the country's Constitutional system within his ambience to stabilise his own political authority," she said.

Ms. Jayalalitha expressed support for the statements of the President who, she said, had minced no words in opposing the move and had stated "unequiv-

ocally" that shortcomings in the people running the system could not be obviated by Constitutional changes or provisions.

Saying it was her hunch that Mr. Vajpayee was keen on opting for some other form of government to ensure the stability of his own Government, she pointed out that the Constitution was not meant to serve the interests of any political party.

The Janata Party president, Dr. Subramanian Swamy, also condemning the BJP's attempt to "rewrite" the Constitution, said there was no need for a review as Article 368 provided amending powers to Parliament.

In a statement, he said, if a general review was necessary, then the Law Commission was there for that purpose. Many features of the basic structure of the Constitution such as secularism and adult franchise were not to the liking of the "fascist, communal RSS."

The RSS had directed the BJP to find ways to start a new Republic with a 'Hindutva' Constitution, he claimed. "This spells danger for Indian democracy," he warned.

# No differences with President: PMO, Jethmalani

SANJAY BASAK & DEEPSHIKHA GHOSH  
STATESMAN NEWS SERVICE

NEW DELHI, Jan. 28. — A day after Mr Atal Behari Vajpayee's party hit out at "those opposing the review of the Constitution," his government insisted the President and he did not differ on the issue.

The Prime Minister is likely to meet Mr KR Narayanan shortly to explain the government's point of view, it was learnt. The Cabinet will probably discuss the President's speech tomorrow.

The Prime Minister's Office and Union law minister Mr Ram Jethmalani today made identical claims saying there were "no differences of opinion between the Prime Minister and the President over the issue (of reviewing the Constitution)."

PMO sources argued Mr KR Narayanan, while speaking at a golden jubilee celebration of the Supreme Court today, "did not raise the issue." In any case, the government had "no intention to disturb the basic structure of the Constitution," and Mr Vajpayee would meet the President to clear the air soon.

Mr Jethmalani, it was learnt, was instructed by the top brass in the government to try to "dilute the issue" as well.

At a press conference today, the minister charged the "differences between the Prime Minister and the President ... was a creation of the media."

There was "no conflict" between them, he declared — "if the President was opposed to any amendment of the Constitution, he'd have been critical of what had been done to it almost 80 times in 50 years."

But he had not done so, and

"my reading of the speech is that he has approved of the process of keeping the Constitution under review and making changes where necessary."

Mr Jethmalani announced the committee to review the Constitution would be set up within "a week or 10 days."

Its brief would be to assess whether the Constitution's objectives had been achieved, and if not, whether the failure

According to the minister, the "obvious" areas needing amendment included empowerment of women through the women's reservation Bill, the power to supercede a state government under Article 356, Centre-state relationship and the mode of appointment of judges.

But the government would in no case tinker with the basic structure of the Constitution, he assured.

It "fully and unreservedly accepted the validity of the Keshavananda doctrine (propounded by the Supreme Court in 1973)": that the basic features of the Constitution will not be altered even in the event of 100 per cent unanimity in both Houses of Parliament.

**BJP adamant:** Despite the government's attempt to "bury the hatchet" for the time being, however, the BJP is likely to keep the heat on the review issue, possibly roping in some allies as well.

A BJP functionary revealed the party had taken a "conscious decision" to disagree with the government on the issue. Some top leaders — a few ministers among them — met yesterday after the President spoke his mind, and asked their spokesman, Mr M Venkaiah Naidu, to take a strong line, but without naming Mr Narayanan. Mr Naidu then said he "respected the President and the institution," but attacked those "opposed to review."

According to the functionary, the government may have its "administrative obligations," but the party was "free to air its own views." Constitutional review "is a commitment in the NDA manifesto," and the BJP would continue to press for it.

## 'PRESIDENT RIGHT'

CALCUTTA, Jan. 28. — Mr Jyoti Basu today welcomed the President's stand against reviewing the Constitution.

"We've been protesting against the BJP government's intention to change the Constitution," he said. "The President, Mr KR Narayanan, has rightly raised objections against the amendment."

In New Delhi, top policy-making bodies of the CPI and CPI-M issued nearly identical statements, saying the Constitution was immutable, UNI reported. It could be amended, not reviewed altogether. — SNS

## ■ Editorial: Muddled thinking, page 8

was attributable to something in the Constitution or to persons or institutions manning it.

Members on the review panel will be "eminent Constitutional experts," Mr Jethmalani said. "We are waiting for the consent of those who we want on the committee". A former President and former Chief Justice are among those tipped to head the proposed 12-member panel.

THE STATESMAN

29 JAN 2000

# Jethmalani defends move to review Constitution

STATESMAN NEWS SERVICE

NEW DELHI, Jan. 28. — The Union law minister, Mr Ram Jethmalani, today defended his government's inclination for a review of the Constitution, citing instances of a "fit of absent-mindedness on the part of the Constitution makers".

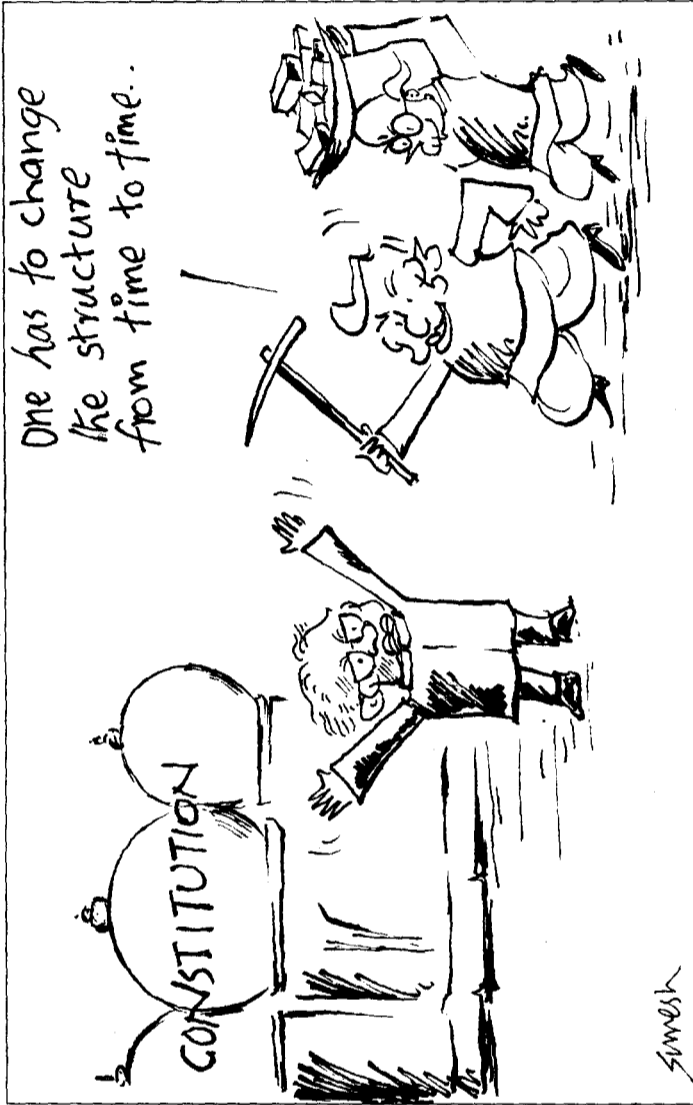
But he did not agree that there is a need to drop the expressions 'socialism' and 'secularism' from the supreme law of the land. Instead, they must be defined correctly in the contemporary scheme of things.

"Nobody wants 'secularism' to be dropped. It has to be understood in the true sense," the minister said, proceeding to give his interpretation. "True secularism is when your religion doesn't stand in the way of your political and economic progress."

It also means, he said, that religious dogma shall be subordinated to the rule of reason, although "most secularists would not agree to this part".

Mr Jethmalani said some doctrines of religion are inconsistent with the interests of a republic, and these need to be dropped. He cited the instance of the "good book" — an obvious reference to Muslim scriptures — "which said 'go ahead and multiply'".

"But the Republic needs birth control!" the minister said. The country needs uniform justice, not a uniform civil code. "Even the Constitution makers introduced it in a fit of absent-



mindedness."

As for "socialism", Mr Jethmalani said every government should include the term, but in a different context. There are three occasions which warrant a review — the discovery of a lacuna in dealing with unforeseen situations, any interpretation or misinterpretation of its provisions producing public mischief, and the abandonment by people of a philosophy within the Constitution.

On the form of government he agreed with the President, Mr KR Narayanan, over the German model, but argued

that an indissoluble Parliament is not the only means to achieve political stability.

Asked to comment on the President delaying the file on the appointment of judges, Mr Jethmalani said: "He has the right not to accept the Cabinet's decision."

The President cannot be a complete rubber stamp, although Article 74 has already made him more so." He, however, added that there is no need to review Article 74, as the President is a figurehead like the British monarch.

**CPI backs President:** The

CPI supports the President who has cautioned against changing the Constitution in the name of reviewing it. The Samata Party backs the move to review the Constitution.

The CPI has expressed fears that the BJP-led government might try to cripple the parliamentary system by making changes in the Constitution.

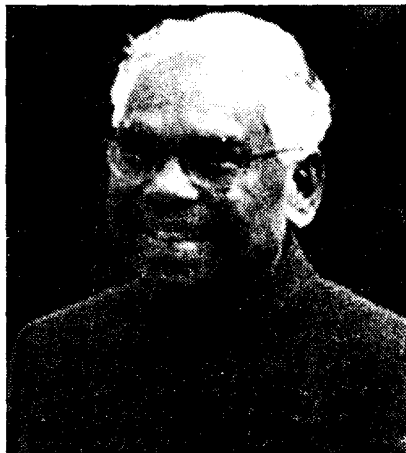
The Samata, however, said the review was very much in the NDA's common agenda and the government had already clarified there would be no changes in the Constitution's basic structure.

# It needed to be said

Conservative

51-9  
29/1

**FALI S NARIMAN**  
makes bold to  
endorse the  
President's  
message for fear  
of parliamentary  
democracy going  
off the rails



President Narayanan: bold and clear

**A** STIRRING speech was heard in the Central Hall of Parliament on 27 January, when members celebrated the 50th anniversary of India's Constitution. The message of President K.R. Narayanan was bold and clear.

We must not discard the parliamentary system of government in favour of any other system: the basic philosophy behind the Constitution, its "fundamental socio-economic soul" must remain sacrosanct. Let changes be brought about as and when necessary, to suit the felt needs of the time after debate and a broad consensus, but there is no need for revision of the Constitution, much less for writing a new one.

To endorse the words of India's First Citizen would not only be repetitive, but plainly pretentious. But I make bold to endorse them, because I believe that if we ignore them there is grave danger of our prevailing system of a liberal parliamentary democracy (enshrined in India's Constitution) going off the rails, as has been the case in neighbouring countries. And then it will be too late.

The myth that needs to be exploded is the suggestion (frequently heard in the corridors of power) that the form of governance prescribed in our Constitution is a British imposition. It is not.

From the earliest stages of discussion on the form of self-government, Indian opinion was overwhelmingly in favour of adopting a system by which the executive was responsible to an elected legislature. The first non-official attempt at drafting a Constitution of India was made way back in 1895 under the inspiration of Lokmanya Tilak. It was known as the Constitution of India Bill, 1895.

In its first chapter, it envisaged a Parliament of India and an electoral system in which every citizen had one vote. Thirty years later came another attempt at Constitution making. Under the chairmanship of Sir Tej Bahadur Sapru, India's political leaders pre-

pared a bill providing for self-government. It was sent to England. The Labour Party, which was then in power in the UK, was responsive to Indian aspirations, and the Commonwealth of India Bill, 1924 was introduced which also envisaged a parliamentary system of government.

The bill passed its first reading in the House of Commons and was even ordered to be printed! But soon after, the Labour Party lost its majority in the Commons — and Indian aspirations got a setback by nearly 20 years.

Traditionally, therefore, our goal had always been for a parliamentary system of government. The Westminster model was not imposed on us.

As for the remarks of the Head of State, they needed to be said.

The Bar Association of India had organised a four-day seminar in New Delhi (in the third week of December 1999) ambitiously calling it the "Constitution Assembly" and not "Constituent Assembly". We invited the views of all major political parties. Representatives of a large number of them came and expressed their views to us. At the end of the four-day session (after hearing more than 40 prominent speakers) we were only able to resolve (unanimously) as follows:

"That the Constitution of India has not failed us — but we the People of India have failed the Constitution"

In his golden jubilee speech in the Central Hall of Parliament, the Rashtrapati said:

"Today when there is so much talk about revising the Constitution or even writing a new Constitution, we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution."

This only goes to show that at rare moments, humbler mortals also anticipate the distilled wisdom of the good and the great!

*(The author is an eminent jurist.)*



## CONSTITUTIONALLY WEAK

It sometimes so happens that two well-meaning contenders aggravate the very ill they wish to prevent by making their disagreement public. That is exactly what the president and the prime minister of India seem to be doing. It does not become either Mr K.R. Narayanan or Mr Atal Behari Vajpayee to rebut each other openly over the National Democratic Alliance government's proposal for a review of the Indian Constitution. If, as their arguments suggest, instability is to be a crucial determinant in the discussion of the Constitution, then nothing can cause greater instability among the people than the sight of their two constitutional heads arguing before them.

The greater responsibility for the embarrassing encounter, sadly enough, lies with the president. Mr Narayanan thundered against the way the present government was carrying out economic reforms in a speech as formal as the Republic Day address. As if this was not bad enough, he read out a prepared text during a special function in Parliament celebrating 50

years of the republic, questioning the very basis of the government's proposal for review. Since both he and the prime minister read from ready texts, it can be presumed they had come prepared for battle. While it can be accepted that Mr Vajpayee needed to put his government's case for review at the meeting, it is difficult to see why Mr Narayanan should go out of his way to demolish the case even before the hows and wherefores of the matter had been worked out. Had it been just this one occasion, it could have been considered an exception. Unfortunately, the frostiness between Rashtrapati Bhavan and the Bharatiya Janata party led government has a fairly eventful history. The Vajpayee government has not been quite as pure as driven snow in the matter. Only the president has been unconventional enough to display his personal — or ideological and therefore political — inclinations. In his interview to a magazine editor, for example, or in the

chance he gave Ms Sonia Gandhi to form the government after the fall of the second BJP coalition. As the chief upholder of the Constitution, the president needs to remember that anything that smacks of bias diminishes the office holder's stature. The speech against a possible Constitution review is untimely, therefore undignified.

The situation is complicated enough. No parameters for the review have been mentioned. It is not clear whether the areas of exploration include the presidential versus the parliamentary form of government, the question of a fixed term for the Lok Sabha and so on. The vague ideas

floating around have raised bogeys of the BJP's "hidden agenda" regarding Article 370, the common civil code and Ram Janmabhoomi. Neither is it clear what the status of the review committee would be from the point of view of law and why it should have a declared supporter of the presidential style of government at its head. Few of the major "reviews" have borne positive fruit. Only the 1967 review concluded

**Whatever may be the purpose behind the NDA government's proposal for a review of the Constitution, the president of India should not risk diminishing his stature by arguing against it**

that Parliament could amend the Constitution by way of addition, variation or repeal. The Eighties review produced the Sarkaria committee recommendations on Centre-state relations, most of which have been consistently ignored. But the Constitution has been amended 79 times, which is not too strange, given that a democracy is by nature vibrant and that India is a country full of difference and movement.

The president has a point when he emphasizes accountability as opposed to the "stability" Mr Vajpayee seems to be insisting on. But Mr Narayanan seems to assume that disaster is inevitable unless he speaks up. Yet a democracy represents the people. There is no way the Constitution can be changed without Parliament's say so. It does not matter whether or not the BJP is trying to ensure its stint in power. The president may rest assured it cannot do anything with the Constitution if the people do not want it.

THE TELEGRAPH

29 JAN 2000

# Constitutional review: An ill-timed wrangle?

**T**HE RENEWAL of the debate on whether or not to have a systemic change was triggered off this week with the President and the Prime Minister, the two highest Constitutional authorities, differing sharply on the question of reviewing the Constitution.

While the President, Mr K. R. Narayanan, maintained that the point to consider was whether the Constitution had failed us or we have failed the Constitution, the Prime Minister, Mr Atal Behari Vajpayee, said that India was faced with a new situation. There was need for stability both at the Centre and in the states.

Mr Vajpayee underlined the need for a Commission to review the Constitution and gave an assurance that the basic structure of the Constitution would remain inviolate. On the other hand, the President felt that our recent experience of instability in the Government was perhaps not sufficient reason to discard the Parliamentary system in favour of the Presidential or any other system.

The controversy over the systemic change has once again arisen even though a lot of other things in the country should be higher up on the agenda of those at the helms of affairs. Clearly ill-timed, the debate has taken the political circles by surprise especially because the BJP led National Democratic Alliance (NDA) does not have the requisite majority to make effective any Constitutional amendment without the help of the Congress which is the main Opposition party.

Mr Vajpayee's views on the review of the Constitution have been endorsed by the Union Home Minister, Mr L K Advani, who has gone on record to state that the NDA Government has the mandate to do so. He has argued that the Constitutional review was a part of the NDA's national agenda. But so were so many other things. Why is the Government not showing the same urgency for implementation of other promises made by the coalition partners prior to the elections?

The NDA's national agenda had dwelt at length on the need to provide clean drinking water to all citizens, provide better medical and educational facilities, augment power supply, give much required boost to the farming sector and generate employment for crores of unemployed youth. The NDA's agenda had further spoken about the need to end poverty in the

country and provide better opportunities to the oppressed and economically and socially backwards in the country. Don't these issues deserve overriding priority over the need to amend the existing Constitution?

The Government's sudden interest on the issue of Constitution review has also triggered off speculations whether the BJP and its partners were using it as a ploy to divert attention from various issues including differences that have come to surface between coalition associates in the wake of Assembly elections in Bihar, Orissa and Haryana. Or was it an attempt by the BJP to fulfil their earlier promise of abrogation of Article 370 of the Constitution which they had abandoned on the eve of the last elections?

Both Mr Vajpayee

India today is facing threat on its borders from Pakistan. There is a constant threat perception from Islamic fundamentalists wanting to begin a Jihad (Holy War) in this country. Both Kargil and Kandahar have demonstrated beyond any doubt the level of our unpreparedness in respect of national security notwithstanding claims to the contrary by the Government. More than anything else, there is a need to step up our vigil to decimate all kinds of

threats to our sovereignty. The country is always above any Government.

The existing system has a lot of inadequacies which have at times been overcome by suitably amending the Constitution. As the President in his address had pointed out, the Drafting Committee chose the Parliamentary demo-

a result of the inconsistent behaviour of some coalition partners, the governments have fallen and the life of the Lok Sabha has been cut short necessitating a fresh round of elections.

The BJP and many of its coalition partners do realise the potential threat to the Government from within. Therefore, driven by vested interests, they would want a full five year term which may be possible only if by Constitutional amendment the Lok Sabha could have a fixed tenure. Otherwise, under the present political circumstances where sharp political differences can always arise, any coalition Government can collapse any time.

Power is the only binding force for various constituents and whenever interests shift and shareholding in the power structure starts getting diluted, a genuine threat looms large over the continuity of the Government. In any case, a Government like the present one, which derives its strength from a combination of more than 15 parties or groups, can be most vulnerable at any given time.

Emotive issues or issues which tend to hide the vulnerable side of the Government, come handy to keep the different constituents together. However, it does not mean that the ruling coalition which on its own cannot amend the Constitution should start talking about the review of the Constitution without taking into confidence the other constituents of the Parliament including its main Opposition party - the Congress.

Both Mr Vajpayee and Mr Advani are aware of the fact that while the NDA was able to increase its tally in the last Lok Sabha polls, the strength of the BJP virtually remained static.

This was despite the fact that the elections were contested on a national agenda and for the first time the BJP put its own agenda like the construction of the Ram Temple, abrogation of Article 370 and a Uniform Civil Code on the backburner.

However, under persistent pressure from the Sangh Parivar, the BJP has to create an escape route to get these issues back on its main line agenda in not too distant a future.

If the Government is serious about a Constitutional review, it should immediately start a dialogue with the Opposition parties to ascertain their views.

There can be no Constitutional review without people's participation. Any exercise therefore is bound to boomerang.

## BETWEEN US



PANKAJ VOHRA

The Government's sudden interest on the issue of Constitution review has also triggered off speculations whether the BJP and its partners were using it as a ploy to divert attention from various issues including differences that have come to surface between coalition associates in the wake of Assembly elections in Bihar, Orissa and Haryana.

and Mr Advani have in the past expressed views in favour of the Presidential form of Government on different occasions. But each time their opinion on the subject has got overshadowed by the ground realities in both Houses of Parliament where the BJP has never had the adequate numbers nor the will to bring about any serious Constitutional changes.

Therefore, Mr Vajpayee and Mr Advani's views apart from becoming subjects for a debate have really never evoked any serious response from other political outfits. The Presidential system debate also was incidentally initiated by Mr Vasant Sathe who was a Minister in the Indira Gandhi Government and not by the two BJP leaders. The BJP's interest in the amendment of the Constitution has had a very limited target despite the big noise made by its front-ranking leaders.

cratic system because they preferred more responsibility to stability which could slip into authoritarian exercise of power. He also distanced himself from any move to have a fixed term for Parliament.

In this context, the renewal of the debate is also being interpreted in political circles as an attempt by the BJP and its coalition partners to somehow stay in power by incorporating a fixed tenure of Parliament for five years.

The NDA partners, many of whom have limited areas of influence, do all the times suffer from a feeling of insecurity keeping in view the coalition experience of non-Congress governments in the past. The life of these governments, starting from 1977, has been considerably reduced on account of one section or the other withdrawing support or changing alliances midstream. As

# Presidential govt, economic reforms on review agenda

KEITH FLORY & SANJAY BASAK  
STATESMAN NEWS SERVICE

NEW DELHI, Jan. 29. — The leader of the 12-member Constitutional review panel is yet to be decided. Though senior BJP leaders favour the former President, Mr R Venkataraman, the law ministry is reportedly keen on the former Chief Justice, Mr Justice MN Venkatachalaiah.

Mr Venkataraman's having held a high office, and his having been a Congressman throughout his political life are factors in his favour, according to BJP sources, who say that the former President will give the review panel a neutral look.

"Differences" between the party and government were apparent in other areas, too.

While the Cabinet today considered the Constitutional review controversy and asked the Prime Minister to act "accordingly" — this was disclosed by a Cabinet member — the BJP maintained its line of strongly defending a Constitutional review and criticising the Opposition for questioning its motives.

The review of the Constitution had been an important and major issue for the Sangh Parivar. The RSS general secretary, Mr KS Sudarshan, the home minister, Mr LK Advani, and the BJP general secretary, Mr KN Govindacharya, had been con-

stantly stressing on the need to review the Constitution.

On the core issue — the review panel's agenda — though, the difference between the party and government may be less.

It is learnt that the law ministry's Cabinet note on Constitutional review, which has been circulated, is based on a "background paper" drafted by a committee with a "saffron complexion," as a ministry official put it. Its members were Prof Mool Chand Sharma, Mr RKP Shankardass, Ms Seita Vaidialingman and Prof Ghanshyam Singh.

The background paper has an extensive agenda. It lists as subjects for a Constitutional review:

- Fundamental Rights, Directive Principles and Fundamental Duties.

- Zones of Silence, Vagueness & Uncertainties (i.e., Articles 73, 74, 102, 191, 163, 164, 167, 356; choosing the Prime Minister, assessing who enjoys the confidence, what methods and mechanisms are to be followed for invitation to form the government, is it the single largest group or party, that too whether pre-poll or post-poll; how to assess who enjoys majority. Defection: the role of the Speaker, matters relating to the 10th Schedule; how to determine whether the government of a state enjoys the majority; role of Governors).

- Abuse, misuse of power and

Constitutional accountability (i.e. who is a public servant, corruption in high places and abuse of power, Lok Pal and Lok Ayukta, Parliamentary committees).

- Stable, effective and clean government: electoral reforms, representation in legislative bodies; delimitation of committees; switch to Presidential form of government, expanding/limiting powers of the President.

- Speedy, effective and inexpensive justice (i.e. selection and appointment to the Judiciary, the judicial commission, judicial activism, judicial accountability, legal aid as a Fundamental Right).

- Multiculturalism, pluralism, and protection of minorities (i.e. Uniform Civil Code, Minorities Commission, special schemes, creation of new states on cultural basis etc., practice of Sati).

- Centre-state relations, interstate disputes and states reorganisation.

- Reservation and affirmative action.

- Economic reforms.

- Amendment and Emergency provisions.

- Role of bureaucracy and need for neutrality.

The introductory remarks of the background paper notes that the Constitution had been a model for developing countries and that its spirit still

■ See REVIEW: page 10

## REVIEW:

(Continued from page 1)

held good. When advocating a review, among the reasons it declared that "the first casualty during these 50 years has been the general erosion of values in public life."

The integrity of political leaders was questioned, and the backgrounder spoke of "increasing vulnerability" of Parliament, the Judiciary, the media, and went on to point to the huge of exercise of holding frequent elections. The politicisation of the bureaucracy, the nexus between business, crime, and legislators were also mentioned.

Critics of the backgrounder allege that a scrutiny of the areas it suggested needed remedy would reveal that while they may not have been printed in the National Democratic Alliance's election manifesto, they would certainly find prominence in the BJPs "hidden agenda."

THE STATESMAN  
30 JAN 2000

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# BJP defends move to review Constitution

By Our Special Correspondent

**NEW DELHI, JAN. 29.** Insufficient decentralisation down to the grass-roots is one of the reasons extended by the Bharatiya Janata Party for a review of the Constitution. The aim would be to increase stability at the Centre and the States, and to devolve more powers to the States, the municipal bodies and the panchayati raj institutions.

Mr. M. Venkaiah Naidu, BJP general secretary and spokesperson, today defended the Government's announcement of its intention to set up a commission to review the Constitution. "The fruits of development have not reached a majority of our countrymen" even after 53 years of Independence, Mr. Naidu said, But party leaders were not able to point to any specific provision in the Constitution that has prevented this from happening.

Party leaders are one in saying that the review was meant to "strengthen the Constitution" and make it an "effective instrument for faster and equitable socio-economic development." But

when asked specifically to identify any Constitutional provision which had in fact impeded development, all they said was that instability with frequent elections had come in the way of a faster rate of growth.

A senior party leader, who was at one time involved in studying the Constitution and preparing a review report, pointed to the directive principles, which have remained enshrined in the Constitution but have not been implemented. The intention to bring in a uniform civil code, a part of the directive principles, was mentioned by him as an example even as it was quickly added that the review proposed by the Government was not intended to touch the "contentious issues" raised earlier by the BJP but which were not part of the National Agenda for Governance adopted by the Vajpayee-led Government. Mr. Naidu also used the occasion to point out that the need for a uniform civil code was not "our hidden agenda" but a part of the directive principles of the Constitution.

Mr. Naidu said that if "we" have failed the Constitution, it could only mean that the Congress(I), which ruled the country for the longest time, has failed and has been unable to translate the "noble ideals" in the preamble to the Constitution into a reality for the common man.

The BJP turned down the idea of specific amendments to the Constitution to deal with any problem saying there could be no amendment without a review.

It was pointed out that the Prime Minister had already assured Parliament that the Government did not intend tinkering with the basic structure.

The party felt there should not be all this noisy opposition to the idea, for the Government was only seeking a study and suggestions for change through a review, which in turn could be widely debated inside and outside Parliament. If any change was made, it would only be after an informed debate and by voting in Parliament. "We cannot mesmerise Parliament into voting what the parties do not want," he said.

THE HINDU

30 JAN 2000

# Reviewing the Constitution

By K. K. Katyal

48-12 31/1

*There is a feeling that constitutional changes were favoured for removing obstacles to implementing the hidden agenda of the rulers. However, there is no cause for alarm — changes will be made only if there is a national consensus.*

IT WOULD be a pity if the debate on the Government's move for a review of the Constitution degenerates into a controversy over "differences" between the President, Mr. K. R. Narayanan, and the Prime Minister, Mr. Atal Behari Vajpayee, pushing into the background the consideration of substantive issues. Yet that is precisely what happened after the January 27 function in Parliament House to commemorate the 50th anniversary of the Constitution. There was, no doubt, a divergence in their perceptions, with the President opposing any tinkering with the Constitution and the Prime Minister defending the move for a review, invoking the need for stability at the Centre and in the States. There is, however, no warrant for the assumption of pre-planning on their part — the President, it appears, spoke in keeping with his role in offering advice to the Government, without questioning the authority vested in it by the Constitution under the parliamentary dispensation. There is nothing to suggest that Mr. Narayanan would thwart the Government's plan to set up a commission to review the Constitution.

The President-Prime Minister equation has been a favourite subject of discussion in the corridors of power and among political commentators, especially when there are signs of strains or even when the two take differing positions within the parameters laid down by the Constitution. The evolution of this relationship was far from smooth, even between the first two holders of the top positions, Rajendra Prasad and Jawaharlal Nehru. They were comrades in the freedom struggle and worked closely at the time of the framing of the Constitution and yet, when it came to delineating their powers and interpretation of the relevant constitutional provisions, they often clashed. Subsequently, we witnessed two extremes in the Rashtrapati Bhavan. One, Fakhurudin Ali Ahmed, in June 1975, signed the proclamation of Emergency, papers for which were taken to him after midnight, before it was considered by the Cabinet and he acquired the dubious title of "rubber-stamp President". Two, Giani Zail Singh, in the Eighties, made Rajiv Gandhi jittery, so much so that the latter, fearing dismissal, did not allow Parliament to be prorogued, so as to be able to get a vote of confidence in the event of any drastic action by the President.

It is, perhaps, a hangover of the past that routine, innocuous cases of divergence have of late been magnified and projected as confrontation at the top. Last year, when Mr. Narayanan required Mr. Vajpayee, then head of the first BJP-led Government, to seek the confidence of the Lok Sabha, many in the sangh parivar and others saw it as a case of animus against the Prime Minister. Earlier, the President's action sending back to the Cabinet its recommendation for the dismissal of the Bihar Government became a clash of the high-ups. But by now, it should be possible to see the expressions of opinion or proffering of advice by the President in the correct perspective.

As for the stand of the political parties on changing the Constitution, there is an ironic reversal of roles. Some 24 years ago, it was the Congress Government, then headed by Indira Gandhi, which was instrumental in making drastic changes. It happened at a time when free debate was not possible because the Emergency was in force and the ruling party rushed with its plans — with indecent haste. Apart from other things, the term of the Lok Sabha was extended from five to six years and the preamble changed with the insertion of the words "socialist" and "secular". There was a talk of setting up a new constituent assembly but the idea did not find

favour. The Law Minister, H. R. Gokhale, explained that this demand had been made because of the feeling that a few amendments would not do and that the whole Constitution needed to be looked into afresh.

The Opposition, then including the Jana Sangh (previous incarnation of the BJP), socialists and some others, who now constitute the ruling alliance, put up fierce resistance but it was of no avail.

But the non-Congress parties lost no time undoing the changes and restoring the checks and balances when they assumed power a year later. They swore by the sanctity of the Constitution with the same gusto with which the Congress had justified its decision for constitutional changes.

What are the changes contemplated now? Neither the Government nor the ruling National Democratic Alliance has at any stage spelt out the ideas in detail. Nor, for that matter, has the BJP provided a comprehensive set of proposals, even though the RSS is stated to be the main motivating force for this course of action. The NDA's election manifesto contained a two-line reference to its plan to "appoint a commission to review the Constitution not only in the light of experiences and developments since 1996 but, indeed, of the entire post-independence period, and to make suitable recommendations." The President's address to the first session of Parliament on October 25 last year reiterated this resolve — to meet "the challenges of the next century". In both the cases, two ideas were specifically mentioned — to have a fixed (five-year) term for the Lok Sabha and State Assemblies and to replace the present system of no-confidence motion with a "constructive vote of no-confidence".

If the purpose of the ruling combine or the Government were confined to making these two (or such) changes, would it be necessary to moot the idea of setting up a commission for a review of the Constitution? Obviously, it has in mind major, substantive changes which could not be effected through the amendment process. The first BJP-led Government, too, envisaged a deep, fresh look at the Constitution. This was how the point was conveyed

through the President's address to Parliament on March 25, 1998: "Fifty years after independence, the time has come to rejuvenate our institutions so that they are strong enough to meet the challenges of the future. The Government proposes to do so as well as appoint a commission to review the Constitution and make recommendations so that anomalous experiences of the past are not repeated in the future."

This was more than a year before the first Government came to grief because of its failure to secure the confidence of the House. As such the review plan is not to be seen in the limited context of the developments which led to its fall but as part of a bigger objective.

The "constructive vote of no-confidence" is a German innovation, inscribed in that country's Basic Law. If adopted here, the Lok Sabha may express its lack of confidence in the incumbent Prime Minister by electing his successor with the majority of its members. It seeks to reduce political instability, by requiring the House not to be guided by purely negative or cavalier moves. A change to this effect does not necessitate a "review" of the Constitution or its amendment, not even a simple legislative measure. It could be brought about by revising the rules of procedure of the Lok Sabha as was done when the concept of "confidence motion" was introduced, subjecting the Government or the Prime Minister to a test of strength.

Suspicious about the motives of the present rulers arise because of the utterances by some of them when they were out of office. At one stage, Mr. Vajpayee himself was in favour of the presidential form. His assurance now that the basic structure of the Constitution was not intended to be changed should rule out the Government's support for such a drastic proposal. But could the statements and proposals which emanated from the RSS and other members of the sangh parivar in the past be ignored? There is a feeling that the constitutional changes were favoured for removing obstacles to implementing the hidden agenda. However, there is no cause for alarm — changes will be possible only if there is a national consensus.

THE HINDU  
31 JAN 2000