

**FORTY FOURTH
ANNUAL CONFERENCE
OF
MEMBERS OF THE IIPA
(OCTOBER 15, 2000)**

**REVIEWING THE WORKING OF THE
INDIAN CONSTITUTION**



**INDIAN INSTITUTE OF PUBLIC ADMINISTRATION
INDRAPRASTHA ESTATE, RING ROAD, NEW DELHI-110002**

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Indian Institute of Public Administration
New Delhi

INTRODUCTION

The Forty-fourth Annual Conference of members of the Indian Institute of Public Administration was held on October 15, 2000. The theme of the conference was "Reviewing the Working of the Constitution". In selecting this very sensitive and critical theme, the Standing Committee and the Executive Council were guided by the consideration that the inputs received during debates and discussions at the prelude conference and at the Annual Conference would be of relevance of the Constitution Review Commission, constituted by the Government last year.

As is our standard practice, a faculty member is requested to write the theme paper. This paper is discussed in prelude conferences which are organised by IIPA's regional and local branches spread through the length and breadth of the country. Then, finally, the theme paper is discussed at the Annual Conference at the time of Annual General Meeting of the IIPA.

I think, I should very briefly mention that we had the benefit of a two-day seminar Coordinated by Prof. S.S. Singh on this issue itself in early April 2000, which was highly valued and some extremely useful suggestions were made at the deliberations of the seminar. Dr. T.K. Saha took note of some of those suggestions and prepared the theme paper. In my view, any exercise on the review of the working of the constitution cannot really be comprehensive, because, it is an extremely vast, sensitive and critical subject.

The theme paper, viz., "Reviewing the Working of the Constitution", was written by Dr. Saha, who is a colleague in the faculty. The paper was discussed in prelude conferences held by 28 Local and Regional branches. The outcome and conclusions of these conferences were presented in the Annual Conference by the office bearers of the respective branches. The Annual Conference sessions were Chaired by Shri T.N. Chaturvedi, Chairman, Standing Committee, Dr. K. Chockalingam, Prof. S. Saroja and Prof. Noorjahan Bava, Members, Executive Council, IIPA.

The theme paper written by Dr. Saha is quite comprehensive. He observed that the Constitution is simply a socio-legal document of special sanctity for the governance of a country and emphasised that good governance is ideologically neutral. In the context of strengthening the parliamentary institutions, he pointed out the need

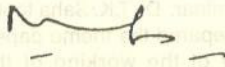
of stability, accountability and electoral reforms. The need of reconsideration of voting age and the review of our union state relations have also been emphasised. Further, he has expressed his opinion for abolishing the office of the Governor. The enlargement of Fundamental Rights, creation of Equal Opportunity Commission and review of the implementation of the important Directive Principles, *inter-alia*, were suggested.

In all 46 papers were contributed by the honourable members of the IIPA. Papers accepted for presentation were 13 and 39 synopsis were circulated.

The booklet includes conference proceedings, theme paper, list of paper contributors and participants.

I express my sincere thanks to Dr. T.K. Saha who did a commendable task in preparing a comprehensive paper. I am also thankful to the members of the Institute who contributed papers and participated in the discussion.

My gratitude is due to Dr. Chockalingam, Prof. S. Saroja and Prof. Noorjahan Bava, Members, Executive Council, IIPA for chairing sessions and guiding the deliberations. I am also grateful to Shri T. N. Chaturvedi, Chairman, Standing Committee, for making his presidential remarks on the theme of the Conference.



(M.C. GUPTA)

Director

INDIAN INSTITUTE OF
PUBLIC ADMINISTRATION

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I hope you will have a good time and I wish you well until we meet next year. With these words, I would like to thank you once again. We call it a day.

(The Members' Annual Conference then adjourned)

REVIEWING THE WORKING OF THE INDIAN CONSTITUTION

TUSHAR KANTI SAHA*

The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of a government at once free and peaceful, since even any powerful and obstinate minority makes under the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves. Grote

All constitutions are heirs of the past as well as testators of the future. Our Prime Minister reminded us that "even in the mightiest fort one has to repair the parapet from time to time, one has to clean the moat and check the banisters. The same is true about our constitution." Equally significant is the call for caution given by the President that "we should ensure *the basic philosophy behind the constitution* and fundamental socio-economic soul of the constitution remain sacrosanct..... we should not throw out the baby with the bathwater and like the tragic character Othello in Shakespeare lament later." And the Prime Minister agreed that *the basic structure and core ideals of the constitution* would remain inviolate." These statements are perfectly in tune with each other. Thus, the Terms of Reference (TOR) of the National Commission to Review the Working of the Indian Constitution (NCRWC) reads:

The Commission shall examine, in the light of past 50 years, as how far the existing provisions of the constitution are capable of responding to the needs of efficient, smooth and effective system of governance and socio-economic development of modern India and to recommend changes, if any that are required to be made in the Constitution within the framework of Parliamentary Democracy without interfering with the basic structure or features of the Constitution.

The terms of reference reassuringly confirm the continual run of the system of Parliamentary democracy allaying the fears

* The author is immensely grateful to Shri M.C. Gupta, Director, Indian Institute of Public Administration, for his contributory inputs and observations in enrichment of the quality of this paper. The author, however, accepts responsibility for the opinion expressed in this paper.

of sceptics and also declares in favour of the recognoscenti the supreme value attached to the concept of basic structure or basic features of the constitution.

The Commission is now working full steam with the aid of 10 expert teams after having identified the major fields for incisive review for reconstruction embracing the following arms:

1. Examine ways to strengthen democratic institutions and their accountability;
2. Review electoral reforms;
3. Review the pace of socio-economic change and development and eradication of poverty;
4. Promote literacy and employment, besides ensuring social security;
5. Review Centre-state relations, including Article 356, appointment of Governors, financial relations and sharing of revenues;
6. Strengthen Panchayati Raj Institutions;
7. Enlarge the Fundamental Rights and improve the Rights of the minorities and weaker sections;
8. Effectuate Fundamental Duties;
9. Enforce the Directive Principles of State Policy;
10. Legal control of fiscal and monetary policies.

There is a growing awareness and demand in our democratic polity for infusion of the spirit of good and effective governance which requires introduction of openness, transparency and the culture of human rights in the sphere of the governmental activity. We all can learn from the instructive lesson from "The Great Learning" of the Great Confucius:

When knowledge is extended,
the will becomes sincere.
When the will is sincere,
the mind is correct.
When the mind is correct,
the self is cultivated.
When the self is cultivated,
the clan is harmonised.
When the clan is harmonised,
the country is well governed.
When the country is well governed,
there will be peace throughout the land.

PREAMBLE TO THE CONSTITUTION

Preamble is an introduction to a written constitution which adds higher dignity and heightened significance to the ideals of a nation seeking its tryst with destiny. In a brief and pithy form, the preamble to the constitution bares open the potential genius of her people to the prospect of fullest development in the crisp air of freedom. It has affirmed that preamble stands part of the constitution and hence amendable like any other part of the Constitution.

In view of the radical changes witnessed over the last five decades throughout the world thanks to technological and now biological revolution ushering in, the new mantra sounds the birth pang of a society based on information, knowledge and enterprising wealth. Therefore, there is a need for a new declaration in favour of 'federal' statehood in clear and unequivocal term. Simply by adding or maintaining a term like 'Union' does not or cannot ensure unity and the living example is erstwhile Union of the Soviet Socialist Republic. On the other hand, people in the USA have really united putting behind the history of civil war by ensuring a discrimination-free community buttressed by liberal principle of federalism. The real strength of democracy is in loosening the grip and in federating powers to the units. Very recently, the Punjab Government's expert committee constituted to make recommendations on its behalf to the NCRWIC produced a 38 page document, which *inter alia* sought inclusion of the expression 'federal' in the preamble as well as in Article 1 in replacement of the expression 'Union' and wherever it occurs in the constitution and equal representation to all states to the Rajya Sabha irrespective of their size and population.

Strengthening the Institutions of Parliamentary Democracy

The strengths of the Parliamentary institutions lie in their ability to deliver the value-based products to society's enrichment in sailing the ship of statecraft in a harmonious fashion. Democratic ethos call for absorption of conflicting interests by peaceful resolution. The visible cracks as the signs of weakness emerge out of functional anarchy from the levels of its inherent capacity for tolerance but dangers surface from the internal dynamics of the irresponsible functional autonomy exercised by the powerful manning these institutions. Lack of accountability and transparency

is responsible for the degeneration of democratic culture and we must ensure their compliance now. Three issues are in stake, namely, the stability of the government, in relation to its responsibility to the Parliament. Accountability of the government in public service and the "persistent menace of unprincipled defections" in the backdrop of unparliamentary voting behaviour. Instability, of late, has become a stable feature of Indian political life. Between 1989 and 1991 three Ministries were formed and stormed and since 1996, five. We must make a departure from this plight and take a flight to reasonable stability of the government in power without compromising with the principle of responsibility of the Council of Ministers to the Parliament. To obviate the game of musical chairs, the evolving system must take care to insure that the very purpose of stability is not defeated by unethical practices. The constitution must itself provide for a Code of Ethics for the Legislators and for this purpose, Article 105 must be amended.

The traditional doctrine of separation of powers has not worked quite well in practice despite the constitutional provisions invoking the spirit of independent functional spheres. The nexus syndrome has distorted the system by direct or indirect interference in each other's business. The politician-bureaucrat nexus has even resulted in large-scale draining of resources. It is time to have a relook on the entire gamut of bureaucracy and free it from the clutches of political masters so that it can assert and act independently in a lawful manner according to constitutional principle and it should be nurtured and cultured by an independent body of Civil Services Commission (CSC). The reversal of bureaucracy for purposive re-orientation should take place by departure from the structure of pyramid to archipelagic dots across the country and some important nodal agencies, wherever possible, be headquartered in remote corners of India such as north eastern villages.

As far as political defection is concerned, it should be totally banned for elected representatives unless they choose it voluntarily by vacation of membership. Even Nepalese Constitution made it an automatic disqualifying factor for a defecting legislator under Article 49. This measure cannot be labeled as undemocratic, on the other hand, defection itself should be seen as undemocratic, as it is a bluff and betrayal of voters' trust. The Review Commission, therefore, has to consider scrapping Tenth Schedule

to the Constitution altogether and replace it by a new order of sanity. This schedule far from removing the blot of defection, has, in fact, encouraged and legitimised splits for the purpose of defection.

The Indian Legal system also requires drastic change with the support of a strong judiciary manned by a line of professional career judges whose appointment, transfer and discipline should be looked after by a National Judicial Commission.

Review Electoral Reforms

Election is the life-blood democracy. Yet, purity of election in India appears to be a distant cry. Democracy cannot survive and thrive without free and fair elections which alone can provide an elected body of competent legislators working the interest of the nation. The present electoral system together with distorted culture of politics and law made room for history-sheeters to don the honour of the House and the entire parliamentary vote has become a marketable specie under the protective umbrella of Parliamentary privilege. The constitution must now clearly define the term and limit it to freedom of speech and not to freedom to enrich. In order to ensure free and fair elections it is necessary to prepare a clean voters' list. In the absence of compulsory voting law, ineligible persons get registered in the electoral roll which is further compounded by proxy voting while genuine voters can be seared away from the place of husting. Therefore certain basic requirement as to voting power and its exercise in a lawful manner are to be met. To this end the Election Commission should be further strengthened with wider powers so that it can man its key offices at the state level with its own cadre of officers. In England, the idea of a powerful commission has found favour recently. In its fifth report, on "the Funding of Political Parties in the United Kingdom", the Committee on Standards in Public Life recommended that there should be an electoral commission charged with *monitoring* the operation of elections and making recommendations for improvements; *an executive role* involving registering parties, receiving party accounts, publishing details of major donations to parties, and determining which parties should receive core funding *an investigative role* to deal with complaints and suspicions that, for instance a party has failed to disclose the names of major donations, *an advisory role* where questions arise about matters under its jurisdiction; and an administrative role in

connection with the conduct of certain elections.

Indian Election Commission has done some splendid job in clearing the stable of electoral malpractices but it can go an extra mile only if drastic reforms, some of which, must be addressed to, by reference in the basic document itself. The electoral code of conduct may not be placed in the form of constitutional provision but at least, the panel can see to entrench a clearly defined code of parliamentary privileges and it can take the cue from the progress made in Britain in this regard. This is of course, related to post-election conduct in Parliamentary proceedings but the immunity from bribery-charge makes the proposition of contesting elections more attractive.

In Britain, a joint committee on Parliamentary Privilege 1997 recognised that what was involved was a conflict between two public interests: the need for corrupt members of either House and those who corrupt them to be punished in the same way as anyone else, and the need to maintain free speech in Parliament. The Committee in effect came out in favour of the first of these public interests while suggesting additional protection in recognition of the second.

Election is a matter of politics but the Constitution must set the basic rule of the game so that free and fair election does not remain a dream idea in the mire of quantity of democracy.

Major Issues

1. Purity of Voters' List: Proof of Age and Identity.
2. Compulsory Voting Law : voters' turn out and freedom of choice for rejection
3. Election Campaign Fund : Limit and Disclosure
4. Internal Democracy of Political-Parties: National Parties' democratisation.
5. Code of Conduct in Campaigning: Statutory basis
6. Conduct of Election: Free from corrupt and illegal practices
7. Reservation of seats for women : Parties' internal quota
8. Powers of the Election Commission : New role.
9. Voters' age and minimum age for other public offices : Constitutional basis.

Two important reforms that can be carried through constitutional mandate are about partial public funding of electoral campaigns with a compulsion to disclosure of the source of private

funds which should also be limited by a ceiling imposed on a single source. There should also be a limit and restrictions on launching new political parties which are far too many at about 550 of them registered at present.

Pace of Socio-economic Change and Eradication of Poverty

Economic growth is an important instrument for poverty reduction. Unfortunately, wealth generated through economic development has been largely cornered by the richer classes. Thus, economic development on its own cannot reduce poverty unless it is focused with allocation of resources in favour of the poor by providing basic services like education, health, sanitation, drinking water and so on. Here enters the relevance of implementing the programmatic agenda contained in the Part IV of the Constitution under the rubric of "Directive Principles of State Policy" which are fundamental in the Governance of the country according to Article 37.

Promote Literacy and Employment

Our constitutional goal for illiteracy free India has not been achieved and our vision 2020 should be focused on this one-point issue. Illiteracy and poverty are the terrible twins of our divided society. India's one billion population can be viewed both as a burden and an asset. We have one billion brains and one billion bellies. The country needs 20 lakh software engineers in next ten years' time both for internal market as well as for overseas. We should not squander away the present moment of glory and hard-earned image created over a considerable period of sustained efforts. Our children are to be treated and regarded as national asset. The Government must right-size itself, if necessary, by expanding its horizon as a true facilitator promoting literacy and employment. Universal primary education must be mandated by a clear provision in the constitution. The large army of unemployed youth can be deployed in an organised manner with the sole objective of eradication of illiteracy from the Indian soil. A mass movement in this direction can take concrete shape from the constitutional mandate. Modern technology is an added advantage in this field which can be used as a convenient tool. It is quite conceivable that we need to work out a completely New Education Policy (NEP) wedded to the National Population Policy (NPP) and to plan through the process of dialogue. As an alternative to

classical form of steering, state intervention must find and evolve the forms of governance through the process of change, experiment and innovation. One such innovative step would be to introduce National Insurance Scheme (NIS) in comprehensive form. A limited right to housing of the homeless should be guaranteed. Child labour in all forms should be banned and the charity should begin from the home by freeing domestication of young teens of maid servants.

Centre-State or Federal Relations

There is now an agreement in generalily that devolution of powers and resources should determine the new dispensation of federal relations which alone can inject the spirit of healthy competition among the constituent units while strengthening the fabric of unity of India in a new scale at the higher plane. Part XI of the constitution only deals with Legislative and Administrative Relations. There is no specific chapter dealing with Financial Relations in the Constitution. The present requirement is to exhaustively deal with these relations on the basis of maximum possible autonomy even to the extent of opening up consular or business offices abroad just as it has been granted to the Australian federating units. The Financial Relations should ensure fiscal discipline with its linkage to the Federal Finance Commission. The Seventh Schedule to the constitution must undergo a comprehensive review for reallocation transfer or inclusion of new subjects like 'disaster' which finds no mention in the lists.

THE OFFICE OF THE GOVERNOR

The office of the Governor, not being an elected constitutional functionary has been in the eye of storm. The entire modalities of the appointment of the Governor have been questioned and choosing persons from the public life with impeccable character and capable of working with neutrality, dignity and judgement is not an easy task nor does it spare the most upright person from the controversy as it boils into an issue of political nature, even if it is of apolitical character since his act did not suit or favour a particular party. The discretionary powers of the governors also have been occasionally resented. The governors have been seen or suspected as the agents of the union government. In this regard, the question of application as well as

exercise of constitutional powers conferred by Article 356 remained as an unresolved issue which recurs in every moment of realpolitik. The best solution that can be offered is to do away with this office of the Governor. Even for limited purpose of invoking Article 356, it is possible to carry on the business of governance by sending a Governor or Advisor for the occasion. In the process the country will save more than hundred crore of rupees spent annually on ornamental luxury in maintenance and sustenance of this institutional edifice.

Panchayati Raj Institution

Three fold objectives of Panchayati Raj system are : (1) greater involvement of the people in the process of democratic governance at the grassroot levels, (2) Development culture and administration as part of the national development process, and (3) Self-reliance through democratic decentralisation of powers and resources while ending isolation of the community life and living from the rest of the World in the spirit of *Basundhara Kutumbakam*. Dr. B.R. Ambedkar disfavoured PRIs as they were viewed as 'a sink of localism and a den of ignorance and narrow mindedness and communalism'. Article 40 in Part IV made it a constitutional agenda and the growing demand for local self-governance at the grassroot level culminated into passage of 73rd and 74th Constitution Amendment Acts although the Sarkaria Commission on Centre-State Relations (1988) on good ground did not favour the idea of Singhvi Committee (1986) to turn Indian villages into self-governing republics of direct democracy. The main argument of the Sarkaria Commission was that the power of enacting any law on the Panchayats rests under entry five list II exclusively with the states and pressed on to say that the law throughout the territory of India in these aspects should be uniform which could be achieved by model legislation by agreement. Instead, the constitution has been amended to grant the PRIs a constitutional status. Now, it is the responsibility of the constitutional machineries to work the system uniformly throughout the territory of India in view of the fact that maximum possible latitude has been provided to the states to make suitable amendments in their Panchayati Raj Acts. It appears, like cooperative movement, success of PRIs will depend largely on the quality of local culture and vary according to grassroot level distribution of corruption or micro-level sense of justice. The question is how to ensure and instill harmony

and tranquil in our villages without hampering the process of growth within the emerging system.

Fundamental Rights and Duties

Enlargement of the fundamental rights in Part III after the total eclipse of the right to property albeit being fundamental to human existence, is a remarkable step for improvement of the rights of man in the country.

RIGHT TO COMPULSORY ELEMENTARY EDUCATION

The element of compulsion in any such scheme to guaranteeing a fundamental right smack on its contradictory statement of objective. The present Article 45 made provisions for free and compulsory education for children up to the age of 14 years. A new Article in the form Article 30A may be inserted incorporating the principle of universal free primary education. The use of the word 'compulsion' has an element of coercion. In assuring a right, there ought to be no such coercive power at play. In England the school-going children are monitored by policing and custodial isolation in the care of social service department are well organised and funded. Our institution and infrastructure are not strong enough to take care of the implementation of a right of a new kind with various implications. Institutions are required to be created and developed to serve this goal of universal literacy by enjoining a duty on the Government to set aside a separate fund to provide for a modern primary school with technological support and logistics within one kilometer distance in each neighbourhood. A large army of employable youth may be engaged in this venture on war-footing in order to efface illiteracy from the country within a decade. *This idea can be supported by incorporation of a fundamental duty to come in aid of the literacy mission throughout the country. Adoption of small family norm should also be made into an fundamental duty enforceable with rewards and incentives.*

RIGHT TO FREEDOM OF PRESS AND INFORMATION

People in a democratic country have the right to form informed opinion on matters of public importance. Free flow of information through the mass media is the *sine qua non* for any such exercise and the press freedom cannot hang on forever on the interpretation of Article 19(1)(a) contained in the constitution. Even in the US Constitution there was no provision in its original

form and had to amend it to extend the guarantee of freedom to the press and largely because of this new found weapon, democratic governance has flourished by contributory force of public opinion at large. Press freedom' ensures protection of the source of information. Hence, there is a need to strike a fine balance between the freedom of the press and the right to privacy and protection against defamation. In other words, press freedom in this country cannot be absolute and should be subjected to reasonable restrictions applicable to other freedoms provided in Article 19 of the Constitution. The freedom of the press should lift the veil of secrecy in official transaction and activities in the interest of transparency and openness of governance in modern style.

RIGHT TO TRAVEL ABROAD

This right is presently secured by Article 21 and requires to be clearly and distinctly provided in Article 19(1)(d) by suitable modification introduced therein. Right to go abroad and return back home is not expressly provided in the constitution. This right is enjoyed by the citizens thanks to the beneficial construction of the phrase 'personal liberty' used in Article 21 made by the court. Though the legal position has now been clarified, it is too important a right in the age of communication revolution to be left outside the fortified area of fundamental rights. This right will ensure holding passport as a matter of pride and remove difficulties in obtaining this document for a large number of aspirants looking for avenues of opportunities in the greener pasture in the land of fortunes.

RIGHT TO EQUALITY

Right to equality is the most important right of man in a free world. Discrimination and arbitrariness are the sworn enemies of the right to equality. Under the Indian Constitution, this right has been recognised as a fundamental right in Article 14 and is widely accepted as one of the basic features of the constitution. The spirit of the constitution is that equality is the rule, reservation or special provisions are the exceptions to serve a cause for a temporary period. The reservation system has been played up as a political football for timeless encounter. The question of reservation apart, the right to equality and to a right for equal opportunity have

remained a dream idea in the book. The open field of opportunity left after absorption by reservation is occupied by a small section of mighty and powerful people who operate as a secret society of 'give and take' overpowered and hijacked the spirit of the constitution. For every bit of infringement and violation of this right of supreme importance, the poor and the deprived class cannot be asked to approach the superior courts for vindication of their fundamental right. *Therefore, it is proposed that an Equal Opportunity Commission be institutionalised* so that, as in Britain, the government must 'be made to commit itself to a policy of 'mainstreaming' equal opportunities across the departments seeking to guard against the risk of placing the responsibility for promoting fair treatment and non-discrimination squarely on departments although Equal Opportunity Commission can carry on their task on permanent basis for elimination of all kinds of inequalities in the matter of opportunities.

Enforce the Directive Principles of State Policy

The Directive Principles are 'fundamental' in the governance of the country under Article 37 yet they have been largely ignored because of their non-justifiable character. As a result, piecemeal legislations which took place over the period, have failed to make any qualitative impact on the wider spectrum of the economic milieu and they remained invisibly microscopic in nature. The broken bones of our societal discords can be repaired by the gel of togetherness and not in terms of *ad-hocism*.

The Directive Principles epitomise the ideals, the aspirations, the sentiments, the precepts and the goals of the freedom movement and they remained the most cherished dream of our polity offered by Kautilya in specific terms:

"The King shall provide the orphan, the dying, the infirm, the afflicted and the helpless with maintenance, he shall also provide subsistence to the helpless expectant mothers and also to the children they give birth to". So, justice must be done inasmuch as "justice is the earnest and constant will to render to every man his due." It has human dimension and wider implications of the height of human rights.

The working of the Constitution now must be reviewed from this angle to identify and concentrate on the most urgent agenda of reforms that will ensure progressive and integrated implementation of some of the key Directive Principles.

The most important of these reforms relate to Article 39(e), 39(f), 45 and 47 and they should be turned into a justifiable category for the purpose of sustained and continuous improvement of the conditions of life of the vulnerable sections of the society.

Fiscal Autonomy and Responsibility

The basic objective of fiscal transfer in a federation is to ameliorate horizontal imbalances by equalising their revenue capacity so that all states can provide basic public services to the people at minimum acceptable levels. Canadian Constitution enjoins such equalisation and federal transfers are the bonding factors in holding the nation together. The Canadian model has not served its ultimate goal. We must take a clear stand at its juncture to declare India as a Federal Republic by granting more powers in the process of devolution to all the states including Jammu & Kashmir and Article 1 should read "India shall be an Indestructible Federation of States". In order to make it a more functional than an institutional concept, the residuary powers of legislation may be placed, in the concurrent list. At the same time, item 46 in List II can be given a place in the Federal list so that the Federal Government can levy and collect taxes like land revenue and agricultural income-tax for the purpose of distributing the same among the states. Articles, 269-270 may be amended accordingly to translate this idea into reality. Management of public spending is a matter to worry about and call for legislative control over the public purse. The Vice-President of India Shri Krishan Kant reminded that "it is the legislature's duty in a democracy to ensure that tax payers money is spent for the purpose mentioned so that he benefits when there is development. The legislature should ensure that money is spent prudently because of the enormity of public expenditure. Interest payment, subsidies and non-plan grants to some states along with other expenses account for 95 per cent of non-plan expenditure and 70 per cent of the total expenditure."¹

India's overall government spending is now around 33 per cent of GDP. The huge deficits in budget after budget are assaults on national savings rate reducing overall aggregate investment that challenges the sustainability of high growth. Therefore, in the interest of better fiscal management and to ensure financial discipline, Articles 292 and 293 should be amended to make it

¹ The Statesman July 30, 2000, p.7.

mandatory for Parliament to place constitutional limits on the borrowing powers of the Government.

The Eleventh Finance Commission (EFC) has now given a cue to downsizing the government by merger of Planning Commission with the Finance Commission. At the first instance, the work being done by the Planning Commission would receive a constitutional sanction and more importantly the exercise would be to do away with the artificial distinction of plan and non-plan grants-in-aid. At the same time Finance Commission would attain the status of a permanent body, necessary for discharging constitutional obligations in a continuous and sustained manner. Amendment of Article 280 of the Constitution will be needed providing for the size of the membership of the new entity, to be called Federal Finance Commission (FFC) with two separate cells. The present tenure of the periodical Finance Commissions constituted for the purpose of deliberating certain fixed principles for five years in advance is faulty as the forecasts of the commission, as gathered from States' or Union representatives' might get substantially disturbed by events unforeseen during the course of five years. Planning Commission has become an extra-constitutional permanent body while the Finance Commission although being a constitutional body enjoys a temporary status. The proposed merger of the two into FFC will then no longer bite the states and bark at the centre.

Autonomy, Decentralisation and Devolution

While the Indian polity can be complimented for paving the way for a strong and united India for the last 53 years and within the framework of the Constitution in the last 50 years, occasionally there have been demands for greater autonomy and decentralisation. The recent developments in the Jammu and Kashmir Assembly and the response of the Central Government thereon and certain observations made by leaders in some of the States raise the important conceptual aspect namely whether the Indian Constitution can accommodate these demands for greater functional freedom at the state and lower levels. It is not clear to the author whether autonomy is the answer. May be a rational and effective decentralisation and a meaningful devolution could itself be the answer. Nonetheless, a debate on this highly sensitive and critical issue. Namely 'autonomy, 'decentralization' and 'devolution' seems to be called for.

Concept of Civil Society and its Place in the Constitution

Of late, renewed emphasis is being laid all the world over on the strengthening of the 'civil society'. It is being argued that too much space has been occupied by the 'political society' which has depressed and even mutilated the components of the civil society. Also that because of vast proliferation of the government which has become flabby and unmanageable civil society must assert itself. The Constitution of India does contain some components of the civil society in an embryonic form particularly in the Articles on Directive Principles of State Policy and Fundamental Rights, *e.g.*, the right to form associations and the freedom of expression. As we look at the future, we have to ponder deeply on the emerging concept of a strong civil society and the component thereof which could find a place in the Constitution.

CONCLUSION

Thanks to communication revolution declaring the death of distance, geography is now history. India has a treasure of history and yet we Indians have little sense of history. We are at the turning point and we can be at the top provided we shake up and get up to the clarion call – a call for sobriety, propriety and moderation in our way of life and organised activities. We have reached the extreme point in certain fronts – extreme corruption in public life, extreme intolerance and extreme violation of human rights. No constitution can guarantee freedom from all these vices unless people themselves imbibe the spirit of truth and follow the path of reconciliation. To inculcate this culture and these practices we must look to the "Gung Ho!" and emulate the spirit of the squirrel, the ways of the beaver, and the gift of the goose.

The need of the hour is to inject a degree of moderation, objectivity and fidelity in our thought and action. Constitutional reforms should only provide a starter signal indicating and enlightening the path to be charted in course of our journey to the destiny of peace and prosperity of this great land of ours. We can learn from the wisdom and scholarship of the great persons of yester years and the words of Justice Cardozo may serve as a ready feast for thought:

That a society so riven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save; that in a society which

evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish. What then is the spirit of moderation? It is the temper which does not press a partisan advantage to its bitter end, which can understand and will respect the other side, which feels a unity between all citizens – real and not the fictitious product of propaganda, which has common faith in the sacredness of the individual. If you ask me how such a temper and such a faith are bred and fostered, I cannot answer. They are the last flowers of the civilisation, delicate and easily overrun by the weeds or our sinful nature; we may even now be witnessing their uprooting and disappearance until in the progress of the ages their seeds can once more find some friendly soil. But I am confident that they must have the vigour within themselves to withstand the winds and weather of an indifferent and ruthless world; and that it is idle to seek shelter for them in a courtroom. Men must take that temper and that faith with them into the market place, into the factory, into the council-room, into their homes they cannot be imposed; they must be lived. Words will not express them; arguments will not clarify them; decisions will not maintain them. They are the fruits of wisdom that comes of trial and a pure heart; no one can possess them who has not stood in awe before the spectacle of this mysterious universe; no one can possess them whom that spectacle has not purged through pity and through fear – pity for the pride and folly which inexorably enmesh men in toils of their own contriving; fear, because that same pride and that same folly lie deep in the recesses of his own soul.

Constitutional principles and goals now should be taken to the doors of our people – they should be read over and taught to remind them of the true significance of their rights and duties in the governance of the country by both formal and informal ways.

Thou too, sail on, O Ship of State on,
 O, Union, strong and great,
 Humanity with all its fears
 With all the hope of future years,
 Is hanging breathless on thy fate!

H.W. Longfellow, *Building of the Ship*

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