

Constitutional Review: The Right of an Unborn Generation

J. P. Singh

Abstract

The article is a follow up of the series of three earlier writings that addressed the issues of Democracy and Governance in India. It outlines the purpose of a Constitutional Review, the needed changes in light of the past experience and further necessary steps for improved governance. It also argues that the review is an essential right of the yet to be born generations to re-examine future in light of accumulated knowledge and make a choice that best suits the needs of their time.

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Nations tend to get wedded to their constitutions, or lack of it. Yet, a periodic review of the constitution and its associated systems and traditions is an opportunity to pause and contemplate, to take a longer term view of the direction that a nation is taking. This is in contrast to the legislative action, which is generally aimed at addressing the present and is often alterable at will.

The purpose

The purpose of a Constitutional Review is:

To address the issues that have defied solution and might have even rocked the nation, more than once.

To look at the future that was not visible when the prevailing political arrangements were made.

To minimize the gap between the expectations of people and the method of their governance. Gaps that become obvious with time.

Ideas that Change Society

Ideas that change society emerge every few decades. Thus we have the Media, the Transnational Corporations and the World Institutions that have altered the very perception of a 'Country'. In some ways they have even altered the power base of a state.

Right of a Generation

The age of a generation is generally reckoned as 25 years. The issue is as to which unborn generation is entitled to take a fresh long-term view of the political framework after its initial design. Should it be every second, fourth or tenth generation is a matter of judgement. The answer to this question will determine advisability of the Review Clause in the constitution. In any case, the right of an unborn generation to re-examine future in light of accumulated knowledge and make a choice that best suits the needs of their time is undeniable.

The Present Scenario

A look at the political progress of the country (Singh, 1997,1999,1999) brings forth several issues, constitutional as well as in the processes. Important ones include:

Voice of the President. The wise voice, unfortunately, has been much diluted over time through legislative enactment and executive action. Need strengthening the institution that embodies conscience of the nation.

Coordination at the Top. Needed as an integrative institution in a structure that perform divides tasks and roles. A formal Committee of the President and the heads of various branches of the government to periodically meet, to review affairs of the nation and share their perception of the future may be worth examining.

Executive by Definition a Part of the Legislature. There is a need to de-link the two and free the legislature of its non-legislative burden and enable it to concentrate on making laws with due diligence. This will ensure that bills are not adopted in haste to be amended a week later. As a by-product, it will also ensure that unnecessary elections are not foisted on the people every time the personal ambitions of legislatures take a flight.

A Stable Platform for the Prime Minister. To let the incumbent breathe easy and put his / her mind to the task of governance. Options include enlarging the voter base for the choice of the Prime Minister than the current 542 or ensuring a minimum tenure in office larger than a day as currently extant. Or both.

Executive initiation of legislative business. The cause of much acrimony inside the parliament that has often diluted the quality of debate. Sometime substituting debate with indignity and physical action.

Accountability of the Judiciary. A mature system with all the paraphernalia that is unable to deliver justice in time, is not just inadequacy of numbers. The entire issue of accountability of judiciary remains unaddressed.

A Forum for the Voice of States. With equal voice for the big and small. Rajya Sabha as presently constituted is at best a poor imitation of the Lok Sabha. A reconstituted Rajya Sabha or a New Forum, but a place for mutual consultation among states to exercise their influence over the center is essential. It will better mirror the federal character of the nation without endangering its unitary system.

Checks and Balances between three branches of government.

Fresh initiatives that help provide mutual restraint among the three branches are essential.

Enhanced Responsibility of the State, Municipal and Local Governments.

Decentralization to bring government closer to the people. To enable each unit, the State, Municipal and Local Panchayat, better manage its own affairs and to let the better ones set an example for the weak. Require transfer of powers, fiscal, legislative and administrative.

Gap between vote and seat share. A system that provides 50% seat share with 40% votes and 77% seat share with 48% votes is prima facie in need for a change.

Inadequate provisions to rein in bureaucracy. Removal of undue security. Enough examples available in the developed democracies for easy adoption, even if bureaucracies are beyond control with a heady blend of executive, legislative and judicial powers.

The Accountability of Corporate Entities. Who is answerable when a corporate entity, knowingly violates the law or commits a heinous crime? If a corporate is a 'person' that has rights, can it be free of liability for its act of omission and commission. This is particularly important, as Transnational Corporations have started altering governance of nations.

Enhancing Good Governance

Democracies often stop at the electoral process and let the lobbies, linkages and commerce take over the process of governance. Thus provisions that enhance good governance need to be viewed as an integral part of the constitution. These are the areas that need to be addressed.

Greater Transparency in Decision-Making. Secrecy may suit the partisan needs of those in power. It is not the need of the people.

Greater Accountability of the Decision-Makers. Risk of losing office for continued poor performance or malafide action is just another perk of an exalted office.

Enhancing Freedom of Expression. Through Community Radio, the only media with near universal access. To let the democratic spirit prevail every day of its existence. Freedom to State, Municipal, Local Governments, Educational Institutions and small community groups to set up their own small range radio broadcasting stations under the benign eye of the center.

Wider Consultation for Law and Policy formulation. Through a mandatory period of public debate and discussion with active help of Media, NGOs' and Academic institutions.

Respect for the Alternate Power Centers in Society

Over time, power has changed hands from the Wise Villager to the Priest-king, the Aristocrat and the Elected Representative. Presently, it is shifting to the World Institutions and the Transnational Corporations. None of the earlier power holders had direct commercial interests. This is not true of the present day actors, including many of the elected representatives.

The need to respect alternate influence bases in society like the NGOs', the Media and the Religion is thus paramount. Recognition of their independent role in society and a relationship of respect are essential.

The Preamble

Finally,

Unity in Diversity, the guiding philosophy of the Nation.

No other philosophy can ever bind together a country with such diversity in languages, religions, cultural norms and traditions as prevails in India. In this **Respect for the Diversity** may lie a solution to the strife which has rocked the nation more than once.

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