HINDUSTAN TIMES

Centre retreats

IN KEEPING with the habit of rolling back earlier decisions, which used to apply mainly to economic measures, the Centre has now followed the same 'one step forward, two steps back' routine in the North-east. But while its latest move to restore status quo ante with regard to the Nagaland ceasefire may restore calm in the region, it has undoubtedly left a severe dent on its reputation. As in the past, what such retreats underline is the ad hoc manner in which the decisions are first taken. One can understand — though not approve of — the petroleum price hikes being reversed under political pressure. But when a decision concerns such a sensitive area as the North-east, which has been home to many insurgencies, it is unpardonable for a government not to do its homework before taking a fateful step. Yet, this is exactly what happened with regard to the extension of the Nagaland ceasefire beyond the state's territorial limits.

For some strange reason, adequate consultations were not carried out with the states other than Nagaland which were to be affected by the move. Inevitably, therefore, all of them were up in arms, complaining that their approval was either not secured or not obtained. Given the volatile conditions which prevail in these areas, in addition to a vague sense of alienation which permeates the region, the outbreak of violence was not unexpected, even if its intensity in Manipur took everyone by surprise. Manipur, of course, may have had a special reason for reacting so violently because its political system had been undermined by the opportunistic antics of its politicians. Besides, it presumed that it might suffer more than Assam and Arunachal Pradesh as a result of the demand for a 'greater' Nagaland which followed the extension of the ceasefire.

In this context, the Naga leadership showed a curious indifference to the sensitivities of the other states when they raised this highly controversial topic. Now that it has been scuttled, there may be some disgruntlement among the Nagas even as the other states are pleased. Reports of demonstrations in Naga-inhabited areas of Manipur show that the issue is far from being settled. The lesson to be drawn from the fiasco is the need for a much closer interaction between the Centre and the north-eastern states, especially because neither the BJP nor any of the major constituents of the National Democratic Alliance like the DMK and Telugu Desam has a base in the region to appreciate the local sentiments. As such, the feedback from there is either inadequate or flawed, thereby leaving scope for rushing in where angels fear to tread.

MONDAY, JULY 30, 2001

AN AVOIDABLE STEP

THE DECISION BY the Union Government, at long last, to restrict the ceasefire agreement with the NSCN(I-M) to the State of Nagaland alone (and not to all the Naga-inhabited areas in the North-Eastern States as announced earlier) is indeed a welcome step. The Centre had underestimated the gravity of the situation, causing a violent agitation in Manipur for over a month. The immediate fallout of the June 14 announcement — extending the ceasefire agreement with the NSCN(I-M) to the Naga-inhabited districts in Manipur and Assam — was a violent backlash emerging from the fear that the agreement could lead to legitimising the demand for a "greater Nagaland." Clearly, the Union Home Ministry and its interlocutor, Mr. Padmanabiah, who struck the deal with the NSCN leaders (Mr. Thiuangaleng Muivah and Mr. Issac Chisi Swu) did not properly assess the implications of including the three words "without territorial limits" in the agreement. It is simply baffling that such a casual approach was adopted in dealing with an organisation that is wedded to secessionism as a primary objective.

The developments after the June 14 announcement, particularly the violence that gripped Imphal leading to the torching of several buildings there, including the Assembly and the Secretariat, was indeed a pointer to the apprehension among the people of Manipur. They saw in the idea of extending the ceasefire "without territorial limits" the scope for the NSCN to further its demand for a "greater Nagaland." They were not, in any way, opposing the ceasefire as such (as long as it was restricted to Nagaland). The Union Government, indeed, was left with no option other than to re-negotiate with the NSCN(I-M) leaders. That Mr. Muivah and Mr. Issac, have agreed to having the ceasefire only within Nagaland is indeed an indication that the rebel outfit is keen on a negotiated settlement. And this is the message that must be taken seriously by those in the Union Home Ministry in the course of further talks with the outfit. Apart from this, it is now imperative for Mr. Vajpayee to spell out in categorical terms that any agreement will have to be within the framework of the Constitution and that the NSCN(I-M) will have to give up its demand for a "greater Nagaland" outside India. Any reticence by the NSCN(I-M) on this count should not be permitted. For, letting the outfit persist with the demand could only serve as an impetus to the various other armed outfits in the region to adopt such postures. It is necessary that the terms of the agreement and the framework for negotiations are made clear at this stage.

Be that as it may, it is a fact that the basis of all the trouble in Nagaland (and the whole of the North-Eastern region for that matter) is the all round failure of the political system (both at the Centre and in those States) in addressing the developmental needs of the people. It is not as though there has been a shortage of funds. On the contrary, a lot of money meant for the region's economic development has either not reached the people or has been spent without adequate planning. There has also been the problem of political parties and outfits in the region allowing themselves to be reduced to appendages of the party ruling at the Centre. It is important that these issues are addressed by all those who matter in New Delhi's political establishment even while the officials in the Union Home Ministry engage themselves in the negotiations with the NSCN(I-M) for a lasting solution. Now is the time to seize the opportunity.

Centre withdraws ceasefire extension

HT Correspondent
New Delhi, July 27

BUCKLING UNDER pressure from three North-East States, the Centre today restored status quo ante as on June 14 of its ceasefire agreement with the NSCN(I-M).

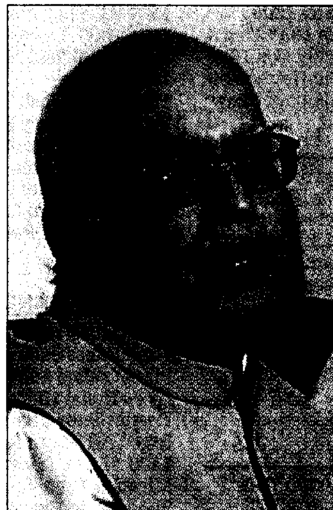
Reading out a brief statement, Union Home Minister LK Advani said after an hour-and-a-half long meeting between Prime Minister AB Vajpayee and Chief Ministers of all North-East States that the "three words, 'without territorial limits', contained in the June 14 Centre-NSCN(I-M) agreement in Bangkok stands deleted and status quo ante restored".

According to Advani, the NSCN(I-M) leadership is agreeable to this change which was affected following three days of discussions between the Centre's representative for the Naga talks, K Padmanabhaiah, and Thuingaleng Muivah, general-secretary of the insurgent outfit, in Amsterdam.

Today's meeting was attended by the Chief Ministers of Assam, Nagaland, Arunachal Pradesh, Mizoram, Tripura, Meghalaya and the Governor of Manipur, which continues to be under President's Rule. On the Government's side, beside Vajpayee and Advani, Minister of State for Home I D Swami, Union Home Secretary Kamal Pande and Intelligence Bureau Director K P Singh were present.

The Chief Ministers of Assam and Arunachal Pradesh and peoples' representatives of Manipur are understood to have expressed happiness at the Centre's decision to restore status quo ante. It means that officially the ceasefire, which has been extended by a year till July 31, 2002, will be applicable in Nagaland and "informally" in Assam, Manipur and Arunachal Pradesh.

The Vajpayee Government has achieved two objectives by impressing upon the NSCN(I-M) for a mutually-agreed amendment to the Bangkok agreement. First, the territorial integrity of Assam, Manipur and Arunachal Pradesh has been protected. Secondly, the Centre and the Naga insurgent outfit will continue to observe the revised ground rules of the ceasefire not only in Nagaland, but "informally" in the three States as well.



LK ADVANI

But North-East observers feel that its latest decision "takes the Centre back to square one", though at the expense of violence in Manipur and Assam. "The Amsterdam conclave between Padmanabhaiah and Muivah was avoidable if the Centre had properly consulted the State Government's and peoples' representatives," an analyst remarked.

Home Ministry sources said that now that the thorny expression, "without territorial limits", has been deleted from the June 14 agreement, the Centre and the NSCN(I-M) can start the much-awaited political dialogue to resolve the Naga issue. "It will be a long-drawn-out process, but there has to be a beginning," an official said.

Earlier in the day, Nagaland Chief Minister S C Jamir told reporters that he was in favour of an eminent political personality as the Centre's interlocutor for the Naga peace talks.

In a veiled attack against Padmanabhaiah and the manner in which he has so far conducted the talks, Jamir said: "An eminent personality who understands the complexity of the North-East should be appointed to discuss the issues".

Earlier reports on Page 6

U.P. to provide quota within quota for the most backward

By J. P. Shukla

LUCKNOW, JULY 28. Uttar Pradesh appears all set to write a new chapter on caste loyalties on the eve of the next Assembly elections. While the war of wits hots up among various players to turn the caste combinations into their favour, no party is sure whether or not it would be advantageous when the fight comes to a close.

The first move to disturb traditional caste loyalties in the State was taken by the Chief Minister, Mr. Rajnath Singh, who announced the setting up of a Committee for Social Justice, with the objective of providing special reservation for the most backward from the existing quota of reservation. While the provision of reservation has been in force all these years, it was not beneficial to every caste among Dalits and backwards to the same extent.

So, the BJP felt the phenomenon could be profitably exploited to woo the deprived sections. If things moved as BJP wanted, the losers would be both the Samajwadi Party and the Bahujan Samaj Party, as they have been exclusive claimants to support of backwards and Dalits respectively.

The first reaction to the Chief Minister's move was on expected lines, the Samajwadi Party and the Bahujan Samaj Party openly threatening that the principle of reservation within reservation would result in caste wars at every village. While the SP leaders said this was an attempt by the BJP to divide the society for its selfish interests, the BSP leader, Ms. Mayawati, claimed the main reason for deprival of benefits to some castes among Dalits was that they had supported Manuwadi forces instead of following the path shown by Babasaheb Bhimrao Ambedker.

On second thoughts, however, both the parties felt that over reaction to the formula being enunciated by Mr. Rajnath Singh could be counter productive. So, while the Samajwadi Party later decided to keep quiet on the Government move, the Bahujan Samajwadi Party performed a volte face. Ms. Mayawati conceded that it would not be out of place to accept the formula of quota within quota, provided the special reservation was granted in proportion to the population of deprived sections among most backwards and most Dalits. She even gave her own figures of percentage of these sections in the State's population.

The BJP also felt that it was not all gains for it as its leaders belonging to influential backward castes sounded a warning that it would not be prudent to create a hype on the formula. "Talking too much in favour of deprived sections would alienate those who had so far benefited from the Government's reservation policy. While the gains accruing from the new formula would only be minimal, the losses could not be ignored," cautioned the BJP leaders belonging to Kurmi and Yadav castes, which had been major beneficiaries from the Government's reservation policy.

The murder of the Samajwadi Party MP, Phoolan Devi, coming in the backdrop of this conflict over caste loyalties, was found as an instrument to escalate the situation. The Samajwadi Party went overboard to wage a war against both the UP and Central Governments charging that the murder of Phoolan Devi was the result of a political conspiracy hatched by the BJP leaders. The SP leaders apparently failed to weigh all the consequences of their overreaction to the murder and were forced to readjust their responses subsequently.

Instead of being defensive, the BJP launched a counter attack on the SP for playing politics over the body of Phoolan Devi. They were quick to disclose that Phoolan Devi had supported the formula of quota within quota as propounded by Mr. Rajnath Singh. The caste of Nishads, to which Phoolan Devi belonged, has been one among the most backward castes likely to benefit from the proposed reservation formula. That was the reason why the assassinated MP had wanted to congratulate the Chief Minister, said the Minister of State for Home, Mr. Rangnath Mishra.

As the conflict escalates, both the parties seem to be in search of more scoring points unmindful of their side effects on the social psyche of the State.

THE HINDU

A DEFENSIVE EXERCISE

THE LATEST SET of consultation papers released by the National Commission to Review the Working of the Constitution (NCRWC), like those brought out last January and May, are palpably wanting in suggesting imaginative alternatives to the purportedly many Constitutional aberrations and anomalies that characterised the first five decades of the Indian Republic. On the singular question of the country's experience in recent years, with political instability and fractured mandates — an issue that supposedly lent legitimacy to the enterprise of a Constitution review by an otherwise illegitimate body — the Commission had little to offer except cite the German model of a constructive vote of confidence or some form of amalgum of indirect and runoff elections. Even if these proposals were circulated merely to elicit public opinion, they barely dwell beyond the usual allusions to generalities on these subjects. On other issues, the mindset informing the Commission appears to be either one of proposing cosmetic solutions to fundamental moral questions of realising the egalitarian vision enshrined in the Constitution, or of steering clear of controversy in relation to ticklish questions with a potential for political fall-out. On the contrary, the answers to some of these predicaments would appear to require nothing short of a practical blueprint, charting radical proposals for social change as well as continuity. The paper released last week on "social security", for instance, does not go beyond hinting at declaring a minimum 80 days work for rural wage labourers as a fundamental right. An earlier document on fundamental rights never even addressed the current controversies surrounding the status of the rights of religious minorities. Instead, it expatiated on the extension of fundamental rights, an area elaborated admirably by innumerable judicial interpretations.

But even if the final outcome of the Commission's exercise is unlikely to suggest any path-breaking endeavours in Constitution remaking, its role has clearly been underpinned by strict conformity with the norms of a democratic Constitutional order. This may be in large measure due to a recognition across the political spectrum of the sanctity of the basic structure doctrine enunciated by the Supreme Court and the repeated assurances from the Commission, including its Chairman, Mr. M. N. Venkatachalayya, that the spirit of the proposals would not conflict with the basic features of the Constitution. The Commission has likewise exercised care to keep out the pursuit of personal agenda by some of its members, especially on the question of the right of naturalised Indian citizens to hold high office.

Contrast these with the motives underlying the National Democratic Alliance Government's case for a review which were always suspect because they were informed by the politically partisan predilections of the Sangh Parivar wedded for many decades to overthrowing a liberal, pluralist Constitution. Correspondingly, the formation of the Commission was itself shrouded in controversy as such an exercise was undertaken bypassing Parliament and without popular mandate. A final word on the Commission's assignment must obviously await its report due at the end of its term by October 2001. But it is hard to imagine that even the noblest pronouncements of a body whose genesis and role lacked a modicum of legitimacy could pass muster with the people of India.

THE HINDU

8 OCT 2001

Court delivers crown to Jaya

Jayalalithaa smiles after the verdict

WHY JAYA WAS LET OFF

TANSI LAND DEAL
No "sinister motive" or "undervaluation" in purchase of 55 plots as it was done through open tender. Therefore, "no wrongful gain or loss" to exchequer. Does not attract code of conduct for public servants as Tansi land does not belong to the government

PLEASANT STAY HOTEL
Public interest involved in granting hotel exemption from building rules. Trial court ruling quashed as "incorrect"

WHAT HAPPENS NOW?

Jaya will return as chief minister. Virtually announces candidature from Andipatti

BUT IT'S NOT OVER YET...

Subramanian Swamy, the original ...

Graphic: RAJ

FROM M.R. VENKATESH

Chennai, Dec. 4: Out of power, nothing was going right. In power, things are falling into place for J. Jayalalithaa.

"It's purely God's grace and divine dispensation," she said after being acquitted in three corruption cases that dogged her through the five years she sat in the Opposition and then forced her to step down as chief minister after a stunning election victory.

Madras High Court today set aside her conviction and sentences in two land deal cases and a third concerning favours granted to a hotel – all when she was chief minister between 1991 and 1996.

She was barred from contesting the May Assembly polls because of these cases and will now be free to stand for election to return as chief minister, if there are no more convictions.

Janata Party president Subramanian Swamy, who had originally petitioned the court in the land deal cases, said he would move the Supreme Court. "I shall certainly appeal against the high court verdict," he said.

DMK leader M. Karunanidhi, under whose government the cases were initiated, said : "I respect the judgment. The path to justice is a long way."

Allowing the appeals by Jayalalithaa and the other accused in the three cases, Justice N. Dinakar ruled that the prosecution had not succeeded in "establishing the charges".

As her partymen celebrated by bursting crackers and breaking coconuts to propitiate Lord Ganesha, at her Poes Garden residence a jubilant Jayalalithaa said she "faced no legal hurdle" now to becoming chief minister.

O. Panneerselvam, who has been ruling by proxy, was in a hurry to step down. "The path is clear for Jayalalithaa to take over from me," he said. With two byelections due, she said she would contest from Andipatti.

In the land cases, the charge was undervaluation of government land to cause loss to the exchequer. Jaya Publications and Sasi Enterprises, where Jayalalithaa and her friend Sasikala were partners, had been given government land by the industrial promotion agency, Tansi.

Jayalalithaa and Sasikala, along with four others, were convicted and sentenced by a trial judge a year ago to three and two years' imprisonment in the cases involving the two companies.

The trial judge had ruled undervaluation of land by using market price as the yardstick in arriving at the worth of the 3.07 acres of Tansi land purchased by the two companies. Justice Dinakar rejected the method, saying that the trial judge was not "justified in taking market value for arriving at the conclusion that there was a loss to the exchequer".

Justice Dinakar also found that the price charged from the two companies was the same as what at least one other buyer had paid. No substantive offence was established against the accused on this count.

Since Tansi is an independent legal entity from the government and since the land at its disposal was owned by it and not the government, Section 169 of the IPC (prohibiting public servants from purchasing or bidding for public property) could not be applied in this instance. The code of conduct for ministers is, therefore, not relevant.

As celebrations began outside with fireworks going off noisily, the judge – taking up the Pleasant Stay Hotel case – appeared annoyed. "What is this?" he frowned and told court officials to ensure silence.

Jayalalithaa and four others were accused in this case, where the Kodaikanal hotel was given exemption from building rules to construct five additional floors. Jayalalithaa was handed a one-year imprisonment.

Finding no basis for the graft charges, the judge said public interest was involved in granting the exemption to promote tourism.

■ See Page 8

QUOTE

This (the acquittal) is purely due to God's grace

JAYALALITHAA

THE TELEGRAPH
- 5 DEC 2001

Apex Court sends Jayalalithaa packing

HT Correspondent
Chennai, September 21

THERE WAS a change of guard in Chennai today. O Panneerselvam, Revenue Minister in Jayalalithaa's outgoing ministry and a comparative lightweight, was sworn in as Chief Minister of Tamil Nadu along with 23 other ministers. This was after J Jayalalithaa stepped down on being unseated by the Supreme Court.

A five-judge Constitution Bench headed by Justice S P Bharucha rejected the argument that her appointment was valid because she had the people's mandate. The will of the people prevails "only if it is in accord with the Constitution," the Bench said.

In a unanimous decision, the Bench said the appointment as Chief Minister of a person who was not qualified to hold the office should be struck down. "We order and declare that the appointment of the second respondent (Jayalalithaa) as Chief Minister ... was not legal and valid and that she cannot continue to function as such," the Bench said.

Panneerselvam, number 10 in the Jayalalithaa Cabinet, was a surprise choice and is seen in the party as a confidant of the Sasikala family. Jayalalithaa announced his unanimous election after a 40-minute meeting of the party's Legislature Party. Panneerselvam is the first Chief Minister from the powerful backward community of Thevars, which forms a major part of the support base of the AIADMK.

"The good Government we provided will continue," Jayalalithaa told reporters after the meeting but refused to comment on the Supreme Court verdict.

Panneerselvam, who dutifully touched Jayalalithaa's feet after being sworn in at a simple ceremony at the Raj Bhawan, retained almost the same ministry as Jayalalithaa's, making just one change.

Since protocol did not allow Jayalalithaa, who has no official position, on the dais, the new CM sat with her among the audience. Only after Jayalalithaa left the venue did many party members feel free to congratulate the new Chief Minister.

Earlier, the MLAs' meeting began almost an hour late in an atmosphere of gloom. There were indications that Panneerselvam's selection had not been smooth. It was apparent that the Sasikala family had exerted influence in the selection.

Law and Finance Minister C Ponnaiyan had appeared to be heading the succession race till about noon. A visit to Jayalalithaa's Poes Garden residence by Visalakshmi Nedunchezhiyan, widow of the late VR Nedunchezhiyan, Finance Minister in the earlier ministry, had, however, fuelled speculation that a woman would replace Jayalalithaa. By evening, a third candidate, Speaker K Kalimuthu, had emerged as the frontrunner. Panneerselvam's appointment thus came as a surprise to party members.

After the Supreme Court judgment, Jayalalithaa met Governor C Rangarajan and informed him that a new leader would be elected by the party MLAs and requested him to swear in the team immediately thereafter. Since she had ceased to be Chief Minister the moment the Supreme Court delivered its judgment nullifying her appointment, the normal procedure of handing over her resignation to the Governor did not arise.

Related reports on Page 6

DUBIOUS DISTINCTION

- First CM to be convicted in corruption cases — one year RI in Pleasant Stay Hotel case and three years RI in TANSI land deal case. The convictions came when she was out of power
- First chief ministerial candidate to be disqualified by the Election Commission from contesting polls based on her sentence in the TANSI case
- First person in Indian history to be sworn in as CM with an active conviction
- First CM whose appointment is nullified by the Supreme Court

HT 22/9 9- Constitution
22 DEC 2001
THE HINDUSTAN TI

'Governor can appoint non-member as CM'

By J. Venkatesan

NEW DELHI, SEPT. 11. The Supreme Court today posed a question to counsel for the Tamil Nadu Chief Minister, Ms. Jayalalithaa, "whether the Governor can appoint anyone under 25 years of age, a lunatic, an undischarged insolvent and a non-citizen as the Chief Minister under Article 164(4) of the Constitution for six months?".

Answering the question in the affirmative, Mr. K.K. Venugopal, senior counsel, submitted that "a disqualification is in the nature of a penalty and has to be expressly found engrafted in the Constitution or the law in regard to that person or that situation".

He hastened to add that when the Constitution was silent on this aspect, the Governor exercising his or her discretionary powers could appoint any person as Chief Minister, irrespective of the fact whether he or she was qualified to become a member of the Assembly or not if that person enjoyed the majority support of members of the Assembly.

Continuing his arguments before a five-judge Constitution Bench comprising Mr. Justice S.P. Bharucha, Mr. Justice G.B. Pattanaik, Mr. Justice Y.K. Sabharwal, Ms. Justice Ruma Pal and Mr. Justice Brijesh Kumar, counsel submitted that no qualification had been prescribed for a non-member to be appointed as a Prime Minister or Chief Minister.

Mr. Venugopal contended that various checks and balances had been provided in the Constitution and the House itself could take care of any anomalous situation that would arise from appointment of any such "disqualified" person as Chief Minister. Counsel said that once the Governor appointed a Chief Minister under Article 164 (4) of the Constitution, in the event of that person not being eligible to contest the elections within the prescribed period of six months (to enter the House), he or she would automatically vacate the office.

Mr. Venugopal submitted that "in this whole drama, one player is missing, that is the Governor. We do not know what were the reasons that prompted her to invite Ms. Jayalalithaa to form the Government. But the Governor has not been made a party here".

He further said without calling for the Governor's file, on which she might have noted down the reasons for appointing Ms. Jayalalithaa as the Chief Minister, it would not be proper for the court to decide the legality of her appointment.

Counsel said "once the Governor invited Ms. Jayalalithaa to form the Government as per the convention, she (Ms. Jayalalithaa) got a legal right to become the Chief Minister and the courts should refrain from interfering with such a decision".

Mr. Venugopal argued that the courts should avoid going into the issues regarding as to who should be the Prime Minister or the Chief Minister as that "would amount to adjudicating politics". His plea was that "this is something that is outside the jurisdiction of the courts and is best left to the people and the House".

Counsel contended that "the only valid and reasonable conclusion to be drawn is that the Constitution does not contemplate the scrutiny of the credentials of a non-member Prime Minister, Chief Minister, Minister, as in the constitutional theory it is the House, consisting of the majority thereof, which proposes him for this transit, temporary and limited period of six months, and it is the House alone which can remove him".

He pointed out that the absence of a machinery for adjudicating any disqualification in regard to a non-member Minister being appointed by the Governor would show that no such disqualification existed.

He asserted that "if a member's disqualifications were to be read into the appointment of non-member Minister under Article 164 (4), then the Governor or the President should be competent to adjudicate on each one of the disqualifications in Article 102/Article 191 read with Sec. 8 to 11 of the Representation of the People Act or none at all. The Constitution does not make any difference between alleged ex-facie disqualifications and the rest".

Mr. Venugopal drew the attention of the court to the decision of the 13-Judge Bench in the 'Keshavananda Bharti case' to drive home the point that under the principle of implied limitation "it is not open to the court to read into Article 164 (4) limitation to prescribe a qualification or a disqualification to a non-member Minister".

He said that if the court were to fill the gaps in the Constitution (which the founding fathers had not intended), then it would amount to altering the basic structure, which was not permissible.

THE HINDU

12 SEP 2001

SC transfers Jaya's appeals to new judge

8/9

PRESS TRUST OF INDIA

NEW DELHI, Sept. 7. – The Supreme Court today transferred Miss J Jayalalitha's appeals against conviction in three cases to another judge of Madras High Court and ordered that the fresh hearing on the appeals would not begin before 1 October.

A three-judge Bench headed by Mr Justice SP Bharucha took exception to the way the hearing was conducted before a single judge of the High Court, saying "justice should not only be done but appear to be done".

Miss Jayalalitha's counsel, Mr KK Venugopal, said the hearing should commence a little earlier as she was racing against the constitutional deadline. The Bench said: "We understand all that. But that does not mean justice will not be done." The Bench,.comprising Mr Justice Bharucha, Mr Justice Brijesh Kumar and Mr Justice Ashok Bhan, left the choice of the new judge to the incoming Chief Justice instead of the present acting Chief Justice.

Today's order was passed on a petition filed by special prosecutor, Mr KV Venkatapathy, who had alleged that he was not being supplied documents and that the atmosphere was not conducive for a fair hearing on the appeals. The Bench also asked him to give a list of the deficient documents to the Madras High Court registrar general latest by 10 October evening.

"The Registry shall comply with Mr Venkatapathy's request and shall make available to him, in accordance with the rule of the High Court, entirety of the records in each of the appeals before the High Court," the Bench said and ordered this to be done before 18 September.

On Mr Venkatapathy's grievance that he was not given time to read the documents (2000-pages), the Bench said: "The hearing of the appeals shall commence not earlier than 1 October 2001."

Taking note of Mr Soli Sorabjee's request that the transfer of the case from the present judge, Mr R Balasubramaniam, should not be construed as casting of any aspertions on him or the High Court, the Bench said: "We make it clear that we are passing the order so that justice is seen to be done." "We do not intend to make any adverse comments on the judge who was hearing the appeals. The attorney-general's requests to the same effect be recorded," it said.

The purpose of the transfer petition was different, Mr Venugopal said. To this, the court said it was unfair on his part to make such an allegation. The Bench said: "We all have been lawyers. Lawyers cannot do justice to their brief if they do not get the papers of the otherside."

Mr Sorabjee, appearing for Mr Venkatapathy, brought to the court's notice the judge's reported statement that he would hear the appeals on a day-to-day basis and dictate the judgment in open court after the arguments were completed.

The court took note of the fact that a "heap of telegrams" were sent to the judges and the registry. Mr Sorabjee said he had received calls asking him not to appear for Mr Venkatapathy. The Bench said: "The atmosphere is distinctly anti-Venkatapathy."

On the judge's comment to dictate judgment in the open court, Mr Venugopal said there was nothing wrong in that as many judges have done so. Mr Justice Bharucha said: "We all have done that but we never said at the commencement of the hearing that we would do so. If a judge makes such a statement before knowing the complexities of the matter, we have no hesitation to allow what has been prayed for by the petitioner." Today's order makes it difficult for Ms Jayalalitha to get elected to the Assembly before 13 November.

■ **Verdict a major setback for Jayalalitha: page 8**

8 SEP 2001

'ARE WE LEFT WITH NO STANDARDS?'

People's will subordinate to Constitution: SC

By J. Venkatesan

NEW DELHI, SEPT. 6. The Supreme Court today observed that the "Constitution is supreme" and that "the 'will' of the people must stand subordinate to it. We will respect the 'will' of the people provided it is not in conflict with the Constitution."

These observations came from a five-Judge Constitution Bench, comprising Mr. Justice S. P. Bharucha, Mr. Justice G. B. Pattanaik, Mr. Justice Y. K. Sabharwal, Mrs. Justice Ruma Pal and Mr. Justice Brijesh Kumar, during the resumed hearing on a batch of petitions challenging the former Tamil Nadu Governor, Ms. Fathima Beevi's decision to appoint Ms. Jayalalithaa as Chief Minister. At the repeated assertion of Mr. K. K. Venugopal, senior counsel for Ms. Jayalalithaa, that the 'will' of the people must be respected, the Bench said "we are not concerned with the mandate of the people. The Constitution is supreme. That is what we are interpreting, not the people's mandate," and asked counsel to confine his arguments to questions of law and the Constitution.

'Overwhelming vote'

Mr. Venugopal contended that despite Ms. Jayalalithaa's 'conviction', people had overwhelmingly voted for her party, AIADMK, knowing fully well that if it won the elections, she would be the Chief Minister. People who did not get two square meals a day had elected her as their leader so that she could ensure the same to them, he said.

For the people, 'corruption' was not an issue in the last Assembly elections as they felt that Ms. Jayalalithaa had been "unjustly and falsely convicted" and they would not go by moral values. "If the Governor looks into any other criteria other than the fact that the elected leader of the Legislature Party enjoyed the majority support of the House, then the 'will' of the people will be defeated," Mr. Venugopal said.

At this, the Bench observed "the argument is that as the lady has been elected by a party which has won by an overwhelming majority in the elections, we should respect it. We will respect it provided it is not in conflict with the Constitution."

When Mr. Venugopal persisted that the disqualification of Ms. Jayalalithaa by the court would go against the 'will' of the people, which was supreme in a democracy, the Bench said "please consider what you are saying — that regardless of 'conviction', she (her party) has won the elections. Today, it is a question of sentence of two to three years. Tomorrow, it may be a sentence for murder. Are we left with no standards at all?" On counsel's submission that there were many politicians who were corrupt but not convicted and that the entire system was corrupt and it was irrelevant, the Bench observed "we are not going into those who are not convicted. We have only one person before us who has been convicted. Let us deal with that person."

When Mr. Venugopal urged that as the people's 'will' was supreme, Ms. Jayalalithaa could become the Chief Minister, the Bench said "by all means. In that case, she should wait till the order of conviction is set aside... Otherwise, because of this feeling, should the Constitution be thrown overboard? This kind of proposition will be dangerous."

When counsel maintained that the discretion exercised by the Governor under Article 164 (4) of the Constitution, to invite a person to form the Government could not be gone into by the courts, the Bench asked "do you mean to say that once the leader is elected, the Governor has to merely put his/her rubber stamp on it without going into the question of disqualification?"

'Will fill vacuum if necessary'

"We are yet to come across a Governor who has sworn in a person convicted under the Prevention of Corruption Act. We have a Constitution which has never imagined this. We have judgments which have never conceived this," the judges said. When counsel asserted that the Constitution was silent on the question of prescribing qualification or disqualification for a non-Member being appointed as the Chief Minister, the Bench said "if necessary we fill the vacuum." Mr. Venugopal contended that the conviction did not operate against Ms. Jayalalithaa as the appeals against it were pending in the High Court. The Governor could not have gone into the legal question of whether the conviction operated against her or not as she had no machinery or mechanism to go into this issue.

The arguments will continue on Tuesday.

Court seeks A-G opinion in Jaya case

PRESS TRUST OF INDIA

NEW DELHI, Sept. 5. – The Supreme Court today sought to know from the attorney-general the consequences if it declared as illegal Miss J Jayalalithaa's appointment as Tamil Nadu chief minister.

A five-judge Constitution Bench headed by Mr Justice SP Bharucha sought to know what would be the fate of ministers appointed by her in that eventuality. Today was the second day of arguments on the PIL challenging Miss Jayalalithaa's appointment by Ms Fathima Beevi.

"Suppose we were to hold that Ms Jayalalithaa could not have been sworn-in and cannot continue as chief minister. As a chief minister, she appointed other ministers, would they also have to go?" the Bench asked Mr Soli Sorabjee.

"What happens to the Tamil Nadu government in the interim period? What are the consequences? They have to be redressed," said the Bench comprising Mr Justice Bharucha, Mr Justice GB Pattanaik, Mr Justice YK Sabharwal, Ms Justice Ruma Pal and Mr Justice Brijesh Kumar.

Opening his arguments, Mr Sorabjee said a person convicted of grave criminal offence involving moral turpitude should not be allowed to become a minister, much less a chief minister, especially when the conviction was operating on the date of appointment.

Ms Jayalalithaa's counsel, Mr KK Venugopal, said the Governor's action was non-justiciable in a court of law. Hence, Ms Jayalalithaa's appointment as chief minister could not be questioned by the courts.

"A person elected as leader by the legislature party, which enjoys overwhelming majority in the House, has to be appointed as the chief minister and the Governor had no discretion to exercise in this regard," he said.

It would be wholly inappropriate for the Court to hold that the Governor, while selecting a person as Chief Minister, would have to convert himself into a quasi-judicial body taking evidence and give judgement if the person selected as chief minister was competent or not, Mr Venugopal said.

The Bench asked what would happen if the legislature party elected a 22-year old person, (the Constitution provides that only persons over 25 years of age could become members of an Assembly) as the leader? Mr Venugopal said the person had to be sworn-in as the chief minister and then under Article 164(4), provided a six month time frame to get elected to the House.

Criteria for qualification and disqualification of a member or a candidate are provided in the Constitution. The absence of any qualification and disqualification for a minister under Article 164(4) would mean that the Governor had to accept the will of the people in selecting a chief minister or a minister, Mr Venugopal said.

Earlier, the attorney-general said he would not criticise Ms Fathima Beevi for her decision to appoint Ms Jayalalithaa as the chief minister as she was not a party in the case. "There is no way you could avoid criticism of the Governor," the Bench said.

"Nobody attributes motive. But the fact remains that your (A-G's) argument is that the day Ms Jayalalithaa was appointed as chief minister there was a disqualification attached to her," the Bench said.

THE STATESMAN

- 6 SEP 2001

Supreme court pulls up states for starvation deaths

Families below poverty line have not been identified

Times News Network

NEW DELHI: Shocked at the manner in which some state governments have been dealing with drought conditions which had led to starvation deaths, the supreme court on Tuesday issued notices to several of them. Attorney general Soli J. Sorabjee said many governments had not even identified the number of families living below the poverty line (BPL).

Mr Sorabjee said the states of Orissa, Bihar, Tamil Nadu, West Bengal, Assam, Goa, Tripura, Manipur, Uttaranchal, Nagaland, Arunachal Pradesh, Delhi and Pondicherry and the Union territories of Chandigarh and Lakshadweep were still to identify the BPL families.

A bench comprising Justice B.N. Kirpal and Justice Ashok Bhan ridiculed the Orissa government for its apathy towards the drought-hit. The apex court also expressed shock at the manner in which some other state governments had handled starvation deaths and sought to know why only 25 kg of foodgrains were being provided to BPL families per month despite a provision for the supply of 73 kg of foodgrains under government regulations.

The bench asked Cecil Gonsalves, counsel for the petitioner PUCL (the People's Union for Civil Liberties), to identify officers in each of the affected districts who had the "spirit, inclination and drive" to prevent such deaths by implementing government schemes. "Let us target the areas which need immediate attention and Orissa appears to be in the greatest need," the bench observed.

In addition to Orissa, the court also issued notices to Andhra Pradesh, Chhattisgarh, Gujarat, Karnataka, Maharashtra, Madhya Pradesh and Rajasthan, which were identified by PUCL as drought-prone. It asked them to respond within a week as to the steps taken to alleviate the condition of the BPL families in their states.

PUCL said the government's food-for-work scheme, to be implemented in the drought-prone areas, had not even achieved a 20 per cent implementation rate. Mr Sorabjee said the Centre had issued the necessary orders for the speedy supply of foodgrains from the Food Corporation of India (FCI) godowns to the public distribution system (PDS) operated by the states. However, he said, this was not proving to be successful as many states had not yet identified the BPL families.

PUCL, while drawing the court's attention to the various aspects of starvation deaths, sought a declaration from the court that the right to food be termed a fundamental right.

The court said it was aware of the question being raised about how long free food should continue to be given and suggested that the government should move in such a way that these people were made competent to take up work.

However, it said the primary task at hand for the governments was to prevent starvation deaths.

Rice still to reach hungry tribals, says relief official

Times News Network

BHUBANESWAR: Has rice actually got to the hungry tribals of Kashipur block in Rayagada district? If the Orissa government is to be believed, everything is fine there. But the special relief commissioner (SRC) says that nothing has changed and that the people there have no option but to continue eating mango kernel and wild roots.

The foodgrain component under the food-for-work programme has not reached the block. The Antyodaya scheme (under which a beneficiary can buy 25 kg of rice per month at a rate of Rs 3 per kg) has not even begun in the district, SRC Hrushikesh Panda has observed in his report.

THE TIMES OF INDIA
4 SEP 2001

Corruption, politics and the Judiciary

By V. Krishna Ananth

AMONG THE verdicts by the Supreme Court in recent weeks, there were at least two which must have come as a ray of hope for all those concerned about the corruption that has come to haunt the nation. One was its order dispossessing the former Prime Minister, Mr. Chandra Sekhar, of about 500 acres he held in the name of a trust. The other was the ruling that a person remains disqualified from holding public office even during the pendency of an appeal against a conviction on charges of corruption.

In the first instance, the Judiciary did nothing more than reverse the consequences of a brazen act by a collective that included a bunch of village elders who decided to (or were forced to) hand over large tracts of land to a trust floated by an important political personality of the time.

But the other verdict pertained to a reinterpretation of the law to say that conviction by a lower court on a charge of corruption will hold against a person in public office even while an appeal is pending in a higher court. This ruling was a reversal of the common understanding of the theory of law (jurisprudential principle) that a convicted person shall be presumed not guilty as long as an appeal was is pending.

These two interventions by the judiciary (as also many other verdicts in recent times) must have infused optimism among a section of civil society that the Judiciary was indeed doing the task of cleansing public life and that it was now possible, by law, to ensure that the corrupt were kept out of politics. These interventions by the learned judges, however, have dangerous implications for the democratic polity. We shall come to this later.

There is something else that strikes anyone concerned over the extent to which corruption has permeated the system, and, more importantly, the dependence of the political class on money managed through unfair means even to run their day-to-day affairs. It is this dependence of the entire political class, cutting across the spectrum, that seems to have guided the parties and their leaders to simply ignore the two landmark verdicts by the apex court. All those men and women in the various parties who never let go an opportunity to wax eloquent on the need to cleanse public life of corruption have been conspicuously silent. This indeed is a shocking comment on their commitment to probity in public life. And even those who claim to be the watchdogs of democracy — the articulate middle classes especially — were not seen celebrating these two judgments.

This indeed is a reflection of the high level of tolerance society and its articulate sections have adopted to the canker of corruption. This is not surprising; people who do not have any qualms about paying huge sums for school admissions or greasing palms to ensure that their telephone lines work, or to carry on with faulty electricity meters, cannot be expected to rise against a corrupt political class whose ways are leading to a serious crisis in the setup called democracy.

And, in this sense, a judge-made law, that could ensure that a public servant held guilty (by the lowest court) of having amassed huge sums of money through corrupt means shall not be allowed to remain in office, is certainly not going to excite them. Such a judgment is, after all, bound to affect them — the political class as well as the managers of the executive and other such institutions as the banks and the public sector undertakings — in the long run.

In other words, the judgment could imply that such leading servants of the democratic polity as the Jayalalithaas, Sukhrams, Balakrishna Pillais and Narasimha Raos shall not be allowed to hold office until the highest court clears them. The apex court did have a definite reason to define the spirit of the law in that manner. "It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence... in abeyance till the disposal of the appeal or revision," was how the Division Bench of the Supreme Court saw it. And even after this, one finds the political leaders, who revel in raising issues of corruption and scandals within and outside Parliament, refusing to even raise the implications of this judgment anywhere. In other words, we find a rare unity within the political class.

To check the brazen ways of the political class, civil society is beginning to look to the Judiciary unmindful of the dangers this could pose to the democratic process.

The silence, indeed, is understandable. The leaders facing trial and those convicted, after all, come from a cross section of the political class. And even those parties whose leaders have not been convicted cannot rule out that possibility in future. For, most parties depend on the clout that they enjoy while in power to raise resources to hire helicopters and for other means that have become necessary to fight elections in a "meaningful" manner.

It is this that seems to have driven the political class to pretend to ignore the implications of the apex court judgment. But then the law is very clear in that MPs, MLAs and Ministers are public servants too. This was, after all, the burden of the apex court's verdict in the JMM bribery case, in which Mr. Narasimha Rao was involved.

This consensus within the political class (to ignore the need to ensure that the law of the land is explicit about keeping the convicted out of the corridors of power) accords a sense of legitimacy to the idea of judicial activism. And a perception is building that the courts will not fail in the task of enforcing democracy. For want of a better alternative to check the brazen ways of the political class, civil society is beginning to look to the Judiciary unmindful of the dangers this could pose to the democratic process. The dangers are multifold. The people would tend to depend on the learned judges to implement democracy rather than restrict their role to enforcing the rule of law, which is only one aspect of the democratic spirit. To assign this larger role to one set of men and women, however enlightened they are, is as inimical to the spirit of democracy as is allowing individual leaders to take over the polity.

But then, this danger cannot be stopped as long as the civil society institutions and those within the political class (a small minority is all that is left which can be counted as not corrupt) continue to remain silent and let the cleansing be done by the courts. The courts, in the first place, cannot be expected to go to the logical ends. And add to this the possibilities that exist to manipulate the Judiciary (particularly at the lower levels) and the investigating agencies by those in power to fix their political rivals. This factor will have serious implications, particularly in the context of the apex court's verdict that conviction by a lower court shall disqualify anyone from holding office even while an appeal is pending.

Hence, the democratic option lies with the civil society institutions and the people to ensure that anyone with a record of having accumulated wealth beyond known means are kept out of the political process. And identifying such members of the political class — whose affluence levels have increased while holding office — should not pose a problem to the people as long as they are encouraged to detest corruption in their own life. Such a movement alone can help prevent the canker of corruption from eating into the vitals of the polity.

THE HINDU

30 AUG

Ensure food for the hungry, SC tells govt.

Times News Network

NEW DELHI: Concerned at starvation deaths despite food stocks overflowing in the country, the supreme court on Monday said that the government was under obligation to provide food to all even if it had to be given free. "It should be done as no person should be deprived of food merely because he has no money," a bench comprising Justice B.N. Kirpal, Justice N. Santosh Hegde and Justice Brijesh Kumar said while hearing a public interest petition (PIL) by the People's Union for Civil Liberties (PUCL).

PUCL said that deaths due to starvation and malnutrition occurred in many states although the Food Corporation of India (FCI) godowns had nearly 50 million tonnes of foodgrain as against the required buffer stock of 17 million tonnes.

When petitioner's counsel Cecil Gonsalves cited a host of centrally-sponsored schemes to mitigate hunger, the bench said, "Mere schemes without implementation is of no use. What is important is that food should reach the needy."

The bench also reminded the government that it was the primary responsibility of the administration to see that food reached the hungry and was not wasted without purpose. "The primary responsibility of the Centre and state governments should be to ensure that foodgrains, overflowing in the FCI godowns, should reach the starving people and are not wasted by being dumped into the sea or eaten by rats," an anguished bench added.

FOOD FOR THOUGHT

- **Foodgrains, oveflowing in FCI godowns, should reach the starving people: SC**
- **Deaths due to starvation occur in many states: PUCL**
- **Something is radically wrong with the system: Soli Sorabjee**

"The anxiety of the court is that the poor, destitute and weaker sections of society should not suffer from hunger and die from starvation," the bench added.

PUCL has raised three crucial questions. Does the right to life mean that people who are starving and who are too poor to buy foodgrain ought to be given foodgrain free of cost by the state from the surplus stock, especially when it is reported that a large part of it is lying unused and rotting? Doesn't the right to life under Article 21 of the constitution include the right to food? Doesn't the right to food, which has been upheld by the apex court, imply that the state has a duty to provide food, especially in situations of drought, to people who are drought-affected and are not in a position to purchase food?

Attorney-General Soli J. Sorabjee said that as far as interim directions needed to address the issues were concerned, the Centre would file an affidavit soon.

Earlier, on July 23, the court had asked the six drought-prone states of Orissa, Rajasthan, Chhattisgarh, Maharashtra, Gujarat and Himachal Pradesh to take immediate steps to make closed PDS shops functional.

Mr Sorabjee had termed it a "horrendous state of affairs", adding that there was something radically wrong with the system.

The bench then said, "Devise a scheme where no person goes hungry when the granaries are full and lots is being wasted."

Apex court rules out back-door re-entry by Jaya

Times News Network and Agencies

NEW DELHI: In a significant judgment, the supreme court on Friday barred the reappointment during the same term of the House of persons who had already served as ministers for six months without being elected to state assemblies or parliament.

Although the court declined to comment on the constitutionality of Tamil Nadu chief minister J. Jayalalithaa's appointment, it ruled that "the clear mandate of Article 164 (4)— that if an individual concerned is not able to get elected to the legislature within the grace period of six months, he shall cease to be a minister—cannot be allowed to be frustrated by giving a gap of a few days and reappointing the individual as a minister, without his securing the confidence of the electorate".

In its first-ever judgment on the validity of a non-elected lawmaker remaining a minister without getting elected to the House directly or indirectly, a bench comprising Chief Justice A.S. Anand, Justice R.C. Lahoti and Justice K.G. Balakrishnan said such a practice "will be clearly derogatory to the constitutional scheme, improper, undemocratic and invalid".

With this ruling, the bench set aside the appointment of Punjab minister Tejpal Prakash Singh since he had not been elected to either House within six months in 1996. Son of slain chief minister Beant Singh, Tej Prakash Singh was inducted into the cabinet under Article 164 (1) which stipulates that any person who is not elected to the House can be made Prime Minister, chief minister or minister for six months, during which time he shall get elected to the House.

Challenging Mr Singh's repeated appointments, the petitioner, S.R. Choudhuri, had drawn the bench's attention to J. Jayalalitha's case— although she had been disqualified by returning officers from contesting assembly elections, she was invited by governor Fathima Beevi to form the ministry under Article 164 (1).

Having perused the debates in the constituent assembly on the need to include 164 (1) in the constitution and subsequent rulings on the issue, the bench said, "It will be superficial to say that even though the individual minister is a person who cannot even win an election by direct or indirect means, he should be permitted to continue as a minister for a period beyond six months."

The bench said the reappointment of such a person who failed to get elected as a member within the period of grace of six consecutive months would "disrupt the sequence and scheme of Article 164".

NO, MINISTER

- **A non-elected member cannot continue as minister beyond six months**
- **Reappointment of such a member will subvert principles of representative government**
- **The will of the people cannot be subordinated to political expediency**

THE TIMES OF INDIA

CM to probe Opp charge on panchayats

Mr Buddhadev Bhattacharya

STATESMAN NEWS SERVICE

KOLKATA, July 31. – The government will dissolve the panchayat samitis and conduct fresh elections if it is found that CPI-M members had used unfair means to control the board, chief minister Mr Buddhadev Bhattacharya said in the Assembly today.

He was participating in a debate on a motion moved by the leader of the Opposition, Mr Pankaj Banerjee, on the violence against Trinamul workers in Hooghly and Midnapore.

Mr Bhattacharya said he had received seven complaints that some party members had been trying to dislodge the panchayats belonging to the Opposition by unfair means.

" I am looking into the allegations and...if the charges are proved right then the newly formed boards will be dissolved and fresh election will be held."

Mr Banerjee alleged that the CPI-M members first forced the Trinamul men to resign and then moved a no-confidence motion.

On the polling day, Trinamul members were driven out of the villages and CPI-M members in league with the BDOs took control over them, he added. He said the district administration hadn't taken steps to rehabilitate them.

Mr Bhattacharya said Mr Banerjee had given a list of 955 Trinamul workers who were ousted from their villages. Of these, 640 had returned home safely.

The government has prepared a list of 343 persons who are yet to be rehabilitated. Mr Bhattacharya said he would hold an all-party meeting in Midnapore on 18 August and instructed senior officials to take steps for rehabilitation.

" I don't believe in revenge. We won't allow the black days of 1972 to come back," Mr Bhattacharya said.

He added that CPI-M leaders like Mr Prasanta Sur, Mr Monoj Pratim Ganguly and Mr Kulendu Som had to stay out of Tollygunge for five years from 1972 because of Congress leaders like Mr Pankaj Banerjee. Mr Banerjee said CPI-M leaders had got into the habit of misleading people by referring to the Congress rule between 1972-77.

Three commissions were set up by Mr Jyoti Basu after he came to power in 1977 to inquire into excesses that were committed but none of the charges were substantiated.

THE STATESMAN

SC takes up Jaya swearing-in case

New Delhi, July 20

THE SUPREME Court today admitted and referred to the Constitution Bench five petitions raising "constitutionally important" questions over the swearing-in of Jayalalithaa as Tamil Nadu Chief Minister despite being barred from contesting polls due to her conviction in the Tansi scam.

But a three-judge bench of Justice S P Bharucha, Justice Y K Sabharwal and Justice Brijesh Kumar dismissed the DMK'S application. The court allowed Jayalalithaa four more weeks to file her counter.

The petitions which have been admitted were filed by BR Kapur, Dhananjayan Chauhan, Pratap Singh Chautala and B L Wadhera. The court dismissed the petition filed by Manohar Lal Sharma as he was not present during the hearing.

On June 4, the court had 4 issued notices to Jayalalithaa, the Union Government and the Attorney-General. Attorney-General Soli Sorabjee said the questions posed by these petitions were important and needed to be expeditiously dealt with.

The court today said the petitions posed "constitutionally important questions" like whether a person convicted of a criminal offence, which has not been suspended, can be sworn in as Chief Minister.

When the counsel for DMK General Secretary K Anbazhagan submitted that the party wanted to assist the court in the case, Justice Bharucha said: "We are not converting the matter into publicity or a political affair."

When three more petitioners wanted to intervene in the case, the Bench said: "We are not entertaining any more petitions...we have enough."

Referring the matter to the Constitution Bench, the court said the matter be placed before the Chief Justice of India for setting up of a larger Bench. The court said the matter would be listed for hearing in the week commencing from September 3. The matter may now be heard by a Bench of at least five judges.

In Chennai, Jayalalithaa today said she had "nothing more to add" to what the Supreme Court had said on the petitions challenging her appointment as Chief Minister. "The apex court is very clear. It is not necessary for me to add anything, she said.

DMK chief M Karunannidhi said the rejection of his party's petition was not a "setback".

"Since there are other petitions, probably the court thought another petition from a political party is not needed. However, I can comment further only after getting more details," he said.

CM rejects Sonia human rights remark

Chennai, July 20

JAYALALITHAA TODAY dismissed Congress president Sonia Gandhi's apprehensions on human rights violations in Tamil Nadu, saying there have been no such instances in the State since she assumed office as Chief Minister.

A message from Sonia Gandhi had been read out at a Congress convention here yesterday. Gandhi had said that recent developments (the manner in which former Chief Minister M Karunanidhi and two Union Ministers, Murasoli Maran and T R Baalu, were arrested) had lent new urgency to the subject of human rights.

Jayalalithaa replied that Gandhi's remarks reflected her personal opinion. "But as far as Tamil Nadu is concerned, there has been no human rights violation since I took over as Chief Minister."

In an oblique reference to Karunanidhi's arrest; Gandhi had said it was the duty of those in power to show through their conduct how much value they attached to human rights. Constitutional provisions on their own were not adequate, and it was the duty of those in power to be watchful so that every citizen's human rights were respected. Jayalalithaa was asked about the Centre's decision to provide 'z' category security to Karunanidhi. Jayalalithaa replied: "There is no threat to the lives of Karunanidhi, Murasoli Maran or T R Baalu in the State. However, the Home Ministry has decided to provide central security cover to them. It is their decision. I have nothing more to say."

She said she had seen press reports on the Union Home Ministry being "pressurised" on this matter. Asked whether she anticipated the Centre to interfere and act against police officers accused of excesses during Karunanidhi's arrest, Jayalalithaa said: "There is no provision under the law for this. The police come on the State subjects list." PTI

STATE GOVERNMENT HAS TO ENSURE ORGANISERS PAY FOR DAMAGE TO PROPERTY

High court shuts down bandhs in state

By A Staff Reporter

MUMBAI: Bandhs in Mumbai will be a thing of the past, thanks to a recent order of the Bombay high court. While disposing of a public interest litigation (PIL) filed by former Union cabinet secretary B.G. Deshmukh and others, the HC directed the state government to act in accordance with the supreme court judgment on the issue.

In 1998, the SC had upheld a Kerala high court judgment banning general strikes or "bandhs" organised by political parties and trade unions as "unconstitutional and illegal" and directed the state government to take steps to recoup the loss caused by destruction of public and private properties from those groups calling the bandh.

Mr Deshmukh, Alyque Padamsee, Julio Ribeiro and Gerson D'Cunha had filed a petition in December 2000, seeking a declaration that calling for bandhs is illegal, citing the inconvenience caused by such events, the violence that often marked them and the economic cost they imposed on the city.

In view of the fact that the apex court had already dealt with the issue, the Bombay high court directed the respondents, which included the Union of India, the state government, the director-general of police of Maharashtra and the Mumbai police commissioner to act in accordance with the supreme court's orders in future.

The apex court's ruling came on the CPM's appeal against the Kerala high court verdict. The Kerala high court had banned general strikes or "bandhs" on the ground that, in reality, there would always be some untoward incident in connection with the bandh call and that such incidents inevitably affect the fundamental rights of citizens.

The Kerala HC had in its judgment held that there was clearly a menacing psychological fear instilled in the citizens by the call for a bandh which precluded him from enjoying his fundamental rights of freedom of speech and expression, and the right to life.

It had also held that the state had the responsibility to recoup the loss caused by destruction of public and private properties from such political parties or organisation.

However, it had held hartals or general strikes permissible, holding that it did not necessarily imply force or complete closure, as a bandh does.

In its appeal, the CPM had contended before the SC that to call for a bandh and protest against any action or inaction on the part of the executive was the fundamental right of every political party or its members and any curtailment could involve the curtailment of the fundamental rights enjoyed by citizens, guaranteed under Article 19 (1) (a)(b) and (c) of the Constitution.

Mr Deshmukh and the others had based their petition on the Kerala high court's judgment, pointing out that the calling of bandh had become 'endemic' in Mumbai in the recent past. In their petition, they noted that during the bandhs the residents of the city are prevented from going to work and put to other hardships.

THE TIMES OF INDIA

Hysteria, justice and revenge

By Upendra Baxi

There is much to condemn in the high-handed police action (in Tamil Nadu) but little to celebrate in what has followed.

THE UNFOLDING events in Tamil Nadu entail many tragic costs for Indian democratic development. The conversion of massive electoral victory into a mandate for the pursuit of personal vendetta, though not new, is still a frightful portent. So is the unspeakably routine use of cruel, inhuman, and degrading treatment in criminal law enforcement, which now stands dramatised as an unconscionable cost when visited upon the managers of the Indian people. Whatever is the political, as against the Constitutional, scope of the federal intervention (dictated by political compulsions of a fractious central coalition), exigent day-to-day solutions will pose future problems for Indian federalism. The rate of politicisation of the administration of the criminal justice system now entailed constitutes an additional formidable cost. So do the crude attempts at muzzling the mass media.

There is much to condemn in the high-handed police action but little to celebrate in what has followed. The Union crisis managers, and others, protest hysterically concerning the 'murder of democracy' (a phrase repeatedly used by Mr. George Fernandes, and even by some leading Cabinet Ministers.) They say the Indian Constitution has collapsed because two incumbent Union Ministers have been arrested and manhandled; the former Chief Minister violently humiliated in the full glare of media; and now denied dignity (according to Mr. Fernandes) because in the 12'-12' room in the Chennai jail there was only an overhead ceiling fan which recirculates hot air in the absence of an air conditioner! Ms. Sushma Swaraj in a television interview, justifying the recall of the Governor says democracy is endangered because the Governor did not initially 'report' to the Prime Minister the fact that two Union Ministers were arrested and in her later report she does indeed justify these arrests. The Union Law Minister curiously concurs!

This political hysteria, on the one side, and vendetta, on the other, that now shape the statist discourse refuse to take Indian citizens seriously. Mr. Fernandes' declaration that the Constitution has collapsed because of lack of air conditioners for VIP undertrials brazenly suggests that some 'super-citizens' should have a larger claim on the meagre, colonial prison budgets, at the cost of millions of impoverished Indians incarcerated. From the standpoint of hapless citizens, we would have to say that the Indian Constitution collapses every moment in the prisonhouses and police precincts. If this were at all what Mr. Fernandes means, he would serve Indian democracy a lot better not by seeking to rejoin the Union Cabinet, but by launching a crusade against horrid human rights violative conditions in the Indian prisons. In any event, the Constitution may not be hailed as routinely robust, only to be proclaimed frail, because the carefully maintained colonial prisons now fail to provide five star comforts to the rarely distressed managers of the Indian people.

Mr. Fernandes has a point when he says, on prime television time, that the Tamil Nadu events may generate a spiral of abuse of political power in the future. To allow Union Ministers to be arrested and detained by States on any criminal charges, even of obstruction of administration of justice seems, in this view, democracy-denying. To be sure, in an eventual Opposition-ruled Uttar Pradesh the present Union Home, Education, and Sports Ministers, for example, would justly remain liable to arrest in the Babri Masjid demolition proceedings.

But on what grounds may we translate such exigent political demands into constitutional mandates of impunity? Should the Constitution be amended to grant immunity from law enforcement processes to all incumbent and opposition 'leaders' (even ex-Prime and Chief Ministers, appellate Justices, ex-Governors, and superannuated Army and security chiefs)? Should, in this scenario, the oath carry a caveat that Union and State Ministers might protect the law and the Constitution against all contrary interpretations produced by co-equal agencies of constitutional and legal interpretation? Should the executive of the day be also allowed to be its own judicature?

The grounds of the recall of the Governor enact a constitutional scandal and invent a sheer constitutional fiction. The Constitution does not contemplate a reduction of gubernatorial position into a merely clerical obligation to routinely report law enforcement actions against itinerant Union Ministers. The reason for this reading of the Constitution is furnished by the ministerial oath; Ministers are not ever to so conduct themselves as to render themselves liable to criminal law enforcement. The recall of Governor does not in any way serve the integrity of constitutional norms and aspirations.

Surely, a retired Supreme Court Justice acting as a Governor of the State should be a granted a co-equal dignity for understanding the Constitution as the Union Ministers of the day! Besides, no one would have faulted the Prime Minister had he publicly resorted to advice from his own cherished Constitution Review Commission, when his Government sought to recast that role.

It is unlikely that beyond the dramaturgy of the present episode that the beneficiary ruling classes will seek, obscenely to their own advantage, to formally amend the Indian Constitution. By recalling the State Governor, they have already secured a *de facto* amendment, one that reduces to gibberish the constitutional prose concerning dignity and autonomy of Governors and revives colonial imagery of British Residents in the Princely States under conditions of imperial paramountcy.

Of course, politics, normal as well as pathological, produces its own order of truth. There already exist abundant competing versions of what happened. The DMK, AIADMK, Congress, NDA, Samata Party and BJP versions of what happened will continue to vary; and everything will remain bloodily contested. (This is no metaphor; people pay with their lives to reinforce 'truths' thus manufactured.)

Active citizens no longer entertain great expectations concerning political veracity. Party politics produces its own contingent, self-serving truths, which even courts and commissions of enquiry find increasingly hard to overcome, given the immense amount of witness intimidation and planned delays in juridical verification of happenings. For the news and views mass media truth remains a species of info- entertainment, as well as of super profit. For the ruling classes the meaning of 'democracy' always is management of cover-up and damage limitation, though draped in the languages of good governance and human rights; as even now continually demonstrated by the fate of enquires concerning the 1984, 1992, or the Bhopal catastrophes. Insidiously misgoverned Indian citizens remain bound, under the discipline of their fundamental duties, embodied in the Constitution, to displace planned political falsehoods, thereby seeking to restore deliberative democracy.

For those ruled, and their next of kin, the active citizens, issues raised by the present hysterical and paranoid discourse transcend the pornography of power, with all its hardcore attractions. This is the time for all those dinosaurs that still care for the idea of a Constitutional India to speak up and be counted. This may well turn out to be their very last chance to press for a law reform agenda that promotes equitable and efficient administration of criminal justice. They must resist the deep undemocratic reworking of the rule of law notions that discriminate between 'citizens' and 'super-citizens' and interrogate the implicit logics of impunity now under construction. Ways have to be found to extend legal literacy to people in power: leading Indian lawmakers, and their vociferous cabals and cohorts, do not often seem to understand the laws they make and swear to uphold without fear or favour.

In the troubling times that lie ahead, we need to redirect the constitutionalist gaze to the pathologies of power, recalling the words of Lord Polonious, in Hamlet, "madness in great ones / must not unwatched go".

(The writer is Professor of Law, University of Warwick, U.K.).

THE HINDU

Experts differ on decision to recall Governor

9 - constitution

By Our Special Correspondent

NEW DELHI, JULY 1. Constitutional experts were divided in their opinion over the Centre's decision to recall the Tamil Nadu Governor, Ms. Fathima Beevi. While most of them said today that the move was unconstitutional and against norms of propriety, a former law officer differed.

Mr. Devendra Nath Dwivedi, former Additional Solicitor-General and general secretary of the Nationalist Congress Party, described it as an "abuse of constitutional power, assault on the federal structure and demeaning of the office of the Governor." The Governor, holding office at the "pleasure of the President," did not imply 'whims and fancies' of Ministers, he said, and defended Ms. Fathima Beevi for executing her powers in accordance with the constitutional provisions.

What was shocking was her treatment as a 'subordinate' to the Union Home Secretary and her removal on the basis of a report by a Special Secretary. On the Centre's handling of the issue, Mr. Dwivedi said the same people who had criticised the misuse of the Governor's office in the past wanted a doctored report from her today.

Mr. Dwivedi hoped the President, Mr. K. R. Narayanan, would exercise his powers under Article 74 of the Constitution and ask the Union Cabinet to reconsider its recommendations, as he had done in the past.

A senior advocate, Mr. Rajeev Dhawan, said the act was "unprecedented," since the Centre decided to recall Ms. Fathima Beevi "on grounds of incompetence." This was "against the constitutional norms of propriety." Objecting to the Governor's confidential report being made public, he said the NDA Government had involved her in its political machinations.

Mr. Lalit Bhasin, general secretary, Bar Association of India, termed the decision as incorrect and said perhaps the Centre wanted the Governor to submit a report saying there was a 'breakdown of constitutional machinery' in Tamil Nadu, which she declined.

The former president of the Supreme Court Bar Association, Mr. R. K. Jain, said the recall was "unfortunate and unconstitutional." The Governor was not expected to 'dance to the tunes' of the Centre.

However, the former ASG, Mr. K. N. Bhat, endorsed the Centre's decision though he had supported Ms. Fathima Beevi's earlier move to invite Ms. J. Jayalalithaa to form the Ministry in Tamil Nadu. He said instead of merely forwarding the report of the Tamil Nadu police, Ms. Fathima Beevi could have asked the Centre to make an independent assessment on the ground that she was unable to get any other version. As Head of the State, the Governor had "failed to discharge her constitutional duty during the crisis" and could not be trusted.

TN Governor defends police action

PRESS TRUST OF INDIA

CHENNAI, July 1. – The Tamil Nadu Governor, Ms Fathima Beevi, is understood to have defended the arrests of Mr M Karunanidhi and two Union ministers, in her report sent to the Centre today.

In the three-page report on yesterday's dramatic developments, she has, reportedly, said Mr Murasoli Maran and Mr TR Baalu were arrested as they had obstructed police officers from discharging their duties when they went to arrest Mr Karunanidhi.

The report gave the sequence of events that took place after police went to arrest Mr Karunanidhi at his Oliver Road residence around 1.30 a.m. on Saturday. It also detailed the steps taken to maintain law and order in the state.

The Union home secretary, Mr Kamal Pande, had sought the report from Ms Beevi, by 9 a.m. today. Just before sending the report, the Governor held a meeting with state chief secretary, Mr P Shankar, DGP, Mr K Ravindranath, and other top police officials. Ms Beevi is also understood to have sent Ms J Jayalalitha's eight-page statement issued last night in which the chief minister stoutly denied charges of police excesses against Mr Karunanidhi.

In her report, Ms Jayalalitha said her government had taken a perfectly correct and legal action. "On the contrary, it's Mr Karunanidhi, Mr Stalin and their colleagues, who are consistently breaking the law", she said.

The chief minister described the clippings shown on Sun TV as "deliberate stage-managed stunt". Mr Karunanidhi, Mr Maran and their families had conspired to generate public sympathy for Mr Karunanidhi, she said.

They had falsely blamed the police to create a bad image for her and for her government.

Ms Jayalalitha said the public were aware of Mr Karunanidhi and Mr Maran's "deliberate ploy" and would be able to see through this "calculated stage-managed drama".

Mr Karunanidhi had behaved in a "childish and immature manner" and tried to resist the police physically. The DMK leader refused to go with police and had to be carried to the car, Ms Jayalalitha said.

The chief minister denied charges that Mr Karunanidhi was beaten up by the police.It was Mr Murasoli Maran who kept on beating the police when they tried to arrest Mr Karunanidhi, she said.

Sangma pushes 'foreigner' agenda

FROM OUR SPECIAL CORRESPONDENT

New Delhi, June 28: Former Lok Sabha Speaker and Nationalist Congress Party (NCP) leader Purno A. Sangma has written to Constitution review panel chairman Justice Venkatachaliah, insisting that the foreign national issue should be included among the terms of reference.

Venkatachaliah did not include the issue in the commission's agenda, despite the advocacy of Sangma — a member of the panel — and the NCP's demand that persons of "foreign" origin be disqualified from occupying offices of power in India, a move targeted primarily at Congress president Sonia Gandhi.

In a recent letter to Venkatachaliah, Sangma also suggested that Article 5 of the Constitution should be dropped, according to sources close to the NCP leader.

Sangma

The article says if a person has come from East or West Pakistan on or after July 18, 1948, they can become a citizen of India through registration, provided they have stayed in India for six months.

Sangma feels that if this provision was retained "any Bangladeshi can become a citizen of India after six months" and this had to stop in the context of the "influx" of thousands of Bangladeshis, sources said. They, however, denied rumours that the NCP leader is likely to pull out of the panel in the event of Venkatachaliah not accepting his suggestions.

The Constitution review panel was part of the NDA government's common minimum agenda. However, despite the earlier hype over the disqualification of citizens of "foreign" origin, it was not part of the panel's brief.

Political observers believe that Sangma — a founder member of the NCP along with Sharad Pawar and Tariq Anwar — cannot afford to jettison the issue and go along with the commission's decision as the reason for the party coming into being was its rejection of Sonia Gandhi's claim to Prime Ministership as she was of Italian origin.

Despite the NCP's high-pitched campaign against Sonia, it failed to strike a chord with Assam's voters in the recent Assembly polls, though Sangma had left no stone unturned to ensure the Congress' rout.

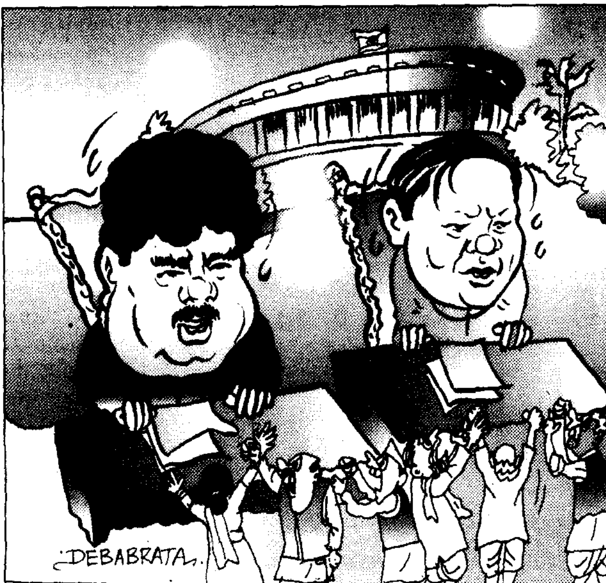
The Telegraph

ROLE OF SPEAKERS-I

Need To Live Up To People's Trust

By CK JAIN

INTERESTINGLY the agenda for the speakers' conference meeting in Chandigarh on 28 and 29 June has at the top a discussion on "the need to evolve a code of conduct for legislators and steps to contain frequent adjournment of the legislatures on account of interruptions/disturbances". No over-emphasis is necessary on the relevance and importance of the topic particularly in the context of what happened to 2001 Budget session of Parliament which was originally scheduled to have 41 sittings but ended up with only 16 sittings creating history with forced day-to-day-basis adjournments for weeks and then passing the budget of billions without any discussion.



This was unprecedented not because in the past there were no frequent adjournments, not because there were no wild slogan shouting, not because there were no allegations of corruption or other misdeeds against those in power, not because there was no demand for resignation of Government, but because the power and privilege of Parliament of discussions before parliamentary approval was accorded to financial proposals of the government involving major policies was brazenly compromised and the executive allowed criticism-free passage.

OBEDIENCE

The rules, conventions and practices as to how members should conduct themselves inside as well as outside the House being already there in the book, the debate really has to concentrate on obedience by members and enforcement by the Speakers so that the legislatures are allowed to work unhindered by frivolous interruptions and disorderly behaviour of members especially when they are deliberate, preplanned and the result of conscious decisions of political parties.

The malaise of non-functioning of legislatures as exemplified by Parliament and State legislatures is indeed a matter of grave concern for it affects the very foundations of democracy and the credibility of democratic institutions as the custodian and guardian of the trust of the people. The Constitution has provided an elaborate institutional arrangement for governance and having stood the test of time, it surely cannot be faulted for the ills stemming from unscrupulous politicians whose crop has had phenomenal growth in the post-Independence era, more in the last few decades.

The responsibility for orderly and efficient functioning of legislatures lies largely with the government, the Opposition, presiding officers, leaders of political parties and individual members. The Constitution is the supreme guide to the role of all these players and lays down boundary lines for them. Rules of the House and the established conventions provide detailed procedures. While the Government has to be responsive, the Opposition is to be responsible. Political parties are free to pursue their agenda and those in Opposition have every right to avail of every opportunity to dislodge those in power and take over the reins, but within the recognised constitutional and legislative ambit. They have to keep national interest above party politics and are not to do anything to jeopardise or tend to jeopardise the system and damage the credibility of institutions.

Most of the presiding officers, legislators and secretaries having widely travelled abroad at public expense would readily vouch that nowhere in the world have the proceedings of Parliament been stalled in the manner as done here. Members contribute in committees and other connected forums according to their initiatives and resources, of course within their party discipline and rules of the House.

DEBATE

Thus, if the legislatures do not function for any reason, individual members do lose a lot in being denied the opportunity to contribute and the House is denied the benefit of a meaningful debate. It is of minor importance that political parties indulging in these tactics may gain short-term political mileage, that too illusory, and the government gains as ministers and the administration do not have to face scrutiny and criticism. In any case, the people of the country are the biggest losers and they have every reason to feel betrayed.

There is no denying that there is considerable scope for reforms in the working of parliamentary institutions and procedures to make them efficient and effective. However, the existing rules give adequate scope for discussions. There is absolutely no justification whatsoever for stalling the proceedings of the House. In any case, stalling the proceedings is no substitute for an informed debate. It is a pity that deliberations on better behaviour of legislators though concluding on a note of optimism, failed to achieve desired results. In September 1992, a specially convened conference of presiding officers, party leaders and whips, parliamentary affairs ministers and senior parliamentarians after two-day deliberations in New Delhi unanimously adopted a resolution that legislators should observe the rules and maintain decorum in the House and that the suspension of Question Hour shall not ordinarily be demanded. It suggested that political parties should evolve a code of conduct for their legislators and ensure their observance. It further suggested that the Central and State governments should ensure longer sessions of Parliament and state legislatures to make these forums more relevant for meaningful discussion of policies and programmes and ventilation of problems of the people. It also urged that political parties, governments, the media and all others concerned should help create a climate conducive to the healthy growth of parliamentary system.

PRESTIGE

The special session of the Lok Sabha convened in 1997 to mark the golden jubilee of the country's independence at its concluding sitting on 1 September unanimously adopted a resolution stating that "the prestige of the Parliament be preserved and enhanced, also by conscious and dignified conformity to the entire regime of Rules of Procedure and Conduct of Business of the Houses and Directions of the Presiding Officers relating to orderly conduct of business, more especially by maintaining the inviolability of the Question Hour, refraining from transgressing into the official areas of the House, or from any shouting of slogans, and invariably desisting from any efforts at interruptions or interference with the address of the President of the Republic". The same year the Rajya Sabha constituted an Ethics Committee to oversee the conduct of members and examine specific cases of their unethical conduct. The Lok Sabha followed suit.

Notwithstanding these exercises, the disease has grown making legislatures less and less relevant. If the trend remains unabated, it would make them redundant except as a forum for farcical theatrics merely to provide formal legitimacy to executive fiats and a source of employment to a self-seeking greedy political community involving as they do a heavy drain on the public exchequer.

(To be concluded)

The author is former secretary-general of the Lok Sabha.

THE STATESMAN

ROLE OF SPEAKERS-II

The Scope For Reforms

By CK JAIN

AGAINST the dismal background of non-implementation of earlier resolutions and betrayal of the public trust, the conference of speakers has to address the subject calling for honest soul-searching and deep reflection to find ways to bring back the legislatures to their assigned role and responsibility. The Speakers need to remind themselves that as the first servant of the House they occupy a very high position of power and authority and as such owe a greater responsibility to maintain the prestige and ensure the orderly functioning of legislatures. Once they accept the office of the Speaker, narrow party considerations or otherwise have to be subordinated and the desire for a ministerial berth has to be shed forever. Only personal integrity can enhance the dignity of the office.

That precisely is the position scrupulously followed in the British House of Commons often referred to as the mother of Parliaments.

CORRUPTION

It presents an extremely tragic spectacle when Speakers themselves indulge in or face controversies; even allegations of corruption and other wrong deeds. In order that the Speakers are able to exercise their authority — legal as well as moral — in the discharge of their responsibilities, it is imperative that they are above controversies. In admitting notices of motions, questions, resolutions etc, they should apply the rules objectively with minimum use of discretion wherever available and that too invariably in favour of giving an opportunity to the House to discuss the matter. Disallowance of notices are often a cause for disorder.

One of the main causes of disorder in the legislatures is levelling allegations of corruption and other acts of commission and omission contrary to laws, rules and norms. While it has become a fashion to make allegations on the floor against ministers, members and even outsiders with or without basis, it has also become a fashion to ignore them in the first instance. While the legislatures are the appropriate forums to raise such matters, the laid down procedure needs to be followed so that legislatures are not misused for making baseless allegations. Lok Sabha Rule 353 enjoins: "No allegation of a defamatory or incriminatory nature shall be made by a member against any person unless the member has given adequate advance notice to the Speaker and also to the Minister concerned so that the Minister may be able to make an investigation into the matter for the purpose of a reply:

"Provided that the Speaker may, at any time, prohibit any member for making any such allegation if he is of opinion that such allegation is derogatory to the dignity of the House or that no public interest is served by making such allegation."

Kaul and Shakdher (5 Ed. p. 918) says: "A member has to be careful while making an allegation. He has to satisfy himself that the source is reliable and the allegation is based on facts. In effect he is required to make prima facie investigation into the matter before he writes to the Speaker or the Minister and more so, before he speaks in the House. A notice relating to an allegation based on newspaper reports is not allowed unless the member tabling it gives the Speaker substantial proof that the allegation has some factual basis. In the notice to the Speaker, a member is required to give brief details about the allegation which he proposes to make against a person or any other member so that the Speaker would judge the matter before him".

PRIVILEGE

Speakers must firmly adhere to the rule and in no case allow the privilege of freedom of speech to be abused. Enormous damage has also been caused to our polity due to interpretation (or misinterpretation) of the ill-conceived and defective anti-defection law by presiding officers in whom the power to decide defection cases vests. The speakers' conference must bring sufficient pressure on the Government of India to repeal this bad law and substitute it by a provision in the Constitution that any member changing the party on which he or she was originally returned should resign and suffer disability to accept any public office for a period of at least two years. Until the law is repealed, the presiding officers must invariably refer the cases to the Privileges Committee of the House and decide according to its recommendations. This will save the presiding officers of the charge of partisanship or behaving arbitrarily.

Similarly, Speakers would do well in substituting their absolute powers in administrative matters with an institutional arrangement of a House Commission comprising leaders of parties by asking the Government to bring forward a legislation as contemplated in articles 98 and 187 of the Constitution and found in Britain and other Commonwealth countries. This will insulate Speakers against the charges of arbitrariness and misuse of powers so far absolute and unbridled.

The conference also needs to look at procedural reforms to allow maximum opportunities for members to raise matters and encourage their participation without fetters like the nod of the government as a precondition.

WASTE

To save the Government from "embarrassment" or even a "negative vote" in the House is surely not the concern of presiding officers. If the government cannot take care of itself, it has no right to remain in power.

The other important area for reforms is restructuring of committee system. Instead of having proliferated committees straining the time of members and also resources of the legislature secretariats and the government, it would promote qualitative participation of members along with cohesiveness, efficiency and economy and avoid waste. Opening the committees to the media has the obvious benefit of strengthening them, focussing on their positive work. Similarly in the matter of codification of privileges, a dialogue between the media and Parliament and state legislatures is overdue.

Instead of parroting the old song, the speakers' conference needs to adopt a new approach to deal with the problem effectively. Otherwise it will turn out to be yet another jamboree throwing the taxpayer's money down the drain. And the people will be left with the usual conclusion, who cares!

(Concluded)

THE STATESMAN

Discretionary power of Governors

By Aladi Aruna

10-11 1996

Undoubtedly, the AIADMK has the right to form the Government in Tamil Nadu thanks to its landslide victory in the elections. The dispute is not about formation of the Ministry by the AIADMK but the Council of Ministers under the Chief Ministership of Ms. Jayalalithaa. Admittedly she has been punished in three criminal cases; she is not eligible to contest elections as per Section 8(3) of the Representation of the People Act, 1951 and her nominations were duly rejected. In spite of all these factors, she met Ms. Fathima Beevi, Governor of Tamil Nadu, and claimed that she should be invited to form the Ministry because she had been elected by the AIADMK Legislature Party to be the head of the Ministry. Now the questions are: whether the decision of the AIADMK Legislature Party and the claim thereof by Ms. Jayalalithaa are valid, tenable and sustainable in the court of law and whether the Governor is bound by the decision of AIADMK Legislature Party.

The AIADMK has every right to have anybody as its leader but the AIADMK Legislature Party, which is distinct from its parent party, has no right to ask the Governor to allow a disqualified person to be the head of the Ministry. When the Legislature Party put such an unlawful and illegal claim before the Governor, Ms. Fathima Beevi, who has taken oath to preserve, protect and defend the Constitution and the law, could have wisely advised the party to elect a qualified person to head the Ministry. Had Ms. Jayalalithaa persisted with her claim in accordance with the decision of her Legislature Party, the Governor could have resisted and promptly reminded her of Article 173(c) of the Constitution, under which she is not qualified to be a member of the legislature. Even then if she clung to her stance, the Governor could have referred the matter to the Election Commission under Article 192 and should have acted in accordance with its opinion.

In the case of Brindabun Naik vs. the Election Commission (AIR 1965 SC 1892) the Chief Justice, Mr. Gajendra Gadhkar, observed: "The decision on the question raised under Article 192(1) has no doubt to be pronounced by the Governor, but that decision has to be in accordance with the decision of the Election Commission. When the Governor pronounces his decision under Article 192(1), he is not required to consult the Council of Ministers; he is not even required to consider and decide the matter himself. He has merely to forward the question to the Election Commission for its opinion and as soon as the opinion is received, he shall act according to such opinion." In other words, the Governor has no option except to accept the opinion of the Election Commission. In the case of N.G. Ranga and others vs. the Election Commission (AIR 1978 SC 1609), the Chief Justice, Mr. Y. V. Chandrachud, categorically declared that in the matter of disqualification, the opinion of the Election Commission was final and binding.

Unfortunately, throwing legality, legitimacy and valid arguments against the claim to the winds, Ms. Fathima Beevi invited Ms. Jayalalithaa to form the Ministry under Article 163 and invoked Article 164 as well. The discretionary power exercised by the Governor is no doubt a naked and aggressive violation of constitutional provisions and subversion of the basic structure of our Constitution.

It is argued that the decision of the Governor in his discretion shall not be called in question on the ground that he ought or ought not to have acted in his discretion. It does not mean the Governor can wield the sword of his discretionary power in an arbitrary manner subverting the Constitution. The Justice Sarkaria Commission has observed: "The area for

OPINION

the exercise of his discretion is limited. Even this limited area of choice of action should not be arbitrary or fanciful. It must be a choice debated by reason, activated by good faith and tempered by caution... In any case they are unnecessary and it should be assumed that a Governor will use his discretionary power properly in accordance with the spirit of the Constitution." If the Governor in his official capacity fails to defend the Constitution, it is the right of any citizen to seek remedy through a court of law. In the past also, some Governors abused their discretionary power. Consequently, the High Courts as well as the Supreme Court intervened, questioning the validity of their actions. So the claim of immunity by the Governors have been set aside by the Supreme Court.

The Governor has the right to invoke Article 164 and nominate a Minister who is not a member of either House of the Legislature. But the nomination of Ms. Jayalalithaa as Chief Minister under Article 164(4) is a flagrant violation of constitutional law and convention. The Governor has no right to nominate any disqualified person as a Minister because it is an enabling provision to nominate a non-elected qualified person to the Council of Ministers. The very noble object of providing an opportunity to an eminent person to become a Minister has been mauled by the Governor. This is the first time in history that a Governor has aggressively abused this power to place the Council of Ministers under a disqualified person. The Governor could have advised Ms. Jayalalithaa to become a qualified person for nomination. To remove the hurdles of disqualification, the Governor could have advised her to expedite her appeals pending before the High Court. If the convictions were set aside or the sentences reduced enabling her to contest election, the claim of Ms. Jayalalithaa has to be accepted by the Governor.

Under the scheme of our Constitution, only one office — the office of the Governor — has been safeguarded from the fire of scrutiny and the axe of punishment. The President, judges of the Supreme Court and High Courts and members of Public Service Commissions can be impeached with necessary formalities by Parliament. Members of Parliament and the State Legislature have the right to move no confidence motion against the Prime Minister and Chief Ministers respectively.

Nevertheless, we have no right to take any action against any Governor. Under our system, the office of the Governor is more colonial, imperialistic and authoritarian than it was during the British system, prior to our Independence. Governors are unduly protected from any form of disciplinary action. They are unfettered and free from the fire of scrutiny. So it is quite natural that absolute power corrupts absolutely.

Alas, with the blessings of the Governor, our Government is placed under a disqualified person. How are we going to release ourselves from the iron clutches of a government under a disqualified person? Though the Governor enjoys immunity, any action taken and order issued by her can be brought under the scrutiny of the court. The defacement and defilement committed by the Governor on the basic structure of our Constitution has been already placed before the Supreme Court, praying it to restore the rule of law and restrict the criminalisation in politics at least in the higher level. Let us wait for the verdict of the apex court. Indian democracy has been on many occasions protected by the decisions of the Supreme Court rather than the vigilance of the public and parliamentarians.

(The writer is a former Law Minister of Tamil Nadu.)

THE HINDU

SC notice to Jayalalitha on PIL petitions

By T. Padmanabha Rao

NEW DELHI, JUNE 4. A two-member Bench of the Supreme Court today issued notices to the Tamil Nadu Chief Minister, Ms. Jayalalitha, its Chief Secretary and the Union of India (respondents) on a group of five connected writ petitions challenging her appointment as Chief Minister by the Governor, Ms. Fathima Beevi, on May 14. The Bench comprised Mr. Justice Syed Shah Mohammad Quadri and Mr. Justice Doraiswamy Raju.

While issuing notice to the Attorney-General to assist the Court in the hearing of the case, the Judges referred the Public Interest Litigation petitions to a three-member Bench in view of the importance of the legal questions raised therein.

The Bench directed that the papers be placed before the Chief Justice for the constitution of an appropriate Bench. The Bench also dismissed certain interlocutory applications from the petitioners seeking the Court's directive for restraining Ms. Jayalalitha from exercising powers as Chief Minister pending disposal of these petitions.

The Bench dismissed as withdrawn a petition challenging the validity of clause (4) of Article 164 of the Constitution which says that "a minister, who for any period of six consecutive months is not a member of a legislature of a State shall, at the expiration of that period cease to be a minister." The Bench asked petitioner's counsel if he could cite any authority to show that an original provision of the Constitution as enacted had been struck down.

Earlier, Mr. Anil Divan, senior counsel for Mr. Pratap Singh Chautala (petitioner), submitted that as the petition raised a matter of public interest, it ultimately required to be decided by the apex court. (Similar petitions are pending before the Madras High Court).

"The appointment and administering of oath to the respondent (Ms. Jayalalitha) of the office of Chief Minister by the Governor is unconstitutional and is contrary to the provisions of the Representation of the People Act, 1951, as she being a convict, convicted under the provisions of the Prevention of Corruption Act, 1988, is covered under the provision of Section 8(3) of the Representation of People Act, 1951. As such, she cannot be allowed even to contest election to either of the house of legislature, and is thus ineligible to hold office of the Chief Minister of Tamil Nadu even under the provisions of Article 164(4) of the Constitution and the provisions of Section 8(3) of Election law," the petition argued.

"The basic postulate of representative government is undermined and subverted when a person who is convicted and disqualified, and whose "stay application" had been rejected by the Madras High Court and, therefore, prevented by law from entering the precincts of the legislature as a member is appointed as a Chief Minister," Mr. Divan said.

There was no case where Article 164 (4) had been utilised for swearing in a chief minister who had been "disqualified" under "election law" because of a conviction under the Prevention of Corruption Act and who had failed to get a "stay" from the court, counsel said, adding that the cases related only to those persons who were qualified to contest elections but who either lost an election from a particular constituency or did not contest elections.

The impugned appointment of respondent (Ms. Jayalalitha) as Chief Minister "is wholly unconstitutional, arbitrary and subverts the law and the rule of law which is part of the basic structure of the Constitution", Mr. Divan said. He felt that the impugned appointment might lead to the following among other consequences:

Persons convicted of grave offences, murder, rape, etc., and who have been "disqualified" can be appointed as ministers in a State or even at the Centre and a chief minister who may be otherwise popular and unblemished can appoint many other ministers who have been convicted of grave offences.

Section 8 of the RP Act, 1951, is a "disqualification" which applies to a person "for being chosen as, and for being a member" of any legislature. It is well settled law that the relevant date for determination of the disqualification is the date of scrutiny of the nomination of the candidate and as a result the respondent (Ms.Jayalalitha) was disqualified (as she was disqualified by the certain returning officers from contesting recent elections), counsel pleaded.

"Article 191 (1)(e) of the Constitution raised a bar against a person if he is so disqualified by or under any law made by Parliament, and thus the bar under Section 8 was elevated to the level of a constitutional bar", Mr. Divan pleaded. He submitted that constitutional interpretation "must be in line with morality, observance of the law, and discouraging corrupt and criminal elements from holding office" and that "the appointment of a convicted and corrupt official is wholly against constitutional morality".

"If the logic of this appointment is upheld the same person may resign office a little before six months and then again may be invited to occupy the office of the chief minister if the majority party so decides," counsel contended, adding that "the impugned decision far from upholding the rule of law, legitimises the rule of outlaw".

Mr. R. Mohan, counsel for a petitioner adopted the submissions of Mr. Divan while Mr. B.L. Wadhera, a petitioner (and an advocate) made similar pleas.

Jayalalitha in Delhi: Page 11

THE HINDU
JUN 2001

Manipur muddle in President court

FROM OUR CORRESPONDENT

Imphal, May 31: Manipur Governor Ved Marwah today faxed his report to President K.R. Narayanan giving his assessment of the current political situation in the state after none of the leaders or groups could form an alternative government.

It is believed that the Governor has recommended President's rule by keeping the Assembly under suspended animation.

Marwah sent his report after Speaker Sapam Dhananjoy last night withdrew his claim to head an alternative government. The other claimant, Manipur State Congress Party (Chaoba) leader M. Hemanta Singh, also could not muster the required numbers.

The dissident camp which voted out the Radhabinod Koijam ministry seemed dejected after their attempts to form the government failed to materialise. Spokesman of the newly-formed Progressive Democratic Alliance Gangmumei Kamei, however, expressed hope that a BJP-led government would be installed before the next session of Parliament.

The Congress today demanded dissolution of the House and fresh polls. Addressing a joint press conference, state party unit president O. Ibobi Singh and former chief minister Rishang Keishing argued that no stable government could be formed by the defectors. The duo blamed the Samata Party and the BJP for encouraging defection and creating political chaos in Manipur.

When asked if the Congress high command was against Central rule, Keishing said he had convinced the central leaders about the ground situation and need for Central rule. He added that if the high command goes against Central rule, the state unit will revolt. He, however, hoped the Congress would respect the state unit's sentiments and press for dissolution of the Assembly.

Speaker Dhananjoy has also landed in a problem with Hemanta moving a disqualification petition against him on the ground of violating the anti-defection law. The MSCP(C) leader urged the Speaker to refer his complaint to the House, so that it could elect a member to supervise the disqualification proceedings.

Hemanta argued that the Speaker violated the anti-defection law by staking claim to form the government without resigning. He also charged Dhananjoy with siding with the dissidents to topple the Koijam ministry.

Caretaker chief minister Koijam, who returned from Delhi today, accused the BJP of trying to capture power through the backdoor via Dhananjoy. He also slammed the Speaker for staking claim to form the government without resigning his office. Koijam said that since Dhananjoy staked claim, he could not exercise his quasi-judicial powers as Speaker and should resign.

People's Front convener O. Joysingh told reporters that Central rule was the only way to clear the political muddle. He said the House should be kept under suspended animation to find a way to install a stable government. If every option fails, the House will have to be dissolved and fresh polls ordered.

THE TELEGRAPH

Quo warranto petitions against Jayalalitha

By Our Legal Correspondent

NEW DELHI, MAY 23. The swearing-in of Ms. Jayalalitha as the Chief Minister of Tamil Nadu by the Governor, Ms. Fatima Beevi, on May 14 has been challenged in the Supreme Court by two advocates in public interest litigation (PIL) petitions.

The quo warranto petitions, questioning under what authority Ms. Jayalalitha is holding the office of Chief Minister and seeking the setting aside of her appointment, are likely to be listed for hearing next week.

In his PIL, petitioner Mr. B.R. Kapur raised substantial questions of law of public importance, viz, whether a person is entitled to become Minister/Chief Minister of a State when he or she is disqualified on being convicted for more than two years; whether a person not entitled to become a Member of the Assembly in view of the disqualification as per the Representation of the People Act could be permitted to become a Chief Minister till his/her disqualification is set aside by the court; whether a "law-breaker" who has been disqualified because of her conviction for more than two years is eligible to become a "law-maker"; whether the appointment of Ms. Jayalalitha as Chief Minister would not hamper and hinder the investigation and trial of the other criminal cases pending against her.

The petitioner submitted that Article 164 (4) of the Constitution contemplated that the Governor could appoint a person as Minister even though he/she was not a Member of the Assembly, provided he/she had the requisite qualification under the RP Act to be elected to the Assembly within six months.

He said a person whose candidature had been specifically rejected to contest the Assembly elections could not be said to be covered under Article 164 (4) of the Constitution.

The petitioner contended that under the democratic set-up, what was relevant was not whether a person was the leader of a political party, but whether he/she was qualified and eligible to contest the election.

In his petition Mr. Manohar Lal Sharma said that inviting Ms. Jayalalitha to form the Government had raised two vital questions: whether a convicted person had the right to hold any post of profit as well as in the employment of Government and whether a disqualified person becoming the Prime Minister or Chief Minister was constitutional.

The petitioner said Sec. 389(1) Cr.P.C., "does not expressly speak of suspension of conviction" and "as per the established principle no citizen can hold or continue in the (Government) service if he/she is found convicted as per the provision in the Constitution".

He contended that "one principle and rule cannot be regulated in two different ways."

If a politician was allowed to hold a post after his/her conviction, any other person in Government service could also be allowed to hold his office after conviction, he submitted.

Contending that the Tamil Nadu Governor had "illegally appointed" Ms. Jayalalitha as the Chief Minister, the petitioners prayed for issuance of a writ of quo warranto and setting aside of her appointment.

THE HINDU

24 MAY 2001

Jayalalitha holds the chief minister's office without legal authority

Law and winding road

By A.G. Noorani

THE JAYALALITHA case is best understood on a plain reading of the law and the Supreme Court's rulings. Section 8 of the Representation of the People Act, 1951, lays down disqualification "for being chosen as, and for being a member" of any legislature. A clause (3) bars one "convicted of any offence and sentenced to imprisonment for not less than two years from the date of such conviction" and for six years after release.

In regard to sitting legislators, clause (4) of the bar begins three months after conviction, unless he has filed an appeal meanwhile. A sitting legislator loses an existing office; a candidate loses only a prospect. The deliberate difference proves that where clause (3) applies, the bar begins at once on "conviction".

V.C. Shukla was convicted in the '*Kissa kursi ka*' case and sentenced to imprisonment exceeding two years "on February 22/27 1979". Execution of the sentence was suspended pending appeal. The returning officer accepted his nomination papers on December 11, 1979. Shukla was elected to the Lok Sabha on January 7, 1980. On April 11, 1980, the Supreme Court set aside the conviction and sentence.

On September 5, 1980, the Madhya Pradesh High Court set aside his election on the ground of "improper acceptance" of his nomination. Chief Justice J.L. Verma, later Chief Justice of India, said: "It is only the execution which is suspended and nothing more, with the result that the sentence awarded is not to be suffered during the pendency of the appeal even though it subsists and the appellant is released on bail. There is no indication in Section 8 (2) of the RPA that the disqualification thereunder remains in abeyance during the pendency of appeal against conviction. On the other hand, Section 8 (3) gives the contrary indication by laying down an exception only in case of sitting members... suspension of sentence does not wipe out the conviction and sentence."

The Supreme Court did not fault this logic. Nor did it hold, as some suggest, that it is only the final appeal court's decision that matters. On the contrary, it ruled that the relevant date for determining the disqualification "is the date of scrutiny of the nomination of the candidate". It allowed Shukla's appeal on the simple ground that an order of acquittal "wipes off the conviction and sentence for all purposes and as effectively as if it had never been passed". It operates retrospectively.

SOME MOTHERS DO HAVE 'EM: Jayalalitha (left) and Fathima Beevi

The court was aware that in a "converse hypothetical case", a difficulty might arise — rejection of a nomination paper on account of disqualification and reversal of conviction on appeal. "But we do not think it necessary to indulge in this hypothetical and academic exercise."

In 1995, the distinction between the effect of stay of conviction and stay of sentence on disqualification was analysed threadbare by the Supreme Court in Narang's case. Chief Justice A.M. Ahmadi's reasoning was similar to Justice J.S. Verma's. Section 267 of the Companies Act disqualifies from the office of manager or full-time director one convicted of "an offence involving moral turpitude". The Supreme Court held: "The operation of Section 267 would take effect as soon as conviction is recorded by a competent court of an offence involving moral turpitude."

Referring to the appeal court's power to order suspension of the trial court's order under Section 389(1) of the Criminal Procedure Code, Chief Justice Ahmadi said: "An order of conviction by itself is not capable of execution under the code. It is the order of sentence or an order awarding compensation... which are capable of execution and which, if not suspended, would be required to be executed by the authorities. Since the order of conviction does not, on the mere filing of an appeal, disappear, it is difficult to accept the submission that Section 267 of the Companies Act must be read to apply only to a 'final' order of conviction."

However, Chief Justice Ahmadi added: "In certain situations, the order of conviction can be executable, in the sense, it may incur a disqualification... In such a case, the power under Section 389 (1) of the code could be invoked." The onus is on the person who seeks that protection. "In such a situation, the attention of the appellate court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389 (1) it is under the obligation to support its order "for reasons to be recorded by it in writing". If the attention of the court is not invited to this specific consequence, which is likely to fall upon conviction, how can it be expected to assign reasons relevant thereto?"

The Chief Justice delivered a sharp warning: "No one can be allowed to play hide and seek with the court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification has ceased to operate."

The Election Commission found that despite these clear rulings, returning officers accepted nomination papers of disqualified candidates if they were on bail. It made an order on August 28, 1979, which did no more than cite court rulings and explain the law for the benefit of chief electoral officers and returning officers — a candidate's disqualification "takes effect from the date of conviction by the trial court", irrespective of a pending appeal, subject, of course, to a stay of the conviction.

All hell broke loose. On September 1, the leader of the opposition, Atal Bihari Vajpayee, told the Lok Sabha: "The impression has been created that the commission is taking away the power to make laws from Parliament."

On September 4, Chief Election Commissioner M.S. Gill explained that the EC only applied Section 8, which hitherto "it had been lax in doing". The critics "had not done their homework". He said that there was ample time for any one to challenge the order in court. "The commission will be happy to obey."

On April 23 this year, Justice K.P. Sivasubramaniam of the Madras High Court ruled that the order was binding on returning officers.

J. Jayalalitha was convicted in the TANSI land case on October 9, 2000 and sentenced to three years' rigorous imprisonment. She did not challenge the order of 1997. Incontrovertibly, she did not secure a stay of conviction in the explicit terms as Chief Justice Ahmadi had laid down. All she has is an ambiguous obiter by a single judge of the Madras High Court on April 11, on the linkage between conviction and sentence, contrary to the Supreme Court's clear rulings.

Article 191 (1)(e) of the Constitution adds a constitutional bar to the one under Section 8: "...if he is so disqualified or under any law made by Parliament." The six months' grace (Article 164) securing election does not overcome this bar. The Governor of Tamil Nadu, Fathima Beevi, flouted the Constitution when she swore in Jayalalitha as chief minister. On a petition by any voter in the High Court or Supreme Court for a writ of quo warrant, the chief minister can be unseated. She holds office without legal authority.

THE HINDUSTAN TIMES

22 MAY 2001

PLATFORM | *Romesh Bhandari*

Constitutionally sound

HT-8 1895

The Tamil Nadu Governor played it by the book when she invited Jayalalitha to take over as chief minister. The issue must now be settled in the Supreme Court so that the morality brigade finally stops screaming

TAMIL NADU Governor Fathima Beevi has joined the ranks of those present and former Governors who are termed as controversial. She had to take a decision in a situation where one side or the other would cry foul. In effect, she is the latest in a line of controversial governors.

The assembly elections gave a very clear verdict. It should have been a straightforward case of inviting the leader of the party, or coalition, having a majority to form the government. Unfortunately, J. Jayalalitha was disqualified to stand for elections under Article 8(3) of the Representation of Peoples Act.

Under Article 164(1) of the Constitution, full discretion is vested in the Governor to appoint the chief minister. Under this article, the decision to appoint or dismiss rests with the Governor. He or she alone has to take a decision. It is up to the Governor to consult legal experts or anyone else, but this is not obligatory.

As Jayalalitha was not a member of the state assembly or council, according to Article 164(4) there is a provision for her to get elected within a period of six months. Here again the provision is straightforward. There are no conditions attached.

Let us now analyse the dilemma facing the Governor in a situation where Jayalalitha has been disqualified from standing for elections, yet claims to chief ministership. She has gone to the polls with this disqualification already known to the electorate. The electorate in turn gives her a massive mandate not merely for her party to take over, but also for Jayalalitha to be the new chief minister.

The Governor has decided that notwithstanding the disqualification, Jayalalitha be sworn in as chief minister. She has accepted Jayalalitha's assurance that she would overcome the disqualification and be elected within the stipulated period of six months.

It has nothing to do with cleanliness

There has been a hue and cry over this decision. It has been termed as being against the spirit of the Constitution; that the Governor has flouted the law which she is sworn to protect under Article 174; that corruption is being condoned; that immorality is being legalised.

Much of the arguments mentioned above have their own validity. They were not, however, relevant insofar as what the Constitution adjoins the Governor to do. What were the options available to her? She could have certainly told Jayalalitha that she should first have the disqualification removed after which she could be sworn in. It was, however, abundantly clear that the majority of the electorate had elected her as chief minister.

The AIADMK MLAs had chosen her as their leader. Neither they nor the public would accept any one else. If the Governor said no, the AIADMK MLAs would immediately retaliate by insisting that Jayalalitha and Jayalalitha alone would be their leader. Under the Constitution, a Governor has the right to return a piece of legislation once. But if it is resubmitted, the Governor must sign. I am sure that the Governor would have been informed that the MLAs would not accept anyone else even on a *pro tem* basis.

If she had insisted on not inviting Jayalalitha, there would have been a constitutional crisis. Here's the scenario: The Governor refuses to invite Jayalalitha. The AIADMK legislators insist they will have no one else. Riots break out. The outgoing chief minister cannot continue as a caretaker CM. The imposition of President's Rule to force the issue would be unthinkable.

There was no other option. Jayalalitha had to be sworn in. She had the people's mandate. And that too in a massive way.

Let us now look at the aspect of disqualification. There are ones like age, which cannot be removed, but in this case it was conviction in respect of corruption where the matter is still *sub-judice* and a clear verdict is yet to be given. The disqualification can be appealed against and rectified. In short, it is not a type of disqualification which cannot be removed within a period of six months.

There has also been talk that this issue will be taken to court. It may be recalled that in 1995, Mulayam Singh Yadav was dismissed as chief minister after he lost his majority with the withdrawal of support by the BSP. He went to court against this dismissal as he claimed that he would have proved his majority had he been given a chance to prove his strength in the assembly, which had already been convened.

Justice Raza of the Allahabad High Court dismissed this petition saying: "The power vested in the Governor under Article 164 of the Constitution of India pertains to his exclusive jurisdiction. The choice of the chief minister falls within the exclusive power of the Governor." He went on to state: "The Governor enjoys an immunity under Article 361 of the Constitution of India, and no writ or direction can be issued to him against his action."

Mulayam Singh Yadav went in appeal to the Supreme Court. This appeal is still pending. Had there been clarity in the matter, there would not have been the controversy when Kalyan Singh was dismissed after he lost his majority in 1998. A few months later, the chief minister of Goa was dismissed. He petitioned the court. A two-member bench of the Mumbai High Court gave a verdict on the same lines as Justice Raza in the case of Mulayam Singh.

The appointment of Jayalalitha falls in the same category as it also falls under Article 164. This issue must be taken to the Supreme Court so that we can have a final and decisive verdict on the inviolability — or otherwise — of a decision of a Governor to appoint or dismiss a chief minister.

Many have talked about the morality involved. If there is one thing the public is disgusted with, it is the morality of politicians and political parties. Everything for them is fair as long as it leads to capturing power and retaining it. Promises made to the electorate are conveniently put on the backburner thereby committing a fraud against those who voted for them. Elected representatives switch sides for money or ministerial berths. Corruption is all pervasive. It is only whether one gets caught or not.

A Mandelson in Britain will resign merely on an allegation that he wrote a letter in respect of a passport for a Hinduja. A politician in India accused of assault, dacoity and even murder becomes a minister.

The author is former Governor of Uttar Pradesh

THE HINDUSTAN TIMES

18 MAY 20

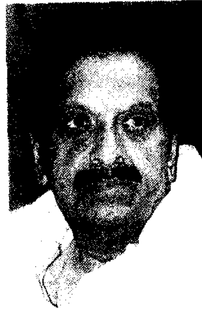
Governor's reservations keep Pillai out of Cabinet

HD-1 1915

By Girish Menon

THIRUVANANTHAPURAM, MAY 16. The Kerala Governor, Mr. S.S. Kang, today expressed his reservations about inducting the Kerala Congress (B) leader, Mr. R. Balakrishna Pillai, who has been convicted in the graphite case, as a Minister in the Antony Cabinet.

S.S. Kang



Balakrishna Pillai

The Governor made his views known when the Chief Minister-designate, Mr. A.K. Antony, called on the Governor in the morning, following which Mr. Antony requested Mr. Pillai to step down. However, in tune with the United Democratic Front convention of giving the prerogative to the concerned constituents to nominate their representatives to the Cabinet, the UDF leaders accepted Mr. Pillai's proposal to induct his son, Mr. Ganesh Kumar, an actor, in the Cabinet.

What is interesting is that Mr. Kang, a former Chief Justice of the Jammu and Kashmir High Court, has chosen a different approach to the Pillai issue compared to his counterpart in Tamil Nadu. UDF sources said the Governor had not put his foot down on inducting Mr. Pillai as Minister, but only conveyed his views on the sensitive issue. Mr. Antony, who gives quite a lot of importance to democratic propriety, felt that it was only appropriate that he comply with the Governor's sentiments. He called up Mr. Kumar and informed him about the developments.

The UDF high power committee had deliberated on the issue of inducting Mr. Pillai when it met on Tuesday night. After a spate of arguments and counter-arguments, the HPC decided that there would be no harm in inducting him as Minister. But, the delicate decision was overturned by the Governor's observations.

The Kerala Congress (B) State committee met and nominated Mr. Kumar as the party's nominee in the Antony Cabinet. Subsequently, the list of Cabinet Ministers who would be sworn in on Thursday was sent to the Governor in the evening.

Mr. Pillai would be the Kerala Congress (B) Legislature Party leader. Addressing a hurriedly convened press conference, he claimed that he had stepped down on his own. He said he had enough of the controversies making national news. He insisted that he was not asked to step down and that he had taken the decision to uphold democratic conventions.

"I have already won a verdict in the people's court. I am ready to fight the legal case in the courts," he said. To a question, he said Mr. Kumar had been nominated in tune with the UDF convention of giving the concerned partners the freedom to nominate their representative to the Cabinet.

Senior UDF leaders said Mr. Pillai, who was a Minister in the Antony Cabinet in 1995, had to resign when a petition in the Edamalayar case was admitted by the court. They felt that the UDF would find it difficult to stand public scrutiny if Mr. Pillai were to be inducted in the backdrop of his conviction in the graphite case. The latest developments appears to have added to Mr. Pillai's cup of woes, though the induction of his son is sure to continue his legacy. Mr. Pillai almost lost out in the electoral race when his nomination papers came up for scrutiny. He won the first round when he produced a Calcutta High Court judgment to clinch the issue in his favour.

Soon after getting his nomination cleared, Mr. Pillai had to go through one of the toughest electoral battle in his career, fighting not only his opponents, but their "character assassination." Mr. Pillai silenced his critics by winning his traditional Kottarakara by a margin of more than 12,800 votes. He topped it by ensuring that his son too won from Pathanapuram constituency with a creditable margin of 9,900 votes.

17 MAY

Spirit of the review

Constitution panel gives a welcome push to federalism

THE four consultation papers the National Commission to Review the Working of the Constitution, released last week, remove whatever misapprehensions some sections of the people may have had over the whole exercise. They saw the commission as an instrument of the BJP-led government to pursue its hidden agenda to subvert the democratic and secular character of the Constitution. Some of the consultation papers released early this year lent some measure of credence to such a belief. But the latest ones clearly show that the Commission, headed by Justice M.N. Venkatachaliah, has a mind of its own and is not susceptible to governmental pressures. The consultation papers are, by their very nature, inconclusive and aimed at generating a debate. Nonetheless, they reveal the direction in which the Commission has been moving. It is against this backdrop that the possibility of the Constitution getting strengthened, rather than weakened, by the review has become bright. If it has its way, the fundamental rights of the citizen will be strengthened to include protection against discrimination on a host of grounds like "ethnic or social origin, colour, age, language, political or other opinion, property and birth". Pluralism, rather than sectarianism, will thus continue to be the hallmark of the Constitution, if the recommendations are accepted.

Further codification of the fundamental rights to include more rights like the right to freedom of the Press, freedom of information and the right to privacy will be in furtherance of the principles that guided the founding fathers of the Constitution. Inclusion of the enforceable right to compensation for depriving a person of his life or property is nothing but epoch-making. It will make it obligatory for the government to pay adequate compensation or provide rehabilitation to the people whose land is acquired for public-utility projects. At the moment, such people are dependent on the mercy of the government or the benign interpretation of the law by the courts concerned. By making it a constitutional right, the need for agitations of the Narmada type will, hopefully, be obviated. In the process, the Constitution will be in a better position to cope with the pressures of globalisation and its unhappy demands that the president once alluded to in a televised address to the nation.

The sum and substance of the paper on Article 356 is that it will become increasingly tougher for the Centre to dismiss state governments which it deems inconvenient. The Commission has gone beyond the recommendations of the Sarkaria Commission, which had looked into the Central-state relations. By making it obligatory for the governor to show cause against dismissal to the government and to explain the circumstances in which the dismissal is ordered, it seeks to control the tendency to resort to Article 356. The Centre will be left with little options for manoeuvre as any doubt on the strength a government enjoys will be tested nowhere else but in the House and the imposition of President's rule must have the approval of both Houses of Parliament. It will also deprive the Centre of the right to choose any one of its liking for a gubernatorial post. Whether this is what the BJP had bargained for or not, such a trajectory will only strengthen, not weaken, the Constitution.

INDIAN EXPRESS

16 MAY 2001

'Sorabjee was not consulted'

By Our Special Correspondent

NEW DELHI, MAY 14. The Attorney-General, Mr. Soli Sorabjee, has neither been consulted nor has he given any opinion on the question of inviting the AIADMK leader, Ms. Jayalalitha, as the Chief Minister of Tamil Nadu.

The office of Attorney-General denied reports that Mr. Sorabjee had given his opinion to the Tamil Nadu Governor in this regard. Mr. Sorabjee, at present, is on a visit to the United Kingdom and expected to return early next month.

Experts divided

Constitutional experts are divided in their opinion on the decision of the Tamil Nadu Governor, Ms. Fathima Beevi, to invite Ms. Jayalalitha to form the government.

Dr. L.M. Singhvi, Constitutional expert and BJP MP, said that while the Constitution did not have any express provision with regard to qualification or disqualification of a person for the post of chief ministership, it could not be said that there were no disqualifications whatsoever for a person holding the post.

Referring to Ms. Jayalalitha's appointment, he said her nomination papers were rejected on the grounds of disqualification under Article 173(c).

"It is axiomatic that if a person suffers from disqualification to be elected as a member of a legislature, that person could be appointed as chief minister on the basis that the disqualification is not expressly prescribed in the Constitution itself."

He said that in a contextual sense and in terms of parliamentary convention, the disqualification incurred by a person as a result of a conviction or a sentence in respect of a criminal offence cannot be overlooked.

"It is a classic case of electoral mandate of our democracy and the rule of law which sustains and regulates democracy. A verdict of people, howsoever overwhelming, cannot over-rule a decision of the court."

Laloo parallel

Dr. Singhvi said his views were in the context of public law and the Constitution and not coloured by political considerations.

Drawing a parallel, he said, the incumbent Bihar Chief Minister, Mr. Laloo Prasad Yadav, was made to resign because charges were framed against him; while in the present context, Ms. Jayalalitha was invited to form the government despite being convicted.

He suggested a Constitutional amendment to avoid such a predicament in the future.

On the other hand, Mr. Ashwani Kumar, former Additional Solicitor-General and chairman of AICC, Vihar Vibhag, said the massive verdict in favour of Ms. Jayalalitha entitled her to be sworn in as chief minister in terms of Article 164 (4).

In a statement, he said the contention that she was not eligible to occupy the post was premised on "a questionable legal foundation" based upon her conviction.

The said Article itself postulates that a person other than a member of the legislature could remain a Minister/ Chief Minister for a period of six months and that it cannot be restricted with reference to any provision of a statue of the Representation of the People Act.

He said, even otherwise, conviction in law has been repeatedly held to denote final confirmation of the order of the conviction after the accused has had an opportunity to exhaust her legal remedies by way of appeal to higher judicial forums.

Senior Supreme Court advocate, Mr. P.P. Rao, who had appeared as the AIADMK leader's counsel in an election case, while welcoming the decision said, if, while disposing of Ms. Jayalalitha's appeals, the courts acquitted her or reduced the sentence, she could contest the election.

In addition, she could also challenge the circular of the Election Commission on the basis of which she was disqualified to contest the Assembly elections.

THE HINDU

15 MAY 2001

Commission recommends changes in Constitution

STATESMAN NEWS SERVICE

NEW DELHI, May 11. – The National Commission to Review the Working of the Constitution today released four consultation papers, recommending major changes in the country's legal and constitutional structure, including 10 new Fundamental Rights for citizens. It had called for the Right to Information, the strengthening of the Right to Equality, changes in the manner a Governor is appointed and the way President's rule is imposed on a state.

The consultation paper on the enlargement of fundamental rights borrowed ideas from the South African Constitution. It had suggested that the Constitution should say that people should not be discriminated against on the grounds of "ethnic or social origin, colour, age, language, political or or other opinion, property and birth" in addition to the present "religion, race, case, sex or place of birth." Article 14 or the Right to Equality is being strengthened. The Commission suggested that the phrase "full and equal enjoyment of all rights and freedoms" be included and added the state can take measures to ensure equality.

The consultation paper called for new Fundamental Rights like the freedom of the press, the freedom of information, prohibition of torture and cruel, inhuman or degrading treatment or punishment, the right to travel abroad and return to one's country, the right to privacy, the right to free elementary education up to the age of 14, the right to a clean and healthy environment and the right to have access to courts and legal aid.

It adds that a person who has been illegally deprived of his right to life or liberty shall have the right to be compensated.

Two other issues dealt with are a reasonable ceiling on the maximum period of preventive detention and discussions on the need and advisability of abolishing capital punishment.

■ See CHANGES: page 8

THE STATESMAN

12 MAY 2001

PLURALISTIC TONE, BLOW TO HINDUTVA AGENDA

Statute panel for enlarging fundamental rights

By Harish Khare

NEW DELHI, MAY 11. The National Commission to review the working of the Constitution, headed by Mr. Justice M.N. Venkatachaliah, has belatedly and silently moved to frustrate whatever narrow designs the NDA Government may have had in wanting to "review" the Constitution.

Today, the "Constitution Commission" released four consultation papers for public discussion; unlike the first set of papers released in January which bore the stamp of the Sangh Parivar's hidden agenda, today's papers would cause deep unease to the Sangh Parivar ideologues.

Releasing the papers this afternoon, Mr. Justice Venkatachalaiah stressed "the spirit of constitutionalism" and saluted the deeply-held commitment in the country to a Constitutional order. If this commitment was strengthened, it would be possible, according to the distinguished former Chief Justice of India, to re-energise "our institutional strategy" in the face of globalisation and its unhappy demands.

The most significant paper released today is on "enlargement of fundamental rights". Prepared under the supervision of Mr. Soli Sorabjee, Attorney-General and Member of the Commission, the advisory panel for this paper included: Mr. Justice V.R. Krishna Iyer (chairperson), Mr. Justice B.P. Jeevan Reddy, Mr. Justice M. Jagannadha Rao, Mr. C.R. Irani, Prof. Amrik Singh, Prof. Andre Beteille, and Prof. Mushirul Hasan.

The paper suggests a deepening of the fundamental rights. For example, as of now the Constitution (Article 14) promises equality before law and specifically prohibits (Article 15) discrimination on the basis of "religion, race, caste, sex or place of birth"; now the Constitution Commission's suggestion is to widen the list of prohibitions, and it seeks to enlarge Articles 15 and 16 to include "ethnic or social origin, colour, age, language, political or other opinion, property and birth."

The judicial philosophy behind this expansion of fundamental rights would make it virtually impossible for the NDA Government to implement its agenda promise of reserving high offices only for "naturally born Indian citizens." The promise made in the 1999 NDA agenda was widely perceived to be aimed at Ms. Sonia Gandhi. Even otherwise, the inclusive and pluralistic tone of the suggested enlarging of the right to equality is sharply at variance with the sectarianism, espoused by the Hindutva right-wing of the ruling combine.

Another major suggestion of the "Constitution Commission" is to codify as fundamental rights certain freedoms which the Supreme Court has already deduced as fundamental rights. These include (a) the right to freedom of the press; (b) freedom of information; (c) right to privacy; (d) right to free elementary education up to the age of 14; (e) right to a clean and healthy environment, and (f) right to have access to courts and legal aid. More significantly, the Commission suggests a "Right of Compensation" against a callous and brutal state authority. The Commission's suggestion is that Article 21 be enlarged to read: "Every person who is illegally deprived of his right to life or liberty shall have an enforceable right to compensation."

Equally far-reaching is the suggestion that "in a case where a person belonging to the weaker section is deprived of property because of acquisition of agricultural and homestead lands, he shall be provided with land of quality at least equal to the land he previously occupied or otherwise adequately rehabilitated." This suggestion becomes particularly relevant in the on-going context of the Narmada agitation.

On role of Governors: Page 13

THE HINDU

12 MAY 2001

Panel wants amendments to Art. 356

By Our Special Correspondent

NEW DELHI, MAY 11. The National Commission to Review the Working of the Constitution, headed by the former Chief Justice of India, Mr. Justice M.N. Venkatachaliah, has suggested wide-ranging amendments to Article 356 of the Constitution and changes in the appointment and functioning of Governors.

In separate consultation papers released today for eliciting public opinion on Article 356 which provides for the dismissal of a State Government as well as the selection, appointment and functioning of the Governors, the Commission sought to correct several anomalies surrounding the two crucial areas.

While invocation of Article 356 as an emergency provision of the Constitution has often sparked controversies, the method of appointment of Governors in recent times has also left much to be desired. Referring to Article 356, the panel suggested approval of the proclamation by both Houses of Parliament.

It expressed the view that before issuing the proclamation, the President/Centre should indicate to the State Government the matters wherein the State was not acting in accordance with the provisions of the Constitution and give it a reasonable opportunity to redress the situation.

The proclamation must contain by way of an annexure the circumstances and grounds, specifying the situation where the governance of the State cannot be carried on in accordance with the provisions of the Constitution. Further, if the Legislative Assembly is sought to be kept under suspended animation or dissolved, reasons for it should also be stated in the appropriate proclamation.

Whether the State Ministry has lost the confidence of the Legislative Assembly or not should be decided only on the floor of the Assembly and nowhere else. If necessary, the Centre should take steps to enable the Assembly to meet and freely transact its business. The Governors should not be allowed to dismiss Ministries so long as they enjoyed the confidence of the House.

The panel commended and reiterated some of the vital recommendations of the Sarkaria Commission regarding Article 356. Among other things, the Sarkaria panel had suggested that the Article be sparingly used, a warning should be issued to the errant State in specific terms and safeguards should be incorporated in the provision.

Referring to the appointment and functioning of Governors as well as the anomalies and problems surrounding the powers vested in them, the panel said the practice of sending ad hoc or fortnightly reports to the President was not a healthy one.

The Commission felt it would be appropriate to suggest a committee comprising the Prime Minister, the Union Home Minister, the Lok Sabha Speaker, and the Chief Minister concerned to select a Governor. "Instead of 'confidential and informal consultations' it is better that the process of selection is transparent and unambiguous," it said.

THE HINDU

12 MAY 2001

SC curb on trial after extradition

FROM R. VENKATARAMAN

New Delhi, April 17: The Indian criminal courts will have no jurisdiction to try a fugitive brought in from abroad for offences other than those mentioned in the extradition decree.

"A fugitive brought into this country under an extradition decree can be tried only for the offences mentioned in the decree and for no other offence and the criminal courts of this country will have no jurisdiction to try such fugitive for any other offence," the Supreme Court in a judgment ruled.

This settles a major question in international law and criminal law of India, particularly when several key accused are sought to be extradited for offences in cases including Bofors, Rajiv Gandhi assassination case and the urea scam case.

A division bench of Justice G.B. Pattanaik and Justice U.C. Banerjee said: "...whenever a state uses its formal process to surrender a person to another state for a specific charge, the requesting state shall carry out its intended purpose of prosecuting or punishing the offender for the offence charged in its request for extradition and none other."

The ruling came on an appeal by one Daya Singh Lahoria who was extradited from America for a criminal case. But after securing his extradition through a US court's extradition decree, the prosecution in India sought to try him in a Tada case also.

Lahoria prayed for quashing of the FIR and chargesheet against him which were not included in the extradition order of the US court. He contended that such a trial would be a contravention of Section 21 of the Extradition Action as well as contravention of the provisions of the International Law and the very Charter of Extradition Treaty.

The apex court cited a US Supreme Court ruling which disallowed a trial even though the extradition treaty had not specified that the accused should not be tried for other offences.

The court held "the weight of authority and sound principle are in favour of the proposition that a person, who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty, can only be tried for one offence described in that treaty and for the offence with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given to him, after his release or trial upon such charge, to return to the country from whose asylum he had been forcibly taken under those proceedings".

"When a person is extradited for a particular crime, he can be tried for only that crime," the bench said, adding, "if the requesting state deems it desirable to try the extradited fugitive for some other crime committed before his extradition, the fugitive has to be brought to the status quo ante, in the sense that he has to be returned to the state which granted the extradition and a fresh extradition has to be requested for the latter crime."

THE TELEGRAPH

Bhan revives dalit agenda in UP through high-level panel

By Amita Verma

Lucknow, March 14: Himachal Pradesh governor Suraj Bhan did on Tuesday what he could not do during his stay in Lucknow's Raj Bhawan.

At a meeting of the governors' committee, appointed by President K.R. Narayanan to review the implementation and impact of various dalit welfare schemes in different states, Mr Bhan revived his favourite dalit agenda. The former UP governor, who had been shifted to Himachal Pradesh in November last year after he had insisted on embarrassing the UP government on dalit issues, took the officers to task for diverting funds meant for dalit upliftment under the Special Component Plan. Mr Bhan was part of a three-member delegation led by Maharashtra governor P.C. Alexander which arrived here on a two-day visit on Tuesday. Mr Bhan, during the meeting with state ministers and officials, expressed his anguish over the fact that SCP funds in UP had remained unutilised for two years. Officials in the state, however, were fully prepared for a gruelling session with Mr Bhan and had come armed with answers to his possible volley of questions.

UP chief secretary Bhola Nath Tiwari announced that in order to ensure proper implementation of dalit welfare schemes, the state government had decided to appoint the social welfare department as the nodal agency that would monitor the implementation of all such schemes.

SPOTLIGHT

At the end of the two-day meeting, however, the chairman of the committee and Maharashtra governor Mr Alexander took away considerable steam from Mr Bhan's crusade for dalits when he announced that "weaknesses in schemes meant for the dalits were a bigger problem than their implementation."

"There are about 300-400 schemes for dalits in the country and people at the grassroots levels have not even heard of many of them. There are inherent inadequacies in several of these schemes which are largely responsible for the lack of improvement in the educational and economic standards of dalits in the country. The implementation of these schemes is not so much of a problem," Mr Alexander said. It may be recalled that Mr Bhan, during his 19-month tenure in Uttar Pradesh had insisted that the faulty implementation was solely responsible for the benefits not reaching the target.

Mr Alexander said that though the final report of the seven-member governors' committee would be formally submitted to the President at the end of April, the members had decided to suggest a pruning in the number of schemes and different packages would be suggested keeping in mind the regional disparities in dalit problems.

"There are so many disparities in the problems faced by dalits in different regions of one state that a comprehensive and uniform scheme cannot be the answer to all troubles. We would require different schemes for different parts of states," he explained.

THE ASIAN AGE

15 MAR 2001

The 83rd Amendment

By Vinod Raina

THERE ARE strong indications that the dormant 83rd Constitutional Amendment Bill seeking to make the Right to Education a Fundamental Right is likely to be introduced in the current session of Parliament. That the introduction of the Bill is still "indicated" and "rumoured" clearly reveals the lack of public discussion and transparency that has surrounded it. Prepared three years back in 1997 when Mr. S. R. Bommai was Union Education Minister, the Bill seeks to replace Article 45 of the Constitution that exhorted the state to "endeavour to provide free and compulsory education to children up to the age of fourteen in ten years". Given that about half the 20-crore children in the 6-14 age group are out of school, never enrolled or dropouts, 40 years since the constitutional deadline expired, the 83rd Amendment could be critical in addressing the question of universalisation of elementary education. Whether such a hope will be fulfilled by the amendment is, however, a big question. And that is not only because of the prevailing pessimism regarding the failure of the Executive and the Judiciary to uphold other Rights guaranteed by the Constitution, but more because of the manner in which the Bill has travelled thus far.

The 1990s saw a relatively heightened attention to the question of basic education and literacy in the country. Coinciding with the Education for All (EFA) decade, declared at the World Summit on education at Jomtien in 1990, large-scale external funds entered the basic education sector during this decade, through the District Primary Education Programme (DPEP), the Lok Jumbish Project (LJP), the Bihar Education Project (BEP) etc. Though the entry of external funds in this vital sector remains a matter of concern, since it signals the failure of the Indian state to provide at least six per cent of its GDP to education, accepted by the Government as a policy, a heightened public awareness about the issues has resulted as a consequence. Notably, the LJP attempted many innovative methodologies, both at the level of community participation as well as in the improvement of quality of education. Similarly, the "Seekhna-Sikhana" approach to primary education in Madhya Pradesh, the "Nalli-Kalli" in Karnataka, and the new textbooks of Kerala were bold attempts to improve the quality of Government education, through large scale involvement of teachers. Many of these policy and practice changes drew upon the work of independent initiatives, pioneered by groups and programmes such as the Hoshangabad Science Teaching Programme and Eklavya in Madhya Pradesh, Digantar, Sandhan and Bodh in Rajasthan, M.V. Foundation in the case of working children from Andhra Pradesh, the Centre for Learning Resources and Pratham in Maharashtra, Agragamme for tribal children in Orissa, to name just a few.

The 83rd Amendment could be critical in addressing the question of universalisation of elementary education. But will such a hope be fulfilled?

The major initiative during this decade was in the area of adult literacy. Pioneered by the Kerala Sastra Sahitya Parishad (KSSP) and backed by the People's Science Movement (PSM), the Ernakulam mass literacy campaign form was picked up by the 1989 constituted National Literacy Mission (NLM) through a bold policy initiative as a model for the entire country. The PSM set up a separate organisation, the Bharat Gyan Vigyan Samiti (BGVS) to support the effort countrywide. Through unprecedented mass mobilisation, the campaign form moved from the southern States to the dominant illiteracy areas of northern and central India by 1992. Madhubani, Saharsa, Dharbhanga, Beguserai, Dhanbad, Dumka and other districts of Bihar, Burdwan, Midnapur, Birbhum in West Bengal, Durg, Bilaspur and Ratlam districts of Madhya Pradesh, Chamoli, Almora, Agra, Bijnor, Bara Banki in Uttar Pradesh, Pali, Baran, Chittorgarh in Rajasthan and many more proved that the participatory and volunteer based, district specific literacy campaign form could involve masses even in the difficult northern States. By 1997, the campaigns had spread to over 400 districts, to most parts of the country.

The 53rd round of the National Sample Survey reveals that in the six-year period between 1991 and 1997, the literacy rate of the country rose by over 10 per cent, a record growth in the post-independence period, more than equalling the best decadal growth rate in the past 50 years. Though we must await confirmation of the results of this sample survey from the ongoing census operations, the voluntary nature and the mass involvement of the people in the campaigns was certainly unprecedented. According to the Union Ministry of Human Resource Development, over ten million volunteers have contributed to the mass literacy campaigns, a contribution that is difficult to quantify in its impact, and the upsurge and demand not only for literacy, but more importantly, for the education of children. Though the demand for children's education has always existed, as was confirmed by the Public Report on Basic Education (PROBE) last year, the literacy campaigns helped to actively involve parents and ordinary people in voicing it. Measured in terms of money, the contribution of the one million volunteers was worth nearly Rs. 5,000 crores at the rate at which literacy teachers were earlier paid (Rs. 200 a month for two years), against a total expenditure of about Rs. 1,000 crores by the Centre and the States on the campaigns. In every sense therefore, it was a people's campaign, particularly in a State such as Bihar, much ridiculed in the media otherwise.

Sadly, most of these initiatives started declining before the end of the decade. The erstwhile Lok Jumbish, Nalli-Kalli, Seekhna-Sikhana and the literacy campaigns were gradually integrated back into the usual bureaucratic morass. Most of the participatory and innovative elements have been given up. Instead a spate of bureaucratically-inspired initiatives, like the various Education Guarantee Schemes, and the para-teacher approach, that virtually disbands the post of the regular teacher, have taken over, with the aim of increasing access. But access to what, one may ask? Most of them stress on cost cutting, but virtually reduce school education to cheap non-formal education. With this background it is hard to imagine that an important policy initiative like the 83rd Amendment can be brought in without any discussion and transparency. Consequently, there is every reason to believe that the Bill is likely to prove discriminatory, non-participartory and cheap.

Discriminatory, because where as Article 45 talked of children up to the age of 14, the Bill clearly restricts the age from 6 to 14. This virtually rules out any state initiative in pre-schooling, something the rich increasingly enjoy through private institutions and is denied to the poor. The particular needs of working children, children with disability, the girl child find no mention in the Bill. What is worse, the onus of educating the child is on the parents. This could lead to more parents in jails than children in schools!

Non-Participatory because there has been no attempt to involve the millions who have worked for education for the masses in the recent past and for decades in eliciting their views, and more importantly, to ensure their support and involvement at the implementation stage.

Cheap for the following reasons. The financial implications of the draft Bill prepared by Mr. Bommai were calculated by the Saikia committee and estimated as Rs. 40,000 crores for a five-year period. Subsequently, the Tapan Majumdar committee set up by the MHRD estimated the figure to be about Rs. 63,000 crores for the same period. It is not clear which estimate Mr. Murli Manohar Joshi will present when he introduces the Bill in the Parliament. The Government talks of a "new policy" called the Sarva Shiksha Abhiyan, but a closer look reveals that it is not really a policy but an accounting and administrative measure at the Ministry level to combine and use interchangeably various education heads. How that can raise the required amount is anybody's guess. But what seems likely is that the implementation will depend more and more on external funds and follow the path of the cheap Education Guarantee Scheme-based non-formal mode, further reducing the quality of Indian school education.

(The writer is an activist associated with the Bharatiya Gyan Vigyan Samiti.)

THE HINDU

- 6 MAR 2001

Four-state debut for fast courts

New Delhi, April 1 (PTI): Fast track courts, expected to reduce the huge backlog of pending cases, came into existence today in Kerala, Meghalaya, Rajasthan and Uttar Pradesh.

The government has set up 1,734 fast track courts to reduce a backlog of more than 2.35 crore pending cases across the country. The courts would first deal with criminal cases pending for two or more years and those of undertrials in jails, law ministry sources said today.

Cases of undertrials are likely to be disposed off in the very first year of the scheme recommended by the 11th Finance Commission. About 2 crore cases are expected to be disposed off by 2005.

The state government will provide infrastructure while the high courts will select judges for these courts.

The scheme was initiated by the Justice department and Rs 502.90 crore was sanctioned as "special problems and upgradation grant for judicial administration" for five years till 2005. The government is spending Rs 361 crore every year to maintain 1.8 lakh undertrials in prisons at a rate of Rs 55 per person per day.

The courts in Delhi, Mumbai, Chennai and Calcutta will soon be computerised at a cost of over Rs 10 crore, the sources said, adding that the Planning Commission has already allocated Rs 8.53 crore for it.

However, till March 1- four states have sent action plans for fast track courts, the sources added.

Law minister Arun Jaitley had said recently that "at least five such courts run in the districts with central funding".

Jaitley said that the government is charting out a "long-term road map" for judicial reforms.

The minister said many amendments have been made in the Civil Procedure Code and placed before Parliament. He added that the home ministry had set up a committee to suggest similar amendments in the Criminal Procedure Code.

Rajiv case

New Delhi, April 1 (PTI): The CBI has approached 23 countries to seek details about LTTE members suspected to be involved in the assassination of former Prime Minister Rajiv Gandhi.

Sources said letters rogatory were sent to various countries, including Sweden where LTTE chief V. Prabhakaran's confidante "KP" is said to be hiding.

The sources said a request was sent to the Swedish authorities to probe the conduct of the militant who is suspected to have "some links with the assassination". The agency had asked the countries to gather information about the suspected persons belonging to the LTTE and interrogate them.

THE TELEGRAPH

Rejecting the parliamentary system

By Era Sezhiyan

THE NATIONAL Commission to Review the Working of the Constitution (NCRWC) has released a Consultation Paper on 'Election Law, Processes and Reform Options', advocating "a system of direct elections only at the grassroots of Indian democracy". Regarding formation of other bodies, it proposes: "Panchayats and other local bodies could elect the zilla parishads and they could together elect the State Legislature. The three could elect Parliament and in the last analysis the four of these could elect the President". Let us see how this odd proposal will work out in practice. At the present we have about 2,50,000 gram panchayats, 1,900 nagar panchayats, 1,700 town municipalities, and 96 city corporations. If the elections are held in full at the panchayat level, there will be about 30 lakh representatives elected directly. According to the Consultation Paper, the members for any tier above the panchayat will be by indirect election from the tiers below it.

Regarding the executive head(s) of the Union and the States, the Paper recommends that "the Prime Minister and the Chief Ministers could be elected by Parliament and the State Legislatures concerned" and that "once elected the Prime Minister or a Chief Minister should be removable only by a constructive vote of no-confidence".

The scheme of indirect elections suggested by the NCRWC cuts at the very basic characteristics of the representative system of parliamentary democracy. In the parliamentary system, the Executive (Cabinet) is responsible to the Legislature. If Parliament or the national assembly consists of two chambers, then the Government is dependent on "the majority in the popularly elected House of the Legislature". Only in the presidential system as in the U.S., is the executive head, the President, not dependent on the majority in the House.

In the U.K., Parliament has two chambers, the House of Lords and the House of the Commons, and the Cabinet exists on the support of the majority in the Commons to which Members come by direct election. The same process is followed by all countries adopting the parliamentary system. India also, having the parliamentary system, has the Cabinet dependent on and responsible to the Lok Sabha which is constituted by direct election.

The NCRWC Paper seeks to establish a Parliament with members chosen through an electoral college consisting of (i) the members elected to the panchayats and other local bodies, (ii) members of zilla parishads chosen by indirect election by the members of the first tier, and (iii) members of State Legislatures chosen by indirect election by the first and second tiers. The Prime Minister will then be elected by Parliament. It is not clear whether Parliament will be uni-cameral or bi-cameral. In the NCRWC Paper, the Prime Minister and his Cabinet are dependent on the majority in a Parliament — of one chamber or two chambers together — having none of its members elected directly by the voters. This is a flagrant negation of the basic characteristic of a parliamentary democracy that the Government should be dependent on "the majority in the popularly elected House of the Legislature".

If the Review Commission wants to create a new system of governance in India by a process of three-fold indirect election, it will not be merely a review of the Constitution; it will be a rewriting of the Constitution and a reversal of parliamentary democracy. Indirect election will be veritably a direct repudiation of the parliamentary system of governance.

Indirect election will be veritably a direct repudiation of the parliamentary system of governance.

In support of this scheme of direct election only at the grassroots' level, the NCRWC Paper has invoked the name of Gandhiji. Obviously, they have not followed fully the course of events and the views of Gandhiji in this regard. While speaking in the Round Table Conference in September 1931, Gandhiji referred to a scheme of indirect election proposed by Lord Peel. What exactly the proposal of Lord Peel was is not available to us now. Starting with the cautious remark, "I do not know — I am talking simply as a lay man", he said: "There the villages elect their own little committees. These committees elect the taluka committees (taluka is a sub-district), and these taluka committees again elect the district councils and the district councils elect provincial councils. The provincial councils send their members to the central legislature — if one may so dub this All-India Congress Committee. That is how we have been able to do it. If here we do some such thing, I do not mind".

To a question of Sir Akbar Hydari, Gandhiji explained: "The villages will be electing candidates to no legislature... they will elect the voters — the villagers will elect one man and say, 'You will exercise the vote for us'". Sir Akbar Hydari: "Then, that man would have dual capacity, whether to elect a man to the Provincial Council or to the Central Legislature?" Gandhiji: "He can have that; but I am talking of the election to the Central Legislature. I would certainly apply the same scheme to the Provincial Legislature". Sir Akbar Hydari: "Would you rule out the possibility of the Provincial Legislature so elected electing the Federal Legislature?" Gandhiji: "I do not rule it out, but that idea does not commend itself to me. If that is the special meaning of 'indirect election', I rule it out. Therefore, I use the term 'indirect election' vaguely. If it has any such technical meaning, I do not know". (Collected Works of Mahatma Gandhi, Vol. 48, Page 38).

It was obvious that Gandhiji had drawn his scheme from the procedures followed by the Congress Party in its functioning. The rules followed by a political party cannot be transferred *ipso facto* to the functioning of a state. For instance, the Indian Constitution is federal and almost all the national parties in India have a highly centralised type of party constitutions.

Gandhiji did not pursue his scheme of 'indirect election' after his return to India. In fact, the Congress had accepted the Swaraj Constitution prepared by the Motilal Nehru Committee. The Nehru Report demanded an Executive 'responsible' to a Parliament of India. It also recommended that Parliament would consist of a Senate and a House of Representatives and that the Members of the latter should be elected under adult franchise. Gandhiji extended warm support to the Nehru Report.

When the Congress at the Patna AICC on May 19, 1934, resolved to suspend the civil disobedience and adopted the council-entry programme, Gandhiji himself moved the resolution. Though the franchise was limited and the Congress was highly critical of the 1935 Act, the Party set up its candidates and succeeded in getting a large number of seats in the Legislatures. In his letter dated July 20, 1937, to Shankarrao Deo, Gandhiji wrote: "I have no repentance for the advice I gave in 1920 to boycott the Legislatures... In now strongly advising the Congress to send its representatives to the Legislatures and even to accept office, I responded to the wholly new circumstances that have since come into being. I have never a fetish of foolish consistency".

Naturally, Gandhiji was against huge electoral expenses and desired to have indirect elections above the panchayat level. A decade later, he changed his views to say: "I believe that some Congressmen ought to seek election n the legislatures or other elected bodies. In the past I did not hold this view... Moreover times have changed. Swaraj seems to be near. Under the circumstances it is necessary that Congress should contest every seat in the Legislatures... The Congress should not have to spend money on the elections. Nominees of a popular organisation should be elected without any effort in the latter's part". (*Harijan*, 17-2-1946)

The Constituent Assembly had after much deliberation adopted the parliamentary system that ensures more accountability to the elected House in preference to the presidential system that has more stability and less accountability. Further, at the present, any attempt to introduce indirect election to the Legislatures will surely be invalidated as it will affect a basic feature of the Constitution, as the Supreme Court has acknowledged parliamentary system as a basic feature of the Indian Constitution.

THE HINDU

2 0 FEB 2001

Undermining the Constitution

By Garimella Subramaniam

IF THE President, Mr. K. R. Narayanan's address to the nation on the occasion of the golden jubilee of the Indian Republic sent out a strong message on the need to create bylanes and pedestrian pathways for the poor and the downtrodden on the liberalisation, privatisation and globalisation highway, his more recent address on the eve of the 52nd Republic Day was no less poignant for his candid expression of displeasure with some of the issues raised for debate by the National Commission to Review the Working of the Constitution (NCRWC). Indeed, his views on such an exercise are no secret and he had, appropriately, chosen the celebrations marking the golden jubilee of the Republic in the Central hall of Parliament to air his apprehensions over the legitimacy of a body with neither legal nor political and consequently no moral mandate to review a core document such as the Constitution.

In his broadcast on Republic day-eve, Mr. Narayanan deplored the invocation of the Mahatma's name to lend credibility to the political ideas of Field Marshal Ayub Khan, father of military rule in Pakistan. His reference was to a proposal contained in the NCRWC consultation papers to experiment with indirect elections to State Assemblies and the Lok Sabha — a regressive move for a country that has gone down the parliamentary road with direct elections for half a century.

Mr. Subhash Kashyap, former Secretary-General of the Lok Sabha and currently member of the NCRWC, has since gone on record to deny that indirect elections had anything to do with Ayub Khan's political ideas. Mr. Kashyap associating Gandhi with indirect elections is of a piece with the deliberate misinterpretation or distortion of history that the RSS and the BJP-led Government at the Centre have been systematically indulging in for some time now. But fortunately, despite Mr. Kashyap's attempt to extract a "Gandhian model of indirect elections", from Shriman Narayan Agarwal's "Gandhian Constitution for Free India", 1946, none other than the NCRWC Chairman, Mr. M. N. Venkatachalaiah, himself has publicly disclaimed any Gandhian parentage for the idea. But it is important to highlight, first, why the NCRWC should want to float indirect elections as a Gandhian idea and, second, why the President was after all right when he drew the nation's attention to Ayub Khan's legacy being invoked by the Commission.

There are striking similarities between the NCRWC's proposals for indirect elections and Ayub Khan's concept of basic democracy. The irony is that there was a Constitution Commission in Pakistan too when Ayub Khan mooted the suggestion, just as such an idea has found favour with the NCRWC. The proposal to restrict direct elections to the panchayat level appears in its paper on "Review of Election Law, Processes and Reform Options" in the context of finding ways and means to fight corruption and cut down the cost of polls. The paper then makes a bad job of reducing decentralisation and devolution of authority to mechanisms providing for direct elections at the local level and indirect election to the highest offices.

Associating Gandhi with indict elections is of a piece with the deliberate distortioof history that the RSS and the BJP-led Govement have been systematically lulging in.

It says: "Direct elections should be held on the basis of adult franchise at the level of panchayats and other local bodies. Panchayats and other local bodies could elect the zilla parishads and they could together elect the State Legislature. These three could elect Parliament and in the last analysis the four of these could elect the President. The Prime Minister and the Chief Ministers could be elected by Parliament and the State Legislatures concerned. The President, the Prime Minister and the Chief Ministers in order to be elected should each necessarily secure no less than 50%+1 of the votes cast. Once elected, the Prime Minister or a Chief Minister should be removable only by a constructive vote of no-confidence."

This is the so-called "Gandhian strain" of indirect elections, Mr. Kashyap would tell us. But let us refer him to an article "Paistan Perspective" by Mohammed Ayul Khan which appeared in the *Foreign Affais*, July 1960. He spelt out his concept of basic democracy, wherein indirect elections are held out as a panacea for a newly-ndependent, poverty-stricken, deveoping country and for a people with th meanest intelligence. "An average vilaer with little or no education has no mans of gaining any personal knowlede about a candidate who is mixed up ina population of 1,00,000 or more, spad over a large area without any advced means of communication and ctact. Votes cast under these circumsices cannot but be vague, wanton and nonsive to fear, coercion, temptation other modes of misguidance," wrote 1.

his speech at the first Round Table 'erence on the Federal Structure mittee in London on September 17, , (*The Collected Works of Mahatma dhi*, Vol. 48 pages 26-38), Gandhi pred a bottom-up model of indirect ions as a possible option, but left the tion of its official adoption entirely . Gandhi then did not particularly nis idea, which originated with Lord as a problem, primarily because he d at the whole matter in the context sheer size of the Indian electorate. e Nehru and Sapru committees that quently looked into the issue gave it favour of direct elections to the pan-ts, the State Assemblies and the Lok . Gandhi also said, "My hands are far as adult suffrage is concerned; re not tied insofar as the methods ncerned", (Vol. 48, page 101). He n page 147, "I am writing on a slate which I have to rub out many ".

dentally at that Round Table, i advocated — Mr. Kashyap may be o know — unicameral legislatures as he saw no basis for the apprehension that a single chamber might enact unpopular laws. He even felt that in view of the problem posed by a huge population, the voter list could be made up of those who wished to exercise their franchise — a recipe for restricted franchise, in case Mr. Kashyap was interested.

Gandhi, at the very same Round Table, also mentioned something that would be highly instructive to people with a unique bent of mind like Mr. P. A. Sangma of the Nationalist Congress Party. This is on the question of persons of foreign origin contesting for public office. Of course, one does not expect Mr. Kashyap, now sitting on the review commission along with Mr. Sangma, to go public with Gandhi's view that even Europeans who made "common cause" with the natives would be acceptable as people's representatives.

But this very Gandhian idea if you like, was in evidence in abundant measure in the case of Ms. Sonia Gandhi both in Bellary and Amethi in the 1999 Lok Sabha elections. It is precisely in its potential to snuff out such "uncomfortable" people's voices that the appeal of instruments such as indirect elections lies.

Thus, in trying to be seen to be merely borrowing from Gandhi, Mr. Kashyap has revealed his own mind on some of these issues and the real motives behind an endeavour he is party to. Suffice it to say that what Gandhi wrote, said or did would have to be viewed in the totality of the life he led and the values he championed.

It is elementary commonsense that his observation for instance, way back in 1934, that the earthquake in Bihar was God's curse on a people practising untouchability could not reasonably be invoked in the aftermath of the recent calamity in Gujarat, even as the remarks should in any case be read as no more than an example of self-criticism from a devout Hindu who fought the evils in his own religion. Precisely in the same manner, a mere label of "basic democracy" could not possibly erase the blood-stained chapters of a military history that Ayub Khan inaugurated in Pakistan.

THE HINDU

12 FEB 2001

Political stability & the NCRWC

By Mukund Padmanabhan

THE NATIONAL Commission to Review the Working of the Constitution (NCRWC) deals at length with the problem of political instability. But it does not — although the contrary impression has somehow spread — share the BJP's views on how to overcome it. The NCRWC rejects (and quite correctly) the BJP Government's quick-fix solution to the problem: fixed term legislatures. The specific arguments against prescribing a fixed time limit for elected legislative bodies — a recommendation which, in some ways, goes against the spirit of parliamentary tradition — are much too familiar to merit repetition.

But what about the NCRWC suggestions aimed at promoting political stability and preventing the country from being plunged into all- too-frequent elections? Two of the seven consultation papers recently released by the NCRWC have a bearing (both direct and tangential) on the question of political instability. Many of these suggestions contained in them have been heard before. (Altering, or even scrapping, the anti- defection law which has notoriously encouraged defections rather than prevented them are two familiar suggestions.) Some others do not require making changes the Constitution. (For example, the proposal to restrict the number of no-confidence motions that may be moved to one every year, or that all such motions be constructive, requires only a simple legislative amendment or modification in the rules of procedure.)

There are many such recommendations in the NCRWC's consultation papers that have a bearing on the question of political stability. To focus on these piecemeal suggestions is to miss the wood for the trees. Far more important are the two comprehensive overarching proposals contained in the consultation papers which involve making enormous changes in the electoral system. If either of these two electoral models is adopted, it will have an huge bearing on our democratic polity, drastically changing the fortunes of every party in the country and revising the existing dynamics of the political sweepstakes.

The NCRWC dubs the first alternative to the manner we elect our representatives a "Gandhian model", one that involves a paradigmatic shift in the electoral process. Under this model, direct elections will be held only at the local or grassroot level. Representatives to State legislatures and the Lok Sabha will be elected via an electoral college comprising either those indirectly elected at a lower level or those directly elected at the lowest tier (namely, panchayats and other local bodies). In his oblique but unmistakable reference during his Republic Day address, it was this suggestion of the NCRWC that the President, Mr. K. R. Narayanan, criticised.

The problem with the National Commission to Review the Working of the Constitution is not its concerns but its main proposals to address them.

The second alternative is, in formal terms, less radical but entails a major change in the electoral process all the same. Under this model, all candidates at the State and Parliamentary levels will be elected on the basis of a majority vote (over 50 per cent). This is done by conducting a "run-off election"in all constituencies in which no candidate has got over 50 per cent. Pitted against each other in the run- off, which would be held soon after the first election, are the two candidates who polled the highest and the second highest number of votes.

The NCRWC does not choose between the two varying models, but it is difficult to avoid the impression that it prefers the second over the first. To begin with, the "Gandhian" or indirect elections model is discussed very briefly. The recommendation that it be studied more deeply is carried with a rider that it needs to be examined whether, as some have claimed, such a model will result in "increased incidents of bribery, coercion, intimidation, winning votes on sectoral considerations of caste religion, etc" — in short, promote the very problems any proposal for electoral reform would aim to tackle. The consultation paper notes that there could be two views even on what is arguably one of the principal advantages of this model — that it would lead to reduced expenses on elections.

In contrast, the second model is advocated more robustly. Moreover, the idea of run-off elections, the core element of this model, is incorporated into the first or "Gandhian one" — all "inconclusive" direct elections at the grassroots are to be followed up with run-offs. Of course, the NCRWC would have us believe that it has conducted a purely neutral exercise. The Commission has been at some pains to stress that the purpose of the papers is merely to "elicit reactions and not to advocate any particular course of action". But a total lack of bias is impossible in an exercise of this nature. It may be true that often two or more competing recommendations are presented with an air of neutrality. But every time this is done, there is a third the NCRWC rules out, among other things, for being impractical or iniquitous. To cite just one example, the proportional representation (PR) system is rejected out of hand.

Both models seek to derive their justification from two incongruities in the first-past-the-post system (FPTP). First, increasing numbers of legislators are being elected on a minority vote (60 per cent of MPs on the last count). The NCRWC is correct in suggesting there is something perverse about a situation where the majority of voters reject the majority of elected representatives. To paraphrase the Commission, do these MPs and MLAs represent the people at all? The other problem is weak and unstable Governments thrown up by fractured mandates (which in turn are a result of an increase in narrow loyalties, to caste, religion etc.)

Run-off elections, as held under either model, are the Commission's answer to both problems — instability and the lack of representation. But are they the answer? The representation problem is hardly resolved by run-off elections. The winning candidate may end up with more than 50 per cent, but surely this can be achieved only by an artificial limitation of the number of contestants. In a (not unlikely) situation where the top two candidates get less than 50 per cent of the vote in the initial election, a run-off will force the majority of voters to support candidates they have already rejected. Is this not odd? Does it not defeat the very meaning of representation?

It is unarguable that the PR system deals with the representation problem far more effectively. But the Commission rejects it because it falls foul of the other concern — the need for stability. Run- off elections are the NCRWC's key to achieving political stability but examine for a moment how this stability is achieved. Run-off elections are heavily weighted in favour of national parties because such organisations are likely to be in the electoral reckoning (by winning either the most or second most votes) in most constituencies. Also, in any run-off between a party with a narrow appeal (based on caste for example) and one with a broader outlook, the second would be placed in position of tremendous advantage. While the former would find it hard put to better its initial performance, the latter would find it much easier to mop up additional votes. Given the present state of political play, the NCRWC models would favour the BJP and the Congress over all the others. Is it fair to introduce a system which is inherently discriminatory of smaller parties? Is this not an unreasonable restriction on the play of political forces?

Concerns about stability and representation are not idle middle class fancies but real problems that afflict the Indian polity. Naked casteism and other disagreeable forms of denominational politics cannot be justified on the (ideologically fashionable but simple-minded) ground that these are struggles for the empowerment of some subaltern class or the other. The problem with the NCRWC is not its concerns but its main proposals to address them. The two models are no solution to the representation problem and stability is achieved by tilting the electoral scales much too much.

The President's ambit

By Pran Chopra

Now that in a more vigorously democratic system the President and the States have begun to fill out the roles intended for them by the Constitution, some people misjudge them to be unconstitutional.

WE HAVE long been famous for running down our achievements faster than anyone else can. Take the latest example: we are trashing our success in doing what many would have doubted we would be able to do when, fifty years ago, we adopted our Constitution.

At that time we gave ourselves parliamentary democracy, enthroned it on universal adult franchise, and crowned it with a sovereign Parliament. But we added to it a nationally-elected President and armed him with considerable powers, including the power to decide, in his discretion, whom he should invite to form the Government. On the face of it, the two institutions are incompatible. But we embraced both, in the hope that we too would develop, and very quickly, the same conventions as Britain had developed over some generations. A noted constitutionalist, Dr. L.M. Singhvi, called it an "act of faith" because we were not deterred by three strong contrasts between India and Britain.

First, given our very detailed and written Constitution, our polity did not have the vast open spaces for conventions to grow in as Britain had because it had virtually no written Constitution. Second, we went to universal adult franchise in one go, from day one, not by stages as Britain did. Third, at no stage did we have the educated electorate Britain had at every stage. But the faith was vindicated. The right conventions took root very quickly. All the quicker because each of the (few) challenges it faced ended as it should have. By the time certain constitutional amendments and Supreme Court judgments fortified them, they had already been set in cement.

But today, four decades later, an uninitiated visitor to India would imagine on reading the press that an ambitious President is on the loose and the conventions of the Constitution are under attack. On the main opinions page of a major newspaper he would read a challenging double decker headline over four columns asking "Has the President transgressed Constitutional propriety by attacking the Prime Minister?". Beneath the headline he would read a hot debate between two Members of Parliament, Mr. Kapil Sibal and Mr. R.K. Anand, both Senior Advocates to boot, arguing whether the President was right or wrong in publicly criticising the appointment by the Government of the National Commission to Review the Working of the Constitution. Mr. Sibal justified the President by calling him "the nation's conscience-keeper", Mr. Anand said he was "merely a titular head" and guilty of "transgression of his constitutional privileges and powers".

Within three days our visitor would read a historian, Mr. Prakash Nanda, arguing on the edit page of another major newspaper that the President, Mr. K.R. Narayanan, has defied "many conventions", has "summoned senior bureaucrats and Ministers to be briefed on issues", and has taken the liberty of expressing critical views about the state of the (Indian) Union and society. Mr. Nanda also noted that while India's first and one of the tallest Presidents, Rajendra Prasad, had been denied permission by Prime Minister Nehru to go to the United states, Mr. Narayanan had "dictated his foreign tours".

If he had the time to delve deeper into newspapers the visitor would find that Mr. Narayanan had directed Mr. I.K. Gujral as Prime Minister to reconsider his proposal that President's rule be imposed on Uttar Pradesh, while in much less justifiable circumstances many earlier Presidents had complied readily with similar proposals by the Prime Ministers of the day. He would also find alarmed comments that many States of the Indian Union were putting India's unity at risk by exerting greater authority vis-a-vis the Union Government.

But facts tell another story. The President does not transgress the Constitution but reinforces it when he cautions the Government of the day against emasculating it, as it was during the years when the wishes of the Prime Minister could easily override the President's duties to the Constitution and the country. The spirit of the Constitution requires, and the letter permits, that the President should ask the Government to reconsider any action which in his own judgment he considers to be injurious for the country. The country's unity, the sanctity of the Constitution, and the health of the polity were harmed, not served, by the ease with which Prime Ministers could get compliant Presidents to dismiss State Governments and transfer their powers to the Union Government.

The political foundations of the country became weaker, not stronger, when the same party ruled practically over the whole country and the Prime Minister of the day could manipulate Chief Ministers through party channels to do what they could not be directed to do under the Constitution. On the other hand, parliamentary and federal conventions became stronger each time they prevailed against a President or anyone else who tried to transgress them. The Constitution is neither violated nor weakened when a President takes decisions on matters which the Constitution has clearly left to his discretion, including his prerogative to decide who should be invited to be the next Prime Minister.

The President's foreign tours are not junkets for his pleasure. They are diplomatic signals and instruments of foreign policy, and therefore are best left for the Government to arrange. The Constitution gives the President the right to be briefed, and the convention is that he should be when he desires to be. The Constitution does not, by its letter or spirit, deny the President the right to express his own view of things, for example in his Republic Day address. It also gives him the authority, unused though it is as yet, to send messages to Parliament, not only on legislative but other matters as well, and to require (under Article 86) that they be discussed promptly. Most constraints on the President, under the Constitution or conventions, prevent him only from taking executive actions independently of the Council of Ministers, or from opposing the decisions of the Government. Thoughts in progress in the Government about its future intentions are not binding on the President and do not silence him, contrary to what is implied by Mr. Anand and Mr. Nanda.

But unfortunately what has happened is that during the years of more or less single-party rule, the Prime Minister could exercise powers, whether in relations with the President or the States, which were not warranted by the Constitution, and people came see them as the constitutional order of things. But now that in a more vigorously democratic system the President, at one level, and the States, at another, have begun to fill out the roles intended for them by the Constitution, some people misjudge them to be unconstitutional.

None of the foregoing implies, however, that the marriage between our parliamentary democracy and our kind of presidency has been altogether smooth. And it cannot be, because the President is saddled with two functions which can be at odds with each other and some times have been. The first is that he decides in his discretion who he should invite to have the first go at forming the Government, a decision which can confer an advantage on one contender against another. If the one favoured by him is rejected by the Lok Sabha and the Government has to be formed by someone who may resent it that the President overlooked him in the first place, they start on the wrong foot with the President's second, and in my view the more important, function: to be, and to be seen by the Government to be, a friend and counsellor who is respected even when his advice does not find favour with the Government in a particular situation. The first function should, therefore, be left to Parliament, to which it more properly belongs in any case.

THE HINDU

16 FEB 2001

Laws within the law

IN RULING that the law against bigamy did not apply to Scheduled Tribes, the Supreme Court has simply reaffirmed the position as it exists in the statute book. While doing so, the apex court has rejected the appeal of the first wife of a senior bank officer who had taken the plea that being a Santhal by birth, the law that made bigamy a penal offence did not apply to him. While the plea may be correct in terms of technicalities, it is not difficult to detect a certain basic inequity in this dispensation. It is ironical that the first wife is effectively denied certain basic rights, including equality before law, that she otherwise would have been entitled to as a citizen of the country.

It needs to be recalled that the spirit behind making such exceptions was that the law makers did not want to give the impression that they intended to steamroll the traditional social structures inherited by minority groups. So the various communities were allowed to retain their 'personal' laws. However, the flip side of this arrangement is that rather than make the weaker or less privileged members of these communities feel more secure, it sometimes ends up by making them more vulnerable. The case of the tribal first wife of the well-placed officer is a case in point. Her plight is the result of a move not to safeguard a tradition but to exploit in a manner which few will consider fair. It is in these respects that the Constitution needs fine-tuning so that distinctions can be made to prevent the misuse of such provisions. The cases of people changing their religion in order to marry a second wife are also relevant in this context.

Clearly, it is one thing to protect the privilege of the member of a Scheduled Tribe when the conflict is between that person and someone from outside that social formation. But when the conflict is between members of the same group, who are both equally privileged or protected, the law should ensure the protection of the weaker. Moreover, since federal laws should override any such pocket of exclusiveness, it should be open to a member of a community to seek justice in terms of the law of the land applicable to all, and not be bound by 'personal' laws or traditional customs.

THE HINDUSTAN TIMES

16 FEB 20..

SC dismisses petition questioning CJI's age

Petitioner hauled up for 'making false statement'

HT Correspondent
New Delhi, February 14

THE SUPREME Court today dismissed a writ petition by the Madras High Court Advocates' Association questioning the date of birth of the Chief Justice of India, Justice A S Anand.

It also directed the Association's president to show cause as to why he should not be prosecuted for a making false statement in the petition.

A three-judge Bench comprising Justice K T Thomas, Justice R P Sethi and Justice B N Agrawal said the petition was an abuse of the Court's process: "It is a reckless action to malign and scandalise the highest judicial institution of this country."

The Bench said the Association's President R Karuppan had intentionally made false statement in the proceedings.

"We, therefore, require him to show cause why prosecution proceedings shall not be initiated against him for offence under Section 193 IPC (punishment for false evidence)," the judges said.

The Bench noted that the petitioner knew very well that the President had settled the question in 1991.

Mr Karuppan, who argued the case in person, had contended that the Court should declare that Justice Anand was born on November 1,1934 and that he has attained the age of superannuation.

The Bench said the petitioner had failed to show any document to prove that Justice Anand's date of birth was November 1,1934. "In spite of repeatedly putting the question, he was not able to point out even one paper in which the date of birth of the first respondent (the CJI) is shown as November 1, 1934," it said.

Referring to a petition by 76 lawyers of the Association alleging that Mr Karuppan had no authority to approach the Supreme Court on the issue, the Bench said: "We do not propose to take any heed to the petition as the same has not been properly filed in this Court."

On December 15 last year, the Supreme Court had sentenced a Chennai-based lawyer to six months' imprisonment for sending the CJI a telegram asking him to step down from office in the light of the controversy over his age.

However, the sentence was suspended for five years as the lawyer has filed an undertaking that he would not repeat the offence.

THE HINDUSTAN TIMES

'States should have treaty-making powers'

By J. Venkatesan

NEW DELHI, FEB. 9. The Constitution Review Committee, in its consultation paper, has suggested the enactment of law by Parliament on States "entering into treaties and agreements with foreign countries."

Tracing the genesis of treaty-making power, the paper said in spite of its importance, it had received very little attention in India, though in many countries, good amount of research and debate had gone into it.

It pointed out that under Article 253 of the Constitution, it was only Parliament which could enact a law even if the matter pertained to a State. This had been questioned by States as it had taken away their powers of enacting independent legislations governing them.

The paper said, "We, in India, cannot afford to ignore this subject any longer, particularly because of the experience of WTO treaties signed by our Government without consulting or without taking into confidence either Parliament or the public or for that matter, groups and institutions likely to be affected adversely thereby."

It said agreements on Intellectual Property Rights, trade, agriculture and services were so far-reaching that there was an opinion that some of the provisions of the agreements were adverse to India's national interest.

So far, Parliament had neither made any law under Article 253 regulating the procedure concerning entering into treaties and agreements nor with respect to their implementation. Moreover, there was no law regulating the manner in which the government should sign or ratify international conventions.

The paper wanted a Parliamentary committee to be constituted to which every treaty/agreement/convention proposed to be signed/ratified shall be referred.

Thereafter the law made by Parliament could categorise them and the executive could negotiate and conclude on its own and inform the Parliament; those treaties which could be ratified only after Parliament approval.

THE HINDU

10 FEB 2001

The Hindustan Times

Doubts about review

IRRESPECTIVE OF the subject matter, it has become almost routine for a commission dealing with it to get an extension. In fact, the customary one-year deadline that is initially set is probably something of a bureaucratic norm, which is rarely taken seriously. Considering that the M.N. Venkatachalaiah commission is examining such a weighty matter as the review of the Constitution, it was only to be expected that its term would be extended. Again, only a diehard bureaucrat would be able to explain why the extension was for eight months and not another year unless there has been some hints from the commission that it is nearing the end of its work.

But whatever be the commission's present stage of deliberations, it will be fair to say that its work so far has not inspired a great deal of confidence in its ability to handle so complex and sensitive a task. On the other hand, it has attracted so much criticism that Mr Venkatachalaiah had to call a press conference to dispel some of the misgivings. Such a step was necessary not only because none other than President K.R. Narayanan had compared a proposal on indirect elections with Ayub Khan's concept of 'basic democracy', but also because an attempt was even made to pass off this wholly unacceptable proposition as a Gandhian ideal. Even an obscure pamphlet was quoted by a member of the commission in connection with this move. It is also known that another member is obsessed with the idea of 'foreign' citizens whose target is obvious to all.

Given such curious preoccupations, it is hardly surprising that the commission has attracted widespread criticism from politicians and commentators. The only support for it has come from the BJP, whose Government set it up, and other like-minded parties and groups. Even if, for argument's sake, the objections seemingly based on partisan considerations are ignored, the fact remains that the commission has failed to put forward any idea which has been widely endorsed. While it has concerned itself with highly controversial moves like a fixed term for legislatures, it has had little to say about burning issues like criminalisation of politics which are a cause of much disquiet in Indian society. If the commission wishes to utilise the remaining part of its tenure in a useful manner, it must deal with questions such as these linked to the deteriorating political climate rather than visualise systemic changes which can do more harm than good.

THE HINDUSTAN TIMES

1 3 FEB 2001

AREAS OF IMMEDIATE CONCERN IDENTIFIED

Statute review panel term extended

By Our Special Correspondent

NEW DELHI, FEB. 13. The Union Cabinet today formally decided to extend the term of the National Commission to review the working of the Constitution by eight months, upto October 31.

The panel headed by Mr. M. N. Venkatachalaiah, retired Chief Justice, was set up on February 22 last year and given a one-year term. Consequently, its term was to expire on February 21.

The Commission, set up with a mandate to examine how best the Constitution could respond to the changing needs of the country in the light of the experience of the past 50 years, had identified 10 areas of immediate concern.

They are strengthening of the institutions of parliamentary democracy; electoral reforms: standards in public life; Centre-State relations; decentralisation and devolution of power; enlargement of fundamental rights; effectuation of fundamental duties and directive principles; measures for promotion of literacy and legal control of fiscal and monetary policies.

During the last 11 months of its effective functioning, the panel released seven of the 20 consultation papers proposed for eliciting public opinion.

Mr. P. A. Sangma, a member of the Commission and Nationalist Congress Party leader, has presented a paper to the panel suggesting amendment of the Constitution to ensure that only natural born citizens should be allowed to hold Prime Ministership and other high Constitutional offices.

Though the Commission is yet to discuss the politically sensitive issue, the paper assumes significance as it is left open to the Commission to make recommendations on this aspect after getting feedback from political parties and the public.

Air safety pact with Russia

The Cabinet also approved the signing of an agreement for promotion of aviation safety with Russia.

In addition, it decided to transfer 200 acres of land belonging to the Navy at Hutbay, Little Andaman, to the Andaman and Nicobar Administration, free of cost for resettling Nicobar tribals from Car Nicobar. The transfer would be on the condition that the local administration acquire 70 acres of private land within the Port Blair airfield and give it to the Navy for expanding the airfield runway.

PTI reports:

The Parliamentary Affairs Minister, Mr. Pramod Mahajan, later told reporters the Cabinet would meet tomorrow to finalise the President's address to the joint sitting of Parliament on February 19, marking the commencement of the Budget session. The President's address was the lone issue on the agenda, he said.

THE HINDU

14 FEB 2001

Tinkering with the Constitution denotes a hidden saffron agenda

Not a harmless exercise

By AMULYA GANGULI

LIKE THE saffronisation of education, the setting up of a committee to review the Constitution represents an insidious attempt by the Sangh parivar to make the democratic system conform to its own sectarian outlook. The panel was set up by the Vajpayee Government not because of a widely-felt need but because of the saffron camp's perception that everything of the last 50 years was a mistake.

In the Hindutva lobby's view, it isn't only Nehruvian secularism and socialism which require course correction but also the running of the Indian State. A BJP stalwart, K.R. Malkani, also wanted to correct the Nehruvian 'mistake' of not annexing Nepal, but has since beaten a hasty retreat. But others in the parivar, such as the Bomb lobby and the reviewers of the Constitution, are carrying on merrily.

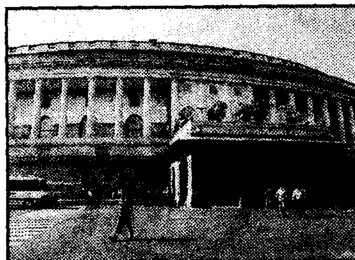
These two subjects are close to the saffron heart because the Bomb underlines the natural militaristic tendency of all fascists while the Constitution is perceived as an obstacle to their sectarian objectives. Almost through its 50-year history, the Jan Sangh-BJP had evinced a preference for the presidential system. If it has now turned to merely tinkering with the existing statute rather than argue for a dramatic change from the parliamentary to the presidential form of Government, it may be because it believes that its task may be easier to accomplish through this stratagem.

In a recent press conference, M.N. Venkatachaliah pointed out that he had accepted the chairmanship of the committee after making sure that the review will not entail altering the basic structure of the Constitution. For this relief, much thanks, as a character in *Hamlet* said. But was there any hint from the men in power about a change in the basic structure? And how is it that a committee appointed by a Government of shreds and patches with a thin majority in Parliament can even think of referring to a change in the basic structure?

But even if the Sangh parivar does not launch a frontal assault on the structure, the kind of ideas that are currently being floated contains the potential for inflicting considerable damage. In this context, it has to be remembered that scrutinies such as the present one are rarely ordered because of a genuine desire for improvement.

Instead, more often than not, it is a camouflage for a hidden agenda. The last time there was much talk about a constitutional change was when Indira Gandhi had developed authoritarian ideas. It was then that she had let Vasant Sathe loose on an unsuspecting public with his pleas for a presidential system.

This time, the BJP's motivation may be the obstacle posed by secularism to its divisive world-view. It is patent enough that secularism is the life-blood of democracy because it does not distinguish between citizens on the grounds of race or religion, as in a fascist or theocratic country. Not everyone in the saffron camp, however, believes in such equality. It isn't only Bal Thackeray who wants Muslims to be disenfranchised. An important member of the Sangh parivar, Ashok Singhal, had also voiced identical feelings. So had, of course, Guru Golwalkar.



It is not surprising that the RSS has proposed the formation of an all-powerful Guru Sabha in its version of a Constitution for '*Bharat*'. According to it, all the three major wings of a modern administration — legislature, executive and judiciary — will function under the aegis of a Guru Sabha, which will have overriding powers. And this supreme organisation will not be constituted on the basis of universal adult franchise, but by a restricted electorate comprising teachers of schools, colleges and universities.

Is this the reason why the RSS is setting up *vidya bhavans* and *sishu mandirs* at a feverish pace? And Murli Manohar Joshi is working overtime to rewrite history to spread the communal poison among impressionable young minds? In normal circumstances, ideas such as these would have been rejected with amused contempt. But it has to be remembered that the RSS heads the parivar of which the BJP is a member. Besides, disregard for democracy is integral to the parivar's sectarian mindset.

Yet, there are individuals in positions of power today who are its devoted members and promise to build an India of its dreams when the BJP comes to power on its own.

It isn't clear at present whether the Venkatachaliah committee has given any thought to the Guru Sabha proposal. But the fact that it has been articulated suggests that the RSS would like it to be considered. But the RSS is not the only organisation which believes in a restricted electorate.

Another paper has been circulated, which allows direct elections only to the panchayats and other local bodies. From then on, it will only be indirect polls, with the local bodies electing district bodies and the latter electing state Assembles. And then, all three will elect Parliament.

In a way, this is an even more dangerous idea than the RSS' rather crude plan, for it has been more cleverly conceived. It has also roped in Gandhi's name to justify the move. But its danger lies in the fact that in allowing direct elections only at the panchayat level, it hopes that only local issues, as opposed to the national ones, will influence the polls.

After that, as the series of indirect elections are held, it will be relatively easy for the political manipulators to control the outcome, as the unknown wishes of millions of voters will no longer be of any consequence. Yet, a lip service would have been paid to the concept of universal adult franchise at the first stage.

It is this 'controlled' or 'guided' democracy which is the dream of all dictators. This is perhaps the reason why President K.R. Narayanan equated such ideas of a restricted electorate to Ayub Khan's concept of basic democracy.

What is amazing is that this outrageous idea was circulated by the committee itself, when it should have been thrown straight into the wastepaper basket. Its subsequent clarification that it does not favour indirect elections does not explain why the committee should be paying any attention at all to proposals which threaten to dispense with the principle of universal franchise.

It takes no great perspicacity to see that if India is at all regarded with admiration in the world, despite its poverty and backwardness in many respects, it is because it has been such a success as a democracy. And this achievement is based solely on the decision of the founding fathers to confer the right to vote to its entire adult population. Only the President is indirectly elected, but he is just a figurehead, with no real power. But once the voters are denied their present rights, the entire democratic edifice will collapse like a house of cards.

Arguably, if universal adult franchise was in place in the pre-Partition period, the country would not have been divided. It was a restricted electorate comprising the 'elite' among Muslims which voted in favour of Partition while outfits which had grassroots connections like the Jamaat-e-Islami opposed it. Just as the Emergency of 1975-77 had the support of the 'educated' but not of the 'illiterates' who rejected it outright.

India's greatest tragedy of the modern period took place in 1947 because of the votaries of the two-nation theory belonging to the Muslim upper classes. Half a century later, another group which does not believe in a composite nationhood is posing a threat to the country's integrity, for India will not survive a serious assault on its democracy.

Has the President transgressed constitutional propriety by attacking the PM?

No, he is the nation's conscience-keeper

Kapil Sibal

HUMAN frailty and failing, not constitutional aberrations are responsible for our Republic's present day predicament. What we need is institutional introspection, not a constitution review.

The President, the symbol of our Republic, is charged with the responsibility of preserving, protecting and defending the Constitution. The chairman of the Constitution Review Commission shares this perspective. As the nation's conscience-keeper, the President must, when required, defend the common weal. None can take exception when he makes public his concerns about a fixed term for Parliament. He did no more than put the record straight by reflecting on the wisdom and foresight of our founding fathers — not to over-emphasise the importance of stability and unity within our political system. He rightly referred to Dr Ambedkar's statement explaining that the Constituent Assembly preferred more responsibility to stability.

The President also cautioned those attempting to change the basic structure of our Constitutional edifice. Some suggest that MPs should be elected not on the principle of universal adult suffrage but through an indirect process of election. The President reminded us that at the heart of democracy is the right to universal adult suffrage. This act of faith cannot possibly be left to an elite class which prefers an indirect method of election.

A year ago, the President had cautioned those working the Constitution to always consider the plight of the common man and to empower him by giving him a sense of belonging, a feeling that he too matters. For those unhesitatingly embracing the mantra of globalisation, he said: Our three-way fast lane of liberalisation, privatisation and globalisation must provide safe pedestrian crossings for the unempowered India also, so that it too can move towards Equality of Status and Opportunity.

On January 28, 2000, on the occasion of the Golden Jubilee celebrations of the Supreme Court of India, he touched upon the perception that the law court was not a cathedral but a casino where so much depends on the throw of the dice. The President was subtly suggesting that the unpredictability of our legal system was a matter of grave concern. Remember the Vohra Committee report which had hinted at the unholy nexus between the politician and the mafia and the involvement of some in the judicial system?

Debate and dissent are the essence of a functional democracy. In India, both are scarce commodities. Very few men of honour are prepared to publicly stand up for their beliefs. Even honourable members of the Fourth Estate have in the recent past been, slowly but surely, co-opted by the government by the offer of lucrative assignments in the electronic media. Professionals hardly have any time for public service. In this dismal state, the President's informed utterances remind the nation of the pitfalls ahead, with the hope that the polity will respond by taking note of the wisdom of his thoughts.

The Constitution Review was born amid controversy. In the recent past, the Commission sought to clarify that it has no intentions of reviewing the Constitution. It only seeks to review the functioning of the Constitution. The proposals that are being bandied about in fact seek to question the basic tenets of our Constitutional democracy. The President is doing no more than defending public interest by expressing his concerns.

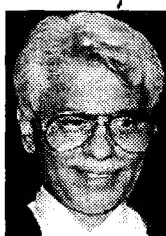
The fact is the Constitution has not failed us. If those working the Constitution are men of substance and integrity, none can have quarrel with its provisions. The Constitution never stood in the way of the government to eradicate poverty or illiteracy. It envisages a society which is equitable, fair and just, bereft of discrimination and makes the practice of untouchability an offence. Yet, unfairness, inequity, discrimination and untouchability are practised with impunity. The President, in cautioning the nation, has focussed on the irrationality of tampering with the Constitution. This futile exercise must be given a quiet burial.

*(**Kapil Sibal** is a Rajya Sabha MP and senior advocate, Supreme Court)*

IN BLACK AND WHITE

TOI Illustration: Neelabh

Yes, he's merely a titular head



R.K. Anand

THE recent speech of President Narayanan on the eve of Republic Day openly disapproving of indirect elections is clearly a transgression of his constitutional privileges and powers. The speech, coming in the wake of the government's suggestion regarding indirect elections from the zilla parishad to Parliament, is quite embarrassing for the government.

India adopted, in a modified form, the British system of governance. The President hence, like the Queen of England, is merely a symbolic or a titular head of the Republic. It is the government headed by the Prime Minister which takes all the decisions and is accountable to the people. The decisions of the cabinet as well as the Parliament are only formally passed on to the President as required by our Constitution. He must eventually accord his sanction to the decisions taken.

This scheme in our Constitution leaves no doubt that the decision-making powers as well as accountability have been reposed in the directly-elected representatives of the people i.e. the Prime Minister. It is the Prime Minister who heads the executive as well as the legislative wing of the government. It is thus clearly out of the President's parameters of rights, powers and privileges to indicate his favour or displeasure at any proposal or decision of the government.

His reference to indirect elections is particularly in bad taste as he has chosen a public occasion — the eve of Republic Day — for hitting out obliquely at the Prime Minister who is known to be a staunch supporter of indirect elections.

But I would like to temper my comments with a quote from John Dunn who wrote, "Today, in politics, democracy is the name for what we cannot have — yet cannot cease to want." The relevance of these words can hardly be underplayed today. But the disadvantages of indirect elections are many. They strike at the very root of the concept of an open, transparent and accountable democracy. No government exists independently of what the people accept. They support the government as long as its sanctions are bearable but when its actions hurt, they recover it by way of exercise of direct franchise. Also, given the state of illiteracy, poverty and lack of basic rights in India, exercise of direct franchise is perhaps the only potent tool available to the citizen.

The proposal to amend the constitution to give Parliament a full five-year term is a welcome prospect. The idea which found favour with the Prime Minister should transform itself into reality. The multi-party phase in our country commenced with the parliamentary elections of 1989. It was an extremely unstable start. The mid-term election of 1991 again brought about a hung Parliament. The last five years have witnessed three general elections. The presence of many parties ensures that a coalition or minority government keeps staring India in the face.

A country like India can ill-afford repeated elections involving an expenditure of crores. Inspiration can be drawn from the German model where introduction of a no-confidence motion is mandatorily accompanied by a confidence motion in another prospective leader. This will be safeguard against opportunistic politicians and the intent of the elector who has definitely not sent his representative to the Lok Sabha to continuously topple governments but to help in bringing about a transformation of his surroundings. The amendment, if effected, would lend stability and continuity.

A fixed term would in no way perpetuate the rule of a minority government. It would ensure that the government in power is removed only in the event of a viable alternative. This also ensures that parties in coalition at the Centre remain steadfast in their support to the government; there will be no scope for horse-trading.

The commission appointed to recommend amendments to the Constitution is chaired by a former chief justice of the Supreme Court, Justice M.N. Venkatchalaih — a jurist of vast experience and wisdom whose recommendations will be of immense help in resolving the persisting crisis of frequent changes in government.

*(**R.K. Anand** is a Rajya Sabha MP and a senior advocate)*

'No meddling with statute'

By J. Venkatesan

NEW DELHI, JAN. 31. Stung by the President's criticism of attempts at tinkering with the Constitution, the chairman of the statute review panel, Mr. Justice M.N. Venkatachalaiah, today reassured him that nothing would be done to undermine his authority or the parliamentary form of democracy.

Briefing presspersons at the end of the sixth full meeting of the Commission, Mr. Justice Venkatachalaiah said, "It shall be our respectful reassurance to the President that no recommendation which will undermine the democratic process will be permitted by the Commission". The chairman, who was reacting to the President's Republic Day-eve address, also made it clear "there is no question of meddling or tinkering with the basic structure of the Constitution or to undermine the authority of the President".

He said "as the preserver, protector and defender of the Constitution, the President is entitled to express his views. We have the highest respect for the President. We take note of his sentiments and observations and there is no question of any debate on this issue by the Commission".

On providing a fixed term of five years to Parliament and State legislatures, Mr. Justice Venkatachalaiah said "no such suggestion has been given in the consultation paper on election law". On the contrary, what had been stated was that providing a fixed term could not be considered legitimate.

Quoting the paper, he said "if a leadership is performing poorly and/or making grievous errors, deliberate or compulsive, in running of the nation, or even when it fails to provide the basics of governance, it cannot be allowed to continue for any fixed term". He said, "I am of the view that such a concept will negate democratic principles and will be inconsistent with the democratic processes".

Asked whether the views of the Prime Minister on having a fixed term would be discussed, he said "all the viewpoints, including the efficacy of the Gandhian model, would be deliberated upon before the final recommendations are made".

Mr. Justice Venkatachalaiah agreed that the suggestions in the consultation papers by implication got legitimacy as they were released by the Commission. But he made it clear that they were not its final recommendations.

THE HINDU

1 FEB 2001

The state of justice — II

By N. R. Madhava Menon

AMONG THE three branches of Government, it is only the Judiciary which seems to have no set goals or planning to achieve whatever targets in its assigned functions. Any organisation, management science tells us, will perform only if it has clear shared goals and specific time-bound plans to achieve them. The goals and plans of the judicial system, if available, are not known to the outside world. [illegible] supposed to be discussed in judicial conferences which the Chief Justice of India convenes annually involving all State Chief Justices. With most Chief Justices having relatively short tenures, policy development suffers. In the absence of efficient in-house implementation mechanisms, implementation and monitoring are often neglected. Judicial performance is, if at all, audited by judges themselves which leaves no scope for objective assessment under empirically-verified criteria. The annual administration of justice reports which the High Courts prepare and the monthly statements which judges of the State Judiciary submit speak very little about the real state of affairs.

Every system has certain limits of performance based on the capacity of each of its components. Too much of overload tends to result in under performance, quality deterioration, system breakdown and ultimate collapse. However, periodical review and maintenance, research and development are seldom employed in the judicial system. The result is lack of information on the health of the system, on its malfunctioning parts and on how re-arrangement can possibly help better performance.

Management of the judicial system is in very bad shape. The policy of every judge being an administrator and demanding his her time and attention for managing systems in every court has not been useful. Everyone is dissatisfied except the corrupt court staff and the parties and their lawyers who want to use the judicial process to buy time or delay justice. Computers wherever supplied are mostly lying idle. Senseless routinisation, repeated adjournments on silly grounds, extended call hours wasting judicial time, scant regard for the witnesses summoned, total confusion with too many cases scheduled for the same period, lack of punctuality and preparedness on the part of lawyers and judges have all become characteristic features of many subordinate courts in the country. The regret is that no one within the system seem to be concerned except in holding occasional meetings and seminars which invariably give the usual justification for the situation.

Between lawyers and judges, a movement has to begin for reforms from within if the judicial system is to survive retaining its fundamentals.

It is time court management is taken out of the control of judges and entrusted to trained administrators who are made accountable for the tasks of modernising, maintaining and showing performance at all levels of the judicial establishment. Judicial time should be devoted to judicial work only. Financial autonomy is necessary for improving efficiency and productivity in the Judiciary. But financial autonomy in the present state of the system may not be a wise step in the public interest. If administrative autonomy is not able to arrest the deterioration, giving financial autonomy also without revamping the administration can be potentially counter-productive. No one will dispute the need for more resources, for modernisation of infrastructure and court control of administration. But the onus is on the Judiciary to demonstrate that judges have determined to put the system back on the rails and will ensure optimum use of scarce resources diverted to them from equally pressing demands on public funds.

One aspect on which the Judiciary took the lead in expediting justice is the popularisation of Lok Adalats to resolve pending cases. Some courts in certain States have institutionalised their functioning within the regular judicial apparatus with great profit. In many other States, it has not picked up the speed as expected, largely because of the apathy of senior judges and the indifference of the High Courts concerned.

The Conciliation and Arbitration Act, the Family Courts Act and the newly-amended Civil Procedure Code have incorporated abundant provisions for judicial activism in pre-trial settlements and diversion of cases to alternate dispute resolution channels. Nevertheless, the same attitude and mindset which led to the present predicament in the judicial system is continuing at all levels. No one seems to be eager to exercise power under the new laws or to risk the displeasure of vested interests including a section of lawyers and ministerial staff. Financial resources could have been saved by diversion and settlements and put to more productive use.

The same attitude of indifference is discernible in another vital aspect of administration of justice, namely legal aid to the poor. A set of judicial statesmen in the 1970s and 1980s initiated a series of changes to promote access to justice through popularising a dynamic concept of legal aid. Two decades later, Parliament was persuaded to endorse the concept. The Legal Services Authority Act entrusted the power and responsibility to organise and administer legal aid to the judges themselves. Judges who have not been as imaginative as their predecessors who initiated the movement and those who felt bogged down with their daily routine in courts, have let the legal aid machinery stagnate without even being able to use the funds allocated for the purpose in some places. Poor people continue to suffer denial of access and feel alienated from the court system. The idea of Chief Justices or their nominees controlling the legal aid apparatus has not served its purpose and is operating, with some honourable exceptions, to the detriment of justice to the poor. If nothing is done in the near future, a stage will come when despite the good work of many judges, the legal aid administration may have to be saved from the control of judges.

The Indian Supreme Court has not proposed a plan for phased changes in the entire system. Even while celebrating 50 years of service to the nation, no vision statement for the future was forthcoming from the Apex Court. Occasional speeches of the Chief Justice at public functions have been more in the nature of reactions to statements and criticisms from outside, rather than reflections of an agenda for systematic reforms. If judges believe that judicial reforms are not part of their official duties, they should be prepared for changes from outside which may be worse than the disease.

Finally, a word about the legal profession which prides itself as the agent of justice delivery and upholder of good governance. Whatever their role in the past, today the public perception of lawyers is far removed from justice and fair play. There is increasing distrust against the profession and a feeling of helplessness while getting involved in the legal and judicial processes. Both tendencies are prejudicial to administration of justice through existing structures and processes.

The onus is on the legal profession to prove public perception wrong. It is the duty of the profession to initiate reforms rather than appear to be opposing them whenever proposed from outside. Between lawyers and judges, a movement has to begin for reforms from within if the system is to survive retaining its fundamentals. Indian humanity which gave so much to the Judiciary deserves a better deal from the lawyers and the judges.

(Concluded)

THE [illegible]

26 JAN 2001

Don't tinker with the Constitution: Narayanan

By Harish Khare

NEW DELHI, JAN. 25. On the eve of the 52nd Republic Day, the President, Mr. K.R. Narayanan, warned the country against the attempts being made to tinker with the Constitution. In his customary address to the nation, the President insisted that there was no cause for losing faith in the democratic spirit and arrangement enshrined in the Constitution.

Though the President did not mention by name either the National Commission to Review the Working of the Constitution, or the controversial "consultation papers" produced by this panel, Mr. Narayanan's words made it clear that the Head of the Republic was deeply troubled by the thrust of the thinking in the 'Constitution review' panel.

Mr. Narayanan reminded the country that the provision of a "right of the universal adult suffrage" was for the founding fathers an "act of faith", which meant "the governance of this vast country was not to be left in the hands of an elite class but the people as a whole". Two of the first crop of "consultation papers" have suggested changes which have been criticised for prescribing elitist solutions.

Since the 'Constitution Review' is premised on the Vajpayee Government's penchant for "stability", the presidential remarks once again underline the divergence in thinking between Raisina Hill and Race Course Road. Only a few days ago did the Prime Minister publicly suggest "fixed terms" for the Lok Sabha and State Assemblies. In contrast, Mr. Narayanan said: "The founding fathers had the wisdom and foresight not to overemphasise the importance of stability and uniformity in the political system... they preferred more responsibility to stability."

The President, Mr. K.R. Narayanan, addressing the nation on the eve of the Republic Day. — PTI

Coming as close as he could to indicting the Constitution review panel which had invoked Gandhi's name to suggest rolling back some of the elements in the Constitution's democratic arrangement, the President noted: "We may recall that in Pakistan, Field Marshal Ayub Khan had introduced an indirect system of elections and experimented with what he called basic democracy or guided democracy. It would be an irony of history if we invoke today in the name of Mahatma Gandhi, the father of the nation, the shades of the political ideas of Field Marshal Ayub Khan, the father of military rule in Pakistan."

Lauds unity, progress

Refusing to give in to the fashionable tendency to run down the achievements of last 52 years, the President noted that "India has achieved an unprecedented unity and cohesion as a nation and made remarkable progress in the social and economic fields." Mr. Narayanan also cautioned against the inclination to run down the public sector. "Indeed, it is the growth of the public sector in India that made it possible for the private sector to expand and flourish later," he thoughtfully reminded the citizens.

The President also questioned the current preference for "development" even if it was at the expense of the disprivileged. "The developmental path we have adopted is hurting them [the marginalised, the Scheduled Castes and Scheduled Tribes] and threatening their very existence." Without mentioning the debate over the cost of big irrigation projects, Mr. Narayanan argued for a transparent consultative process and for a judicial system that has respect for "the social commitments enshrined in our Constitution".

'Empower women'

In particular, the President lent his voice to the demand for the empowerment of women, especially in reservation of seats in the legislatures. This provision "might well be a decisive factor that will purify and save the democratic politics of India from the deterioration of standards and values it is experiencing today". Mr. Narayanan also wanted the youth power to be tapped in an increasingly young country.

Mr. Narayanan ended his address by applauding the Prime Minister's "bold and imaginative measure" in declaring a unilateral ceasefire in Kashmir. "Let us persist in the belief that the people at the other end will realise the futility of their hostility and respond to our gestures of peace and friendship."

THE HINDU

The state of justice — I

By N. R. Madhava Menon

AMONG THE causes for popular dissatisfaction with delivery of justice, there are some attributable to the judicial machinery and its management, for which the judges, the lawyers and the court administrators are themselves responsible. Of course, there are many other causes traceable outside the justice system for which the laws, the Government and the litigant public must own responsibility. Assuming that internal changes are easier to accomplish and they would, in turn, provide the fillip for external support for reforming the system, it is proposed to discuss here some priority steps which those in control of the judicial machinery would be well advised to undertake in the immediate future. Most of these steps have been suggested time and again by judges themselves, though the leadership was not forthcoming to implement the measures necessary. The result has been a steady deterioration in standards of judicial performance and unprecedented accumulation of over 30 million cases clogging the system for the last nearly a decade.

The fact that judicial will and effort can bring about substantial change in the delivery of justice has been amply demonstrated by the recent experience of the Supreme Court where, within a short period of less than three years, the pendency was brought down from well over a lakh of cases to just around 20,000 only. Today it is reported that the annual disposal rate is a little above the rate of fresh filing which promises a future of zero pendency in the Apex Court in the not-too-distant a future.

A planned and coordinated effort to shake-up the system and put the judicial house in order has not been made despite availability of several reports of the Judiciary and the Government. The tendency has been to blame the Governments at the Central and the State levels for not making timely appointments, not providing adequate resources and not increasing the number of courts and judges. Of course, these are valid reasons for delay and arrears; but they are not the only reasons or the major causes. The judicial system is in bad shape today because of poor management of resources and a continuing reluctance to do what can be done within the existing framework. It should be said at the same time that there have been many outstanding judges and Chief Justices who performed well and sustained the system from total collapse. But they have been unable to change the style of judicial administration, motivate their colleagues down the line and give leadership and direction for higher productivity and accountability. When public systems do not change, there is always pressure from outside to force changes and that may not always be pleasant so far as the Judiciary is concerned. Hence, in the interest of judicial independence and accountability, it is imperative that judges at all levels put their heads together and initiate change for improving the state of justice and redeeming lost credibility and popular support.

The judicial system is in bad shape today because of poor management of resources and a continuing reluctance to do what can be done within the existing framework.

It is unnecessary to describe the picture one sees in and around lower courts in the country. To say the least, it is indeed depressing and far different from text-book perceptions of justice. Qualities of fairness, efficiency, trust, credibility and service are not evident in the way the system operates. On the other hand, evidence of indifference, lack of sensitivity to human suffering, open exploitation by intermediaries, invitation to corruption and an impression that the judicial system exists for lawyers and judges is what is conveyed from the so-called "temples of justice"! Who is responsible? The immediate response from everyone in the system is to put the blame on the Government and perhaps also, on the litigant public. Without denying the charge, one can argue that lawyers and judges are equally to blame. If they wanted to set things right, in spite of Governments' apathy, a lot could have been done to bring some order and discipline. This is what work culture is all about.

Judicial activism is successfully employed by the Apex Court to improve the conditions of service of judges. What the public expects is the extension of activism in quicker disposals and in improvement of quality of services. This is not entirely a matter of lack of resources and infrastructure. It is to a large extent, a matter of attitudes and work ethic. Colonial practices still linger in judicial administration. Is it too much to seek a substantial increase in the number of working days and working hours for courts at all levels? Is the existing set of indicators for assessing judicial performance appropriate for establishing competence and accountability? Is it difficult to curb the level of corruption if the judges send the right signals and occasionally monitor the situation? Is there a fair system of redress of public grievances in courts and tribunals? Are judges sensitive to the problems of women victims and witnesses appearing before them? Do they respond appropriately to cultural sensibilities of minorities and weaker sections? Do they keep punctuality and respect the value of time of themselves and of others visiting courts on their summons? All these are issues of work culture and commitment to public service for improvement of which they themselves have to act.

Quality of justice largely depends on the quality of judges. Only a competent judge can control the members of the bar appearing before him/her and direct the course of proceeding according to the demands of each case. Of course, there are not enough competent lawyers aspiring to get into the judiciary. Even if there are, the processes of selection are so uncertain and time-consuming that merit does not get adequate recognition. Therefore, people who seek appointments at the lowest level of the judicial hierarchy are not the best available for such positions. It is doubtful whether even after judges took complete control of selection to the higher judiciary, the really meritorious find their way into the High Courts. The whole process is not transparent enough to enable debate in public about its strengths and weaknesses.

No one can deny that courts which exercise enormous powers and enjoy a lot of independence in their functioning, should get persons of sterling qualities and strong sense of public service. The report of the First National Judicial Pay Commision set up following judgment in the all India Judges' Association case has many valuable recommendations to reform the process of selection and training. Similarly, the proposal to set up a National Judicial Services Commission for dealing with selection, discipline and other matters relating to the Union Judiciary deserves to be examined for attracting the best minds into judicial office.

Deficiencies in selection are supposed to be rectified by intensive and individualised training programmes. Unfortunately, what obtains on the ground in the name of judicial training is more a formality than a process of judge-making. Many High Courts do not have even an organised programme of training except a period of work as an understudy with a senior judge. In other places it is a repeat of what they ought to have studied in law college or in legal practice.

Knowledgeable people, particularly from the Bar, say that for much of the problems in delivery of justice, judges are responsible and the reason is their relative incompetence. This is a matter for which neither Governments nor society can be blamed. The earlier judges realise it and respond with the urgency it deserves, the better it is for themselves and for administration of justice.

(The writer is Vice-Chancellor, West Bengal National University of Juridical Sciences, Kolkata).

THE HINDU

25 JAN 2001

POLITICAL STABILITY AND FIXED TERMS

ON THE FACE of it, the Prime Minister's strong pitch for a fixed tenure for Parliament and State legislatures may seem like a mere reiteration of his Government's view. After all, the NDA's election manifesto promised measures for introducing a fixed term (five years) for elected bodies. In 1999, the President's speech to the two Houses of Parliament made a clear reference to the desirability of having fixed terms in order to "prevent political instability" at the Central and State levels. But what is really astonishing is that Mr. A. B. Vajpayee's call for fixed tenures should have come in the middle of a speech in which he strongly defended the National Commission to Review the Working of the Constitution (NCRWC) — the very body constituted to examine what, if any, changes are required to be made in the Constitution. Clearly, Mr. Vajpayee was not reflecting the NCRWC's view on this subject, which was contained in one of the consultation papers it released last week. The paper puts forward a number of suggestions (of varying merits) which are aimed at injecting more stability into the system of governance. But it specifically stresses that these be "contra-distinguished from the suggestions of some to provide fixed terms to the Government and to the legislators". This, the NCRWC declares, "cannot be considered legitimate", going on to add that the basis of governance should not be determined by fixed terms. Evidently, the Prime Minister and the NDA Government are quite out of sync with the Constitution Commission on the proper mechanism to achieve political stability.

More generally, the fixed term proposal suffers from many drawbacks, some of which have a serious bearing on the proper functioning of a parliamentary democracy. Although fixity is proposed for legislatures (as a House) and not for Governments, the bald fact is that, in practical terms, this will serve to entrench Governments in power even when they, to quote the NCRWC once again, are "performing poorly and/or making grievous errors, deliberate or compulsive". It is perhaps no surprise then that many Opposition parties perceive the fixed term proposal as a ruse for the BJP Government to shore up its position and remain in power. The advantages of fixed terms have been repeated *ad infinitum*; briefly, such terms will facilitate stable governments, permit long-term policy making and spare the country the huge levels of expenditure incurred on frequent elections. But it is imperative to examine the flip side. One of the cornerstones of a parliamentary democracy is that a Prime Minister and his Government remain in office only while enjoying the confidence of the Lok Sabha. And one of the great advantages of our political system is that it affords free play to a variety of social groups with a multitude of (often competing) interests to express themselves in party politics and through a system of free elections. Any measure which seriously inhibits legislators from withdrawing support to a Government and suppresses them from searching for an alternative set-up within the House or by going to the people will go against the grain of this parliamentary democracy. In a country where the political class is often predisposed to be arrogant and insensitive to the needs of the people, fixed terms could have dangerous ramifications. Where ministers and members of Parliament are so firmly in place that they cannot be removed, it is easy to imagine a situation where the abuse of political power assumes even more frightening dimensions. It is true that a country which has had five Governments since the 1996 general election needs to think hard about the question of political stability. But fixed terms are hardly an appropriate solution.

THE HINDU

22 JAN 2001

The right to equality

By Imtiaz Ahmad

The fundamental rights found in our Constitution come not from political compromises but from the core of human nature.

WHY HAS the right to equality become such a contentious part of our politics? The Preamble to the Constitution resolved to secure to all Indians social, economic and political justice and provide equality of status. Towards this end, Article 15 prohibits discrimination on grounds of religion, race, caste or any other consideration. Article 16(2) lays down that no person can be discriminated against in public employment on grounds of race, religion and caste. Nonetheless, the framers of our Constitution knew that the greatest dilemma of human society is that Government has necessary functions because humans are not angels. Thus, while Government was placed under the obligation to ensure equality of all citizens, it could be presumed that cultural and linguistic minorities might have a different experience of political practices.

Specific protections were provided by way of fundamental rights to ensure that equality was not denied to such communities. Article 29(1) laid down that any section of citizens having a distinct language, script or culture shall have the fundamental right to conserve the same. Article 30(1) provides that all minorities, whether based on religion or language, shall have the fundamental right to establish educational institutions of their choice and Article 30(2) guarantees that the state shall not in granting aid discriminate against any educational institution on the ground that it is under the management of a minority.

Clearly, the discourse on minorities was overshadowed by the historical experience of Partition. When the Preamble to the Constitution was discussed in the Constituent Assembly, all the members agreed on the necessity of establishing a secular state. Simultaneously with discussing the kind of religious rights permitted under secularism, the Constituent Assembly also debated the political rights of minorities. Even though the Sub-Committee initially began with the proposal to establish for Scheduled Castes and Scheduled Tribes and religious communities separate electorates and reservation, separate electorates and reservation for the minorities was given up in the name of an unalloyed, pure nationalism. This was done despite the Sub-Committee on Fundamental Rights admitting with much candour that "it is difficult to expect that a country like India where most persons are communally minded those in authority will give equal treatment to those who do not belong to their community".

The disadvantaged position of the minorities can be traced back to the European representations of the Orient. The defining of India as Aryavarta and the centralisation of caste as the most important marker of that India concomitant with the marginalisation of other "communities" can be traced through paths direct or winding to this paradigmatic, overarching representation. It has its reverberations also in contemporary politics, the politics of identity, religion and on the discourse on the right to equality. For the high castes, the idea that they are the linear, biological descendants of the Aryans makes good sense. It enables them to appropriate Indian civilisation and then the Indian nation.

This tendency has recently begun to overshadow the discourse on the right to equality. There has emerged a strong political voice against the constitutional scheme of providing absolute equality to all citizens and guaranteeing certain protections to cultural-religious minorities. It is argued that such a scheme violates the principle of equality in a democracy and should be abandoned in favour of a unified right to equality. Further, the organs of Government are beginning to reinterpret the right to equality. In particular, judges dressed in black robes, similar to what some magicians wear, with audiences often in no less awe than those who witness magic, have begun to perform sleight-of-hand feats by reinterpreting the right to equality. Most have been to the delight of audiences that are demanding withdrawal of constitutional guarantees to minorities.

The individuals who drafted the Constitution and ratified it were practical people. They knew that life and history are dynamic. The needs of Government change over time. But they also knew that the rule of law, embodied in the process of a written Constitution, must be the vehicle for change or the Constitution would mean nothing. The degree to which a country has recognised rights and a minimum of arbitrary decision-making is the degree to which we call the Government of that country legitimate or illegitimate.

Much of the controversy over the recent legal interpretations of the right to equality is generated because significant numbers of people think that judges and state functionaries, in a number of cases involving ideologically contentious issues, have changed the rules without any authority to do so. This is seen as cheating by one faction. Those opposing that faction's views feel that this violates the fundamental principle of democracy that the will of the majority shall prevail. To the extent this controversy involves a fundamental critique of the legitimacy of the executive and judicial branches of the Government, it is very important to society. Unprincipled decision-making, if accepted, spells the end of any real Constitution. If a Constitution does not mean what the people who wrote and ratified it meant by it, then it means nothing at all. It then becomes a tool rather than a barrier to tyranny.

Not only is such possible, but also that it is a very real problem in the current rights oriented jurisprudence and public discourse. Empirically, rights are claims that someone else must recognise. Constitutional rights make perfect sense when they are understood as claims against the Government. Historically, and one could argue logically, this leads to all rights being negative. But if constitutional rights are interpreted positively, we will end up arguing that rights, like the rabbit in the magician's hat, are things that can be materialised by mere will. If rights are nothing but expressions of political will, then they may be created or destroyed by the political actions of the society. Thus, the long-term security for rights is the political process. Further, if there is nothing to a right but positive law, that is, the will of the society as expressed through the law-making process, any deep attachment to rights, or even descriptions of rights as fundamental, should be replaced with a candid recognition that rights are nothing but one era's fancy.

This is not the view the vast majority of our citizens hold. They value, honour and almost idolise rights. This implies that rights, or some of what we call rights, are not just statements of political will. Rights, real rights, the fundamental rights found in our Constitution, come not from political compromise but from the core of human nature. They express the fundamental integrity of the person.

Since fundamental rights are an aspect of what it means to be human, a society that does not embody them in its system of Government and law or takes them away after providing for them is not a good society. Rights are not simply a creation of the human will. They exist independent of whether Governments or current majorities recognise or honour them. Whether based in purely secular philosophies or in deeply held religious views, a belief in the objective reality of certain fundamental rights has significant consequences for the way in which we think about law and Government. If rights are real, and independent of a particular regime's recognition of them, then they, by their very existence, impose significant restrictions on what Government and law may permissibly do.

Our Constitution and the law have provided our nation with unique freedom. At times vast carnage and harm have been visited on human beings. But out of this history, with its abiding faith in law and constitutional rights, a free, egalitarian, prosperous and tolerant open society has been in the process of emergence. Buttressed by the institutions of federalism and the common law traditions, India's best hope for a good society has grown. In order to preserve this opportunity, we must like our constitutional ancestors be ever vigilant. This is the eternal price of liberty and equality.

(The writer teaches sociology at the Jawaharlal Nehru University, New Delhi.)

THE HINDU

17 JAN 2001

Bengal governor has sought report on Midnapore violence

The Times of India News Service

KOLKATA: West Bengal governor Viren J. Shah has sought a report from the state goverment on the recent violence in Midnapore, claimed leaders of the Trinamul Congress after meeting him on Thursday.

"We have apprised the governor of the current situation, including the latest case of rape and murder of Trinamul activist Sujata Das by CPM cadres at Midnapore on Tuesday. He said he would ask the chief minister for a report on the issue," Trinamul MLA Shovondeb Chattopadhyay claimed.

Even as the Trinamul-BJP combine reiterated its demand for imposition of President's rule in the state, the Trinamul on Thursday evening lifted its siege on the Calcutta police morgue after the police decided to send samples from the remains of the four bodies brought from Midnapore for DNA tests. This decision was taken after the CPM and the Trinamul made claims and counter-claims about the identity of the bodies.

Forensic experts have taken out bone marrow and skin samples for tests at the Central Forensic Labarotory at Park Circus. The samples may also be sent to Hyderabad for further examination.

Deputy commissioner (headquarters) Narayan Ghosh said, "The decision on DNA tests was taken in view of the conflicting claims and the process is already through."

However, director-general of police Dipak Sanyal said he had no knowldege of the decision. "According to police rules, the remains have to be handed over to the first claimants after the postmortem. The other claimants have to obtain a court order to demand further tests," he said.

Meanwhile, a Congress delegation led by Saugata Roy and Siddhartha Shankar Ray called for the declaration of Midnapore and Hooghly districts as disturbed areas pending a decision over the promulgation of Article 356.

But a report from Midnapore quoted state Congress president Pranab Mukherjee as saying that the Congress would raise the demand for President's rule only after the Trinamul-BJP combine made a formal plea in this regard.

While Mr Mukherjee is pondering over the possibility of forging a grand alliance with the Trinamul sans the BJP, senior leader A.B.A. Ghani Khan Choudhury is learnt to be opposed to the imposition of President's rule.

MIDNAPORE MAYHEM

- **DNA tests to be conducted on bodies recovered in Midnapore to ascertain identities**
- **Police officials give conflicting views on decision to conduct DNA tests**
- **Declare Midnapore and Hooghly districts disturbed areas, says Congress**
- **Cong will raise demand for President's rule only after formal plea by Trinamul-BJP combine, says Pranab Mukherjee**

Kerala govt seeks experts' opinion on Periyar dam

The Times of India News Service

NEW DELHI: Though the Kerala government on Friday sought technical appraisal of the impact of two earthquakes on the Periyar dam, the supreme court asked it to submit its response on the experts' committee findings on the fitness of the dam.

A bench comprising Chief Justice A.S. Anand and Justice R.C. Lahoti has noted that all other states concerned have filed their responses. And Kerala should do so within six weeks.

Kerala's counsel Rajiv Dhawan said two earthquakes— one in December last year and the other in January this year— rocked Kerala and there had to be a fresh technical appraisal of their impact on the project. Solicitor-general Harish N. Salve said that the next meeting of the expert committee would be held on January 22.

Janata Party president Subramanian Swamy in his petition had sought that the water storage height of the dam on the Periyar river should be raised from the present 136 ft to the original 152 ft.

Mr Swamy had claimed that due to a scare created by media reports in 1979 that the 115-year-old Periyar dam was on the verge of collapse, the Kerala government lowered the water storage height to 136 ft, resulting in shortage of irrigation water for around two-lakh farmers in Tamil Nadu.

He claimed the farmers were also agitating for raising of the storage height of Periyar dam as around four-lakh hectares of agricultural field was deprived of irrigation water.

THE TIMES OF INDIA

13 JAN 2001

JUDICIAL REFORMS-II

NEED FOR TRAINING AND MOTIVATION

By NR MADHAVA MENON

FINANCIAL autonomy in the sense that there should be a mechanism in which the judiciary will have dominant control in shaping the judicial budget is a felt need today. It is to be examined whether a Judicial Finance Commission can fulfil this task. The present arrangement in which the decisive power is left in the government is unsatisfactory for efficiency and productivity in the system. The recent Delhi High Court judgment striking down the decision of the Delhi government to restrict the supply of computers only to those judges who draw a certain scale of salary is illustrative of the point.

With financial autonomy, greater management reform will become necessary in the judiciary. Every Chief Justice cannot be presumed to be an efficient administrator as well. Management involves a variety of skills which are constantly on test and therefore to be reviewed and revised. The present system is ad hoc, not transparent and not in tune with management principles and accountability systems. A cadre of court administrators is to be developed giving due recognition to judges who are good at it. A better system of performance audit in the judiciary is to be evolved and linked with financial autonomy after detailed study of judicial administration.

I had occasion to study the system of legal services available to governments both at the central and state levels. To say the least, there are large gaps and inadequacies in the existing system costing the governments heavily and compromising public interest in the whole process. The Government is still the largest litigant and government cases take most of the time and resources of courts and tribunals. Nonetheless, governments are not the gainers in the final result; on the contrary, they are the losers when the total picture is take into account. Government lawyers, including public prosecutors, are not necessarily chosen on merit. Wherever it is done on the basis of party affiliations and patronage, the government loses money and cases in the judicial process. There is no proper assessment of the money spent on litigations, many of them unproductive and avoidable.

ADVICE

The loss to the government occurs more in the matter of inadequate advice and poor documentation rather than in actual litigation. After all, every government litigation is initiated on the advice of a government law officer who is usually a subordinate judge on deputation for few years to the law department. In many cases he is new to the nature of the job and does nothing more than delay and complicate the matter without ultimately contributing to the resolution of the issue. This is more evident in issues relating to economic governance under the new liberalised policies.

The economic ministries and departments have started scouting for professional services in the private legal market sometimes even from outside the country. Still there is no attention given to revamp the system of legal services to the government or to train the existing cadres of law officers for the fresh demands of advice, negotiation, documentation and alternative settlements.

A related issue which contributes to the judicial malaise is the absence of a litigation policy on the part of governments and public sector establishments. The conventional mindset of avoidance of risks and settlement of everything through courts still prevails in the bureaucracy. Even the introduction of arbitration through legislation did not make a change because that too is being conducted more or less on the lines of litigation, perhaps costing more in terms of time and money than otherwise! The whole subject of legal services to governments requires to be examined by an expert committee not only to protect public interest and accountability, but also to modernise the system in tune with a competitive environment. Such a step will indirectly benefit the justice system as well.

SCRUTINY

This has been the subject of scrutiny of several Commissions and even of litigation. We do have on the table several suggestions and recommendations which, if implemented in a phased manner, would yield rich dividends in the quality of justice and efficiency in its delivery.

While it is important to look at appointment of judges to the High Courts and Supreme Court, priority attention is to be given to the recommendations of the First National Judicial Pay Commission. All said and done, it is the trial courts which handle an overwhelming percentage of cases and it is they who deliver justice to the majority of litigants in the country. If these courts are reformed through proper selection and improved service conditions, problems at the higher levels will naturally get resolved in course of time. Training and motivation are the tools for productivity and accountability. This is a matter most neglected in the judicial establishment. It will be prudent for the leadership in the judiciary to give attention to training and link service benefits to performance at all levels.

There are many detailed procedural changes to be addressed in civil, criminal and administrative proceedings. What is discussed above are certain structural and management issues which cut across both civil and criminal justice systems. The irony of the situation is that we are fully aware of the problems and their possible solutions; yet something stands between ideas and implementation. The judiciary does not have control of the purse nor has it a constituency in the decision making system of the government. As such, it is for public opinion to mobilise forces for decisive action in favour of the judiciary.

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this process, the doctor said, "We monitor the ovulation of the woman. And the day when the egg is released from the woman's ovaries, we call the couple to the hospital. Then we ask for a fresh semen sample which is put in kit which separates the chromosomes.

A woman has two 'X' chromosomes and a man has an 'X' and a 'Y' chromosome. In a normal conception both the 'X' and the 'Y' chromosome of the man have an equal chance of uniting with the 'X' chromosome of the woman. If the 'X' comes together with the 'X' then a girl is conceived and if the 'Y' unites then a boy is born.

The doctor explained that although the process has a success rate of 85 per cent couples are mostly willing to take a chance. "I have come across women who have been forced to undergo abortions only because the babies were female. For them this process is quite a boon," the doctor said.

Government hospitals, even if equipped with the infrastructure, do not normally do chromosome separation only for sex-selective conception. Head of the gynaecology department at Safdarjung Hospital Dr Salhan said, "We do not do these things. Do you think we have the time for all this?" Safdarjung Hospital handles the largest number of deliveries in the country.

Even at the All India Institute of Medical Sciences (AIIMS), chromosome separation may be carried out but only for research purposes.

Constitution review panel favours decentralisation

The Times of India News Service

NEW DELHI: The National Commission to Review the Working of the Constitution (NCRWC) on Monday released seven consultation papers for public debate. Papers on other aspects of the constitution will be released later.

Speaking to newspersons, NCRWC chairperson Justice M.N. Venkatachaliah and other members stated that the papers did not contain the final views of the commission. The seven issues covered in the papers include a review of the working of political parties, election laws, processes and reform options, immunity of legislators, a treaty making power under the constitution liability of the state in tort, all-India judicial service and efficacy of the public audit systems in the country.

One of the many suggestions made in the paper on the election law has been to adopt the Gandhian model of decentralisation down to the grassroots level. It has also recommended the adoption of the bottom-up approach instead of the present top-down one, with multi- member or double-member constituency-based direct elections being held to the primary tier of governance. Once this is done, all the upper tiers must will be filled with representatives elected by the electoral colleges of representatives manning the lower tiers, it said.

The Gandhian model goes on to add that "the Prime Minister/chief minister may be elected by the House and be removable only by a constructive vote of no-confidence."

According to the paper, it should be mandatory for all parties to provide 30 per cent organisational posts and the same percentage of election tickets to women. Taking an elitist view of protest rallies by political parties, the paper said, "A law should provide for limiting the expenditures of political parties on holding public rallies, large-scale demonstrations and protests. These hardly serve any effective purpose in these days of hi-tech electronic media, which is far more effective and economical and causes least inconvenience to the public."

When asked about its opinion on people of foreign origin occupying constitutional posts, Justice Venkatachaliah said the issue had not been discussed. But P.A. Sangma, a member of the NCRWC who was present, admitted that he had submitted a paper on the issue.

THE TIMES OF INDIA
10 JAN 2001

Stop this middle class mischief

By Harish Khare

The consultation papers of the Constitution Review Commission confirm the fears that "the review" is a stratagem devised by partisan voices and narrow minds to advance the BJP's hidden agenda.

IF THE first crop of "consultation papers" produced by the National Commission to Review the Working of the Constitution is any evidence, the public interest will be better served if the Commission were to be asked to disband itself. The tax-payer will be spared a totally avoidable expenditure, as well. The quality of these papers is only slightly better than what a reasonably bright second-year Political Science (Honours) student in the University of Delhi would have produced. Judging by the shoddy scholarship, the meagre analytical fare, the pedestrian insightfulness in the papers, it is difficult to discern what impact, if any, the Commission's distinguished chairman has had on its labours. The mediocre members, whose "works" are copiously cited, seem to have run away with the Commission's ball.

These intellectual deficiencies, however, are only a very small part of the problem. What is more disquieting is that the Commission has confirmed the worst fears that "the review" was a stratagem devised by partisan voices and narrows minds to advance the BJP's hidden agenda. In particular, two consultation papers, on "working of the political parties" and "election law, process and reform options", have obviously proceeded on the assumption that the whole purpose of the Constitution review is to ensure that the 1999 experience, when Mr. Atal Behari Vajpayee was voted out by one vote, is not replicated.

Predictably enough, the Commission proposes to endorse two of the BJP crowd's hobby-horses, both presumably intended to produce "parliamentary stability" of the kind that would make Mr. Vajpayee immune to the vagaries of a Mamata Banerjee or a Jayalalitha. The consultation paper on political parties suddenly introduces, on page 40, a section on "stabilising the Parliamentary system"; this section bears no relationship, analytical or thematic, with the discussion in the first 39 pages on the various aberrations in the functioning of the party system. A classic instance of a "command performance".

The first proposal is that the Prime Minister be elected by the Lok Sabha, rather than be appointed by the President. Needless to say, this proposal dignifies the collective cussedness the BJP and its cheer-leaders have come to display towards Rashtrapati Bhavan. It is perhaps no coincidence that the Delhi High Court has even entertained a public interest litigation petition, wanting to sit in judgment over the President, Mr. K. R. Narayanan's decision in the summer of 1999 to invite Ms. Sonia Gandhi to explore the possibility of forming an alternative Government after the Vajpayee Ministry lost the vote of confidence. The second proposal for "stabilising the parliamentary system" notes that "a motion of no-confidence" should not only be tabled by at least 20 per cent of the total strength of the Lok Sabha but should also be "accompanied by a proposal of alternative leader to be voted simultaneously".

STATECRAFT

Together, the two proposals strike at the very heart of the parliamentary system. Only when the final recommendations get formulated would it be possible to judge whether or not the basic structure of the Constitution was being sought to be subverted. For now, it suffices to say that the two proposals are retrogressive, and deprive the President of the constitutional option of asking a Prime Minister, who has lost his/her majority, to demonstrate that he/she still commands the confidence of the House. If there was a prescription for prime ministerial arrogance and manipulation, this is it. Add to this Mr. P. A. Sangma's insistence on circulating a "note" whose sole purpose is to debar Ms. Sonia Gandhi from ever holding a constitutional office, and the Commission's true agenda becomes gradually discernible.

It is no surprise, then, that despite so distinguished a legal luminary as Mr. Justice M. N. Venkatachalaiah presiding over the panel, the Constitution Review Commission has not only given in to the Sangh Parivar's penchant for "stability" but has also bought the BJP's catechism on political morality. The political party "paper", for instance, notes: "Strong leaders with support from their States have been bypassed in favour of loyalists. Instances are galore when the party presidents have appointed party chiefs in the States just before the organisational elections were to take place despite the protests of the central election authority chairmen". Though there is no mention of the Congress, there could not have been a simpler giveaway of the Commission's deliberate bias against that party and Ms. Sonia Gandhi. This kind of blatant partisanship will not be helpful.

What is most troublesome, however, is that the Commission seems to suffer from an overdose of middle class biases, all rooted in an impatience with the masses and their demands on our collective conscience. Unapologetic about its middle class disdain for the politics of a Laloo Prasad Yadav or of a Mayawati, the paper on political parties spells out its diagnosis: "Exploiting caste sentiments and playing off one caste combination against the other with a political axe to grind, perhaps even more than religious bigotry, is the very anti-thesis of rationalism, but the monster of casteism has all of a sudden mysteriously gained wide respectability as a means of empowerment of the subaltern India!" The Commission wears its elitist proclivity on its sleeve rather cockily.

The Commission has, unfortunately, lent its name and prestige to the fashionable political correctness, which loves to crank up anti- politician and anti-political class feelings and sentiments. The Commission believes that "it is important that political parties and legislators need to be educated, socialised, disciplined and sensitised to public welfare for becoming effective partners in the process of governance". A quintessential upper middle class perspective that believes in the efficacy of an enlightened corporate crowd to think, plan and allocate societal resources for the common good.

Above all, there is a pronounced distrust of democratic processes and an equally pronounced intolerance of egalitarian urges. The Commission calls for a law to "provide for limiting the expenditures of the political parties in relation to holding public rallies and large scale demonstrations and protests which hardly serve any effective purpose in these days of high tech electronic media, which is far more effective and economical and causes least inconvenience to the public than the very frequent huge public rallies and large protests in capital cities". First the various High Courts put a ban on hartals; now the Commission wants to ban public rallies.

Never before were such anti-democratic prescriptions bandied about with so much impunity and arrogance. If the Venkatachalaiah Commission is allowed to have its way, democratic disagreements and disputes can only be expressed through "letters to the editor" and the CII-type "seminars" and "workshops" in a airconditioned, sanitised and "civilised" ambience. Mr. Kanshi Ram, for example, would not be allowed to hold a "defend the Constitution" rally in the nation's capital just because it may cause "inconvenience" for a few hours; he would be permitted only to make his case in 90-seconds on Mr. Rupert Murdoch's television channels.

As if these elitist prescriptions were not bad enough, the Commission has devised an equally-flawed mechanism for "eliciting public reactions and opinions". Each consultation paper carries with it a questionnaire. It would appear that Mr. Justice Venkatachalaiah and his colleagues on the Commission are blissfully innocent of the ways in which such questionnaires get manipulated. By now we are all familiar as to how the so-called "internet polls", conducted by some newspapers, as well as the "telephonic polls", encouraged by this or that self-promoted objective television anchorman, are regularly and systematically rigged to steer "public opinion" in favour of unwholesome causes, ideas and personalities. This is a format from which the overwhelming number of the masses stand, *ipso facto*, excluded; this is a game which only the internet crowd can play. This is nothing but an upper middle class mischief in the making.

THE HINDU

19 JAN 2001

Change Art 105: statute panel

STATESMAN NEWS SERVICE

NEW DELHI, Jan. 8. — The National Commission to Review the Working of the Constitution has suggested the amendment of Article 105 by inserting a new clause (3A), to make it clear that none is above the law and culprits are required to be brought to book to meet the ends of justice.

This is in reference to clause (2) of Article 105 which confers immunity upon a Member of Parliament "in respect of anything said or any vote given by him" in Parliament or any committee thereof. The interpretation of this clause generated controversy followed by the interpretation placed by the majority in the recent decision of the Supreme Court in the PV Narasimha Rao versus State case.

The suggestion was part of the consultation paper released today by the Commission on the topic of "Immunity of legislators: What do the Words 'in respect of anything said or any vote given by him' in Article 105 (2) signify?" The Commission released seven consultation papers today to generate public debate and discussion.

The Chairman of the Commission, Mr Justice MN Venkatachalaiah, said the views expressed and suggested in the papers were "not the final views" of the Commission.

The paper on the Immunity to legislators suggested that the Article 105 of the Constitution should be amended by inserting the new clause (3A) on the lines that "(3A) (i) Nothing in clause (1), clause (2) or clause (3) shall bar prosecution of a Member of Parliament in any court of law for an offence involving receiving or accepting whether directly or indirectly and whether for his own benefit or for the benefit of any other person in whom he is interested any kind of monetary or other valuable consideration for voting in a particular manner or for not voting, as the case may be, in a House of Parliament."

(ii) No court shall take cognizance of the offence mentioned in sub-clause (i) except with the previous sanction of the committee constituted under sub-clause (iii).

(iii) The committee referred to in sub-clause (ii) shall be a permanent committee constituted by the President. It shall compromise five Members of Parliament drawn from Lok Sabha and Rajya Sabha (in proportion 3:2) nominated by the President in consultation with the Speaker of Lok Sabha and the Chairman of Rajya Sabha. The term of the members of the committee and other incidental matters may be such as may be notified by the President in the order constituting the committee".

Article 194 which also deals with powers, privileges, etc of the Houses of Legislatures of the States and of the members and committees thereof would also require similar amendment, the Commission said.

The six other consultation papers are on Review of the working of political parties specially in relation to Elections and Reform Options; review of Election Law, Processes and Reform Options; Treaty-making Power under the Constitution; Liability of the State in Tort; All India Judicial Service and Efficacy of Public Audit systems in India: C & AG - Reforming the Institution.

HIGH POSTS

NEW DELHI, Jan. 8. — Mr Justice Venkatachaliah said that Mr PA Sangma, member of the National Commission to Review the Working of the Constitution, has submitted a paper on high posts held by persons of foreign origin but no decision has been taken by the Commission on the paper as yet.

The paper is based on ideological grounds and there has been no decision so far on whether it would be referred to a full commission or to a committee for discussion, said Justice Venkatachaliah adding that the matter has not been raised in the commission as yet. — SNS

THE STATESMAN

9 JAN 2001

JUDICIAL REFORMS-I

Approaches And Strategies

By NR MADHAVA MENON

WITH changes happening everywhere and in all spheres of human endeavour, one does not have to make out a case for reforms in judicial administration and delivery of justice. There is today a great deal of awareness on what ails the judicial system and on where and how reforms are necessary to enable the system to respond to fresh demands and challenges. The ongoing economic reforms and structural adjustments under way do provide an appropriate occasion to introduce the long-awaited judicial reforms on which at least a dozen official reports are awaiting governments' attention. In short, what is required now is agreement on how to package the reforms and organise their implementation in phases, given the ground realities of the day.

Broadly speaking, most of the recommendations for reform fall in two broad categories: first, changes in the institutions of the judicial system which includes courts, the legal profession and related structures; and secondly, improvement of the human material, the personnel managing the institutions. If the goals are clear and the stake holders agree on the reforms package, it is possible to conceive a scheme of what can immediately be introduced and what can be planned for the future. Even within the existing set-up a great deal can be done to enhance efficiency and increase productivity by better management of existing resources.

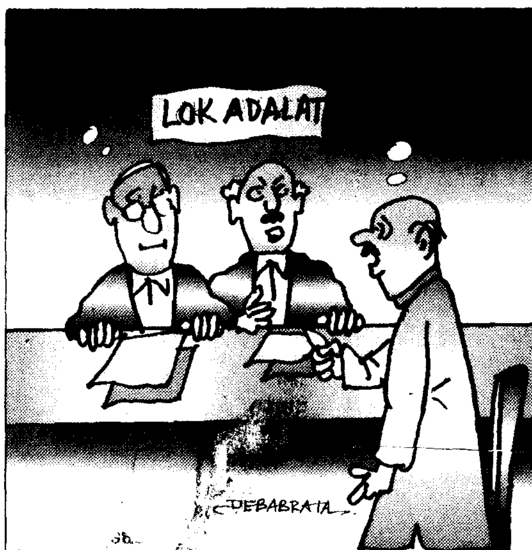
SKILL

Modern techniques of management have not yet been introduced in the judiciary. Any system if overloaded without proper repair or maintenance is bound to disintegrate in course of time. If the judicial system is still performing it is because of the dedication and skill of the men and women involved in its operation.

Given the need to make justice accessible to all and the inability of the existing structures to cope with the demands, we desperately need alternatives to adjudication through courts. India is one country where almost all cases filed are pushed through the elaborate and expensive processes of litigation. The Civil Procedure Code contemplated otherwise; that was the case to some extent with criminal disputes as well. Pre-trial settlements and ADRs (alternate dispute resolution systems), though provided for in the system, are seldom pursued vigorously either by the parties or the courts.

The Lok Adalat, of course, has made a difference with striking results. It needs to be strengthened and institutionalised with the help of the Legal Services Authority Act, the Conciliation and Arbitration Act, the new Civil Procedure Code and the proposed Criminal Procedure Code amendment. By this step it is expected that the arrears of 30 million cases can be substantially reduced and half the litigation settled out of court.

To be able to put such a policy into operation, High Courts have to take a pro-active role and adopt a minimum settlement scheme like the one pursued by the Himachal Pradesh High Court some time ago during the period of Chief Justice PD Desai. Bar Councils and Bar Associations should instruct the advocates to fully support such a scheme with penalties for unreasonable obstruction and unjust boycotts. The provision of imposing costs for delaying tactics should be liberally used to send the right message to all ranks and to induce changes in the mindset of functionaries of the system.



While it is necessary to have more courts and better infrastructural facilities for the judicial apparatus, it is also important to emphasise that a lot more can be accomplished with the existing resources by better management. This is not to belittle the excellent work done by many courts even in adverse circumstances. But the system as a whole is yet to receive the necessary direction and leadership from the High Courts to make the many parts and units work to their optimum efficiency. There is talk of greater punctuality, extended time for courts, fast track litigation, rewarding efficiency and curbing corruption. Nothing much is discernible yet at the grassroots level. Unless this is attempted seriously within the organisation, the demands for more courts and greater financial autonomy are unlikely to receive the attention they deserve.

DISPUTES

Another structural reform at the grassroots level which the Law Commission recommended 15 years ago (114th report on gram Nyayalaya) requires immediate action from the state governments. Resolution of simple disputes through people's participation at the grassroots level has long been part of the Indian judicial system. For a variety of reasons they have been abandoned with the adoption of the English legal system. Today the decentralisation of administration attempted through panchayat raj institutions has made the revival of [illegible] Panchayats a Constitutional imperative and a democratic necessity. Gram Nyayalaya, according to the Law Commission report, is to be a three-member body consisting of two lay judges and a trained professional judge from the state judicial service. The district magistrate and the district judge with the concurrence of the Chief Justice will draw up a panel by lay judges for each district from which the presiding judge will choose his team. The procedure is to be simple incorporating natural justice and avoiding technicalities of CPC, CrPC and Evidence Act.

Gram Nyayalayas have to function like mobile courts visiting villages, settling disputes and executing the decrees themselves. While Gram Nyayalayas will have criminal jurisdiction of a First Class Magistrate, its civil jurisdiction will cover matters involving boundary disputes, tenancies, use of common property resources, complaints regarding, entries in revenue records, irrigation disputes, minor property matters, easements, family disputes, wage disputes, disputes arising out of bonded labour, child labour etc.

The Law Commission desired that judges who preside over Gram Nyayalayas should be imparted special training on "rural litigants and rural litigation". They must be enabled to use conciliation as the dominant method of settlement of disputes. The presiding professional judge can give directions to the lay judges on matters of law. Unanimity is to be the basis of judgments; however, in case of difference, the majority view should prevail.

CONVENIENCE

The Gram Nyayalayas will have no power to adjourn a case to suit convenience of lawyers nor change the venue of hearing arbitrarily. The Commission recommended that two lawyers selected under the Legal Services Authority Act be attached with each Gram Nyayalaya to enable parties and the court to seek their services if they so desire. Appeals are not allowed except in criminal cases.

Revision to district court in civil cases can be had on questions of law. Finally, the law commission wanted "all authorities of the revenue department, police department and forest department at the village and tehsil levels should be put under obligation to assist Gram Nyayalayas in discharging its functions".

The Panchayat Raj Act in each state can be amended to help establish Gram Nyayalayas for cluster of villages to reach justice at the door steps and reduce litigation in the formal court system. A well-thought-out framework which can easily be put in place is thus provided, the cost of which can be absorbed in existing judicial budgets. The presence of a Munsiff/Magistrate as the presiding judge and the judicial selection of lay judges from the panel prepared for every district in advance, will avoid criticisms of local prejudices getting into decision-making. On the spot trial will promote truth finding, expedition in procedures and participation of parties, all of which will contribute to voluntary acceptance of settlements.

(To be concluded)

The Author is Vice-Chancellor, WB National University of Juridical Sciences.

Review panel favours delinking no-trust vote from Lok Sabha term

The Times of India News Service and Agencies

NEW DELHI: The National Commission to Review the Working of the Constitution (NCRWC) is of the opinion that when the Lok Sabha passes a no-confidence motion against the government it should simultaneously "elect" a new leader. The chairman of the commission, Justice Venkatachaliah, said a provision for simultaneous election of an alternative leader of the House was being examined by the commission.

The issue came up during the commission's meeting here on Friday.

The provision, he said, was being considered in the interest of a full term of the Lok Sabha, keeping in mind the "growing fractionalisation" of coalition governments in the recent past.

Justice Venkatachaliah cited the German model as a case to the point. The German constitution provides for the election of an alternative leader by the 'House of People' in the event of loss of trust in the leadership of the Chancellor. The commission, he said, was also taking into account trends in the growth of number of political parties as well as the constitutional and legal positions in this regard in various other countries.

Justice Venkatachaliah said while considering consultation papers on electoral reforms, the panel had examined suggestions by the Justice V.M. Tarkunde committee, the Justice V.R. Krishna Iyer committee, the Dinesh Goswami committee, the Justice Kuldeep Singh committee, the joint parliamentary committee on electoral laws and the Law Commission's report on the issue.

He stressed that the commission was reviewing the functioning of the Constitution strictly within the ambit of the parliamentary form of government and assured that there was no question of considering the presidential model. Justice Venkatachaliah said the terms of reference of the commission made it clear that it would not tamper with the basic structure of the Constitution.

The commission is also examining the issue of economic liberalisation and its impact on Third World countries like India, taking into consideration the fact that Indians have access only to one per cent of consumer goods.

AP

IT'S OFFICIAL, FOLKS! THIS IS THE 21ST CENTURY: The Sydney Harbour Bridge is alight with fireworks to welcome the New Year -and the 21st century - in Sydney on Monday.

Prasar Bharati CEO granted extension

NEW DELHI: Acting chief executive officer (CEO) of Prasar Bharati Rajiv Ratna Shah, whose term expired on Sunday, has been given an extension of six months or till the selection of a new CEO, whichever is earlier. This was disclosed by information and broadcasting minister Sushma Swaraj.

She said the ministry has requested the high-level committee headed by vice-president Krishan Kant to select the CEO. Asked as to by what time the committee is expected to make the selection, she said, "I cannot set the deadline." (PTI)

indiatimes.com POLL

YESTERDAY'S POLL RESULTS
The Centre's top priority for the New Year should be:

Education for all	Check population growth	Shelter for all
50%	43%	7%

9,560 VOTES IN ALL

- The poll reflects the opinions of Net users who chose to participate, and not necessarily of the general public.

TODAY'S QUESTION

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