THE INDIAN CONSTITUTION NEEDS AN URGENT REVISION

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ABSTRACT

With many subterfuge being applied to profane the sacred text of our land viz. Constitution of India, it is the bounden duty of all to preserve the sanctity of the same. The author has left no stone unturned to underscore the ominous presence of many constitutional apparitions which are yet to be exorcised either by legislative wand or by judicial amulets.

Introduction

Indian constitution consists of twenty two parts and twelve schedules. Constitution is the country's supreme law-**Suprema lex**. In other words, **the stream of law flows from the glacier of our constitution,** thus ensuring the constant and unpolluted flow of modern civilization. Indian constitution is marked by the refulgent presence of many aspects ranging from Fundamental Rights, Directive Principles of State Policy, Fundamental Duties, Parliament, Executive, Judiciary to some constitutional bodies like Election Commission, Finance Commission, UPSC to mention a few. Indian Constitution is conspicuous by the towering presence of constitutionalism which enjoins limited form of government to put a check on the whims and caprice of the state power. Our constitution is also marked by the glaring principle which demarcates three important organ of Indian polity viz. Legislature, Executive and Judiciary. Despite these winsome aspects, it can be said with certitude that Indian constitution needs rigorous revision to suit the realities of the present century: "The only constant in life, is change."

Transmutation in legislative domain:

There is no mechanism available in India to raise the salary of Members of Parliament. No one should have a power to enhance his/her salary, perks and perquisites on his own volition. Declining no of sessions stands in stark contrast with the increasing demand for pay hike. The above circumstances have rendered it compulsively imperative to create an external body to determine the compensation package for MPs on the line of Review Body on Senior Salaries

in the UK and Remuneration Tribunal in Australia ibid. It is also a festering issue as to how a person in his mid-twenties, a one -time MP is eligible for lifelong pension and such an expenditure is a drain on the exchequer. A provision should be made for eligibility criterion of the pension entitlements of MPs, for example MPs for three times in either house of the Parliament or the like. Also legislators should be debarred from taking any other profession simultaneously as similar to the restriction foisted on the civil servants and the members of the judiciary. Many a times, it is seen that law-makers are trying to shield law-breakers. Penchant for practicing other profession results in low attendance in the parliament, thereby impinging on the quality of debate in the House. The imperative is to end truancy in the House.

Parliament must play a greater role in budgetary governance including budget approval, scrutiny of its implementation, thereby holding the government to account. In India, establishing a Parliamentary Budget Office (PBO) is a long overdue. It should be made a statutory body. While C&AG provides retrospective audit of the financial accounts and performance of the government operation, PBO will provide prospective forward looking economic and fiscal projection. The need for the establishment of PBO should be seen in the lurid light of declining number of session and the propensity of the large tranche of fund being guillotined in the Parliament.

E-petition system is currently in place in many developed countries like UK, Australia etc. It should be adopted to give space to the common folk in the arena of law-making. In this system, if ten thousand people sign an e-petition, the minister concerned will have to reply to it. When such a petition is signed by more than one lakh people, it has to be debated in the Parliament.

It is a paradox that the respect for Parliament is deepening while respect for Parliamentarians is declining. This may be attributed to many factors such as diminishing role of individual MPs, frequent disruption in the parliament, lack of internal democracy in the political parties to mention a few. Owing to the lack of intra-party democracy, MPs would dance attendance on the party boss to secure his/her ticket in coming polls, thereby discarding his constitutionally mandated obligation in the House. It is suggested that the Election Commission of India be entrusted with securing intra-party democracy by conducting free and fair poll for each political parties to keep the macabre shadow of nepotism and dynastic politics at bay. Also there is an urgent need to make it obligatory for every bill to be sent to Parliamentary Standing Committee (PSC) and be vetted accordingly. As PSC is free from the draconian rigour of the whip system, such an obligation will definitely lead to value addition to each bill. Many political analysts are

of the view that a new term "GSD" i.e Government Sponsored Disruption is sneaking into our political lexicon. The opposition parties will be encouraged through some or other way to disrupt and within a short time the session will be adjourned immediately. This may be attributed to a shenanigans of the Government to circumvent any inconvenient questionnaire in the Parliament. "The Right to Recall' must be incorporated in our constitution to hold the MPs accountable to the denizens of their respective constituencies in order to set right the diminishing role of MPs in particular and the significance of legislature in general.

"Office of profit" and its concomitant sophistry continue to hover over the political firmament of the country. The concept is that every legislature will not be beholden to the government of the day so that they can keep tight oversight over the activities of the executive. Legislature should not play second fiddle to the Executive. It is often ignored that holding the government to account is not only the role of opposition but also that of entire legislature. There is an unhealthy trend of appointment of parliamentary secretary in the rank of a minister in order to circumvent the constitutionally mandated limit of fifteen percent of the members of the house as a minister. This practice deserves a decent burial forthwith by clearly defining the Offices which will be outside the purview of "Office of Profit".

Rajya Sabha is considered to be the voice of the states. Domicile clause is no longer a hindrance to entering into Upper House of the Parliament. Even Supreme Court supported it, perhaps in a mistaken belief that it would ensure national integration. But the domicile clause must be restored as the person of the state will be more familiar with its problems. Now a day all political parties use the Rajya Sabha as a conduit of patronage. The constitution lays down that only twelve members will be nominated to Rajya Sabha. Now, it appears that the whole house is nominated by political masters. The importance of Rajya Sabha is not to be lost sight of-"We pour our legislation into the saucer of Upper house to cool it ".

Speaker of Lok Sabha is placed on a very high pedestal. Unlike British Speaker who takes political exile after getting elected to the post of Speaker of House of Commons, Indian Speaker of Lok Sabha continues to be partisan. It is germane to note that the tenth schedule which deals with the anti-defection law gives exclusive and unbridled power to the Speaker to decide on the question of defection. It is often seen that the Speaker is resorting to a sinister design to sustain a sinking regime through selective expulsion. There is always an allegation of camouflaging any bill under the garb of money bill to circumvent the scrutiny of the Upper House. So continuance of the Speaker to be partisan impinges on the impartiality of the office.

In consideration of the same, the adjudicatory power of Speaker in relation to anti defection law may be transferred to an independent body like Election Commission of India.

Article 93 of our constitution states that the Lok Sabha shall "as soon as may be" chose one member as the speaker and another member as the Deputy Speaker. It is seen that the post of Deputy Speaker is lying vacant for long. The importance of the post of Deputy Speaker is to be seen in the constitutional light that the resignation of Speaker can be tendered only to Deputy Speaker and in the absence of Speaker, it is the Deputy Speaker who will preside over the house. In consideration of the above, the clause "as soon as may be" of Article 93 must be dispensed with to keep any interregnum at bay on the line of that of President and Vice President.

A collapse of Public Order has wider ramification for national security and economic development. Given the meteoric rise of inter-state crime and the difference in the legal and administrative framework across the states, it is suggested that the Public Order be placed on the concurrent list to provide for a unified legal framework for police forces across the country.

Reforms in Executive Sphere:

Reforms in Election Commission has been a long overdue. The appointment of Election Commissioners should not be left to the sweet will of the ruling dispensation. It should be made through a high level collegium comprising of the Prime Minister, Leader in Opposition and the Chief Justice of India. Unlike Chief Election Commissioner (CEC), the other two Election Commissioners (ECs) do not have constitutional protection despite having equal voting power. Also the uncertainty of elevation by seniority makes other two ECs vulnerable to government pressure. The government can control inconvenient CEC through the majority voting power of the two ECs. This constitutional anomalies must be set right forthwith.

Leader of Opposition (LoP) is a categorical imperative. There is no constitutional provision for the ten percent of the total number of seats in the House to get the status of Leader in Opposition. It should not be left to the magnanimity of the ruling dispensation to accord LoP status. In any case, pre-poll alliance is a reality in our political life. The same concept may be extended to LoP through substituting "party" by "pre-poll alliance". Leader of Opposition must be given constitutional status by inserting a similar provision in the constitution itself. It is high time to realize that the strength of democracy doesn't come from the assertion of numbers but

from consensus. It is the sacred duty of the Treasury to bring the belligerent Opposition on board.

Unlike US President, Indian President does not have Qualified Veto power which enjoins that if any bill is sent to the Parliament for reconsideration, it, with or without amendment, has to come to the President with grater majority than that of initial sending to the President. Necessary amendment may be made to incorporate this provision in our constitutional set up.

Perhaps the time has come to stop the Governor from being treated as a political football all the while. Owing to the towering presence of "Doctrine of Pleasure" clause, the Governor can't play any role beyond the preferences and predispositions of the ruling dispensation at the Centre. There should be a constitutional guideline for the governor as to how much time will be given to the legislature to conduct a floor test, especially in case of a fractured mandate. More time may be used for obnoxious practice of horse-trading. Flagrant misuse of Article 356 needs to be given a decent burial. Just as an unscrupulous defections are legally discouraged, opportunistic collusion between ruling party dissidents and opposition legislators to topple a democratic government must be prevented. An amendment to that effect may be made which will enjoin the Governor to ask the Chief Minister to submit proof of his support within his own party or alliance partners before ordering a floor test, so that the CM can no longer remain stoic in the face of brewing dissidence within its rank and file. Given the macabre threat on national security, it is suggested that emergency provision under Article 356 and 365 be localized-either a district or a part thereof be brought under the Governor's rule and such an emergency period should not exceed three months.

Reforms in Judicial Parlance:

Though Article 50 explicitly mentions separation of executive from judiciary, yet some serious doubt can be cast on whether collegium system is sufficient to insulate the judiciary from any ominous external influence. It is often seen that the Ministry of Law & Justice is sitting on the recommendation and even reiteration of the Collegium indefinitely. This contretemps carries the sinister weight of curbing judicial independence. There should be a constitutionally mandated timeline within which the reiteration of the Collegium has to be accepted and the notification to that effect be made accordingly.

Article 124(3) of the constitution has never been put to use. Despite having the constitutional provision, no jurist has ever been appointed as a judge of the Supreme Court of India since

independence. Incorporation of outstanding legal minds from academia into the apex court will definitely enhance the quality of justice.

There is no constitutional bar for any retired judges to be appointed as Governor or being nominated to the parliament. Nor does constitution put any mention of cooling off period for judges before taking any post retirement appointment. There is an inkling that their pre-retirement conduct may get influenced in lure of post-retirement benefits. There is a need to insulate judiciary from the charge of being a recipient of government largesse. The relevant article of the constitution may suitably be amended to debar any judge of higher judiciary from taking any post other than that of President and Vice-President.

Article 142 provides that the Supreme Court may pass such an order as is necessary for doing complete justice in any matter pending before it. Often capricious usage of the same is seen in the lurid light of judicial overreach. However, this article should not be used to supplant the existing law, but only to supplement the same. So, it is suggested that all cases invoking Article 142 should be referred to a constitution bench of at least five judges so that the exercise of discretion may be the outcome of five independent judicial minds.

Article 145(3) enjoins that five or more judges are required to sit in a constitutional bench. Given the Judiciary grappling with the abyss of arrears, such requirement may be constitutionally reduced to three judges.

There is a dire need of creating a National Court of Appeal which, would be in a position to entertain appeals by special leave and from the decision of High Courts and Tribunals whereas Supreme Court will only deal with the question of Constitutional interpretation. Also it is further suggested that the National Court of Appeal should have four Cassation benches in different zones of the country to keep the allegation of "Access to Justice" at bay.

As of now, only the Constitutional courts i.e the Supreme Court and the High Courts can review the legislative action. District Courts may be given the power to review executive action, not any legislative action, under its jurisdiction in order to unburden heavily burdened Constitutional Courts.

Miscellaneous Reforms:

The scope of fundamental rights under Part III of the constitution has seen significant

expansion through judicial pronouncement. As a result an imbalance has been created between current set of fundamental rights and duties. So some additional duties like duty to vote, duty to pay tax, duty to help accident victim, duty to keep premises clean etc. may be incorporated in the Part IVA of the constitution.

It is further recommended that the Directive Principles of State Policies (DPSP) be made at par with the fundamental rights by making the DPSP justiciable in nature, so that executive action as well as inaction may be sued before any court of law on the touchstone of violation of DPSPs.

Constitutional governance on local bodies needs a thorough revision forthwith. What needs to be done may be well understood in the light of what is going on. Local governments are financially crippled and don't have the administrative capacity to carry out its functions. Though local government finds an exclusive mention in the constitution, yet they are seen as administrative vessels for implementing schemes of Union and State government. Especially, Urban Local Bodies (ULBs) are actively disempowered and depoliticized as an institution. Elected representatives at the city level are rendered powerless by making them increasingly subservient to the State Government. In many Municipal Corporations, while the Mayor is the ceremonial Head, the real executive power is vested in the hand of State appointed Municipal Commissioner. Municipal corporations are further enfeebled by the continued operation of various parastatal agencies created by State government. These may take the form of urban development authorities (which build infrastructure) and public corporations (which provide services such as water, electricity etc.). These agencies are accountable only to the State government not the Local government. Frequent constitution of Special Purpose Vehicle (SPV) is giving further dent to the autonomy of ULBs. In the coming decade, progress on Sustainable Development Goals (SDGs), UN Habitat New Urban Agenda and Paris Agreement on Climate Change will come under close international scrutiny. Only elected and empowered Mayor can deliver on that. So, it is suggested that the Mayor of ULBs be elected directly by the people like Mayor of London in a bid to curb the overwhelming interference of the State government in the day to day affairs of ULBs. Necessary amendment may be made to that effect. Also the propensity of the State government to defang the Local Bodies by simply delaying election on various pretext must be dispensed with through necessary constitutional amendment. Equivalently, the significance of Panchayati Raj Institutions (PRIs) must be beefed up. There should be a clear-cut demarcation of functions of each tier of the local government to

defenestrate the unholy presence of adhocism. Also, Social Audit should be incorporated in the constitutional set-up and its concomitant accountability must be fixed for its non-compliance through relevant sub-ordinate legislation. The Principle of Subsidiarity is not to be swallowed by the Principle of Centrality. If the aforesaid reforms are not taken on a war footing, our rodomontade concept of "Direct Democracy" will remain a Panglossian idea based upon the farrago of wishful thinking and harsh reality to be judged by others on the touchstone of floccinaucinihilipilification. Indian Economic Service and Indian Statistical Service should be made an All India Service under Article 312 in order to give a fillip to planning in state and local level. In 74th amendment, many provisions, which are hitherto voluntary, may be made mandatory in nature in order to truncate the whims and caprice of the concerned State government in relation to the need of local bodies. There should be a dedicated fourth list for Local bodies in the 7th schedule of the constitution.

Conclusion:

Indian constitution is an ever changing document. We can't stay stoic in the face of changing need of the society. The line of Victor Hugo is apposite in this context: "You can't stop an idea whose time has come." It is time to get our constitution aligned with modern century and ensure that the grey areas of our constitution will not be used or abused to reset the arithmetic of power, the algebra of ambition and the geometry of nation's political structure.