

INDIAN POLITICAL ENVIRONMENT: DEMOCRACY AND A CITIZEN'S RIGHT TO INFLUENCE GOVERNMENT

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ABSTRACT

The paper focuses on the prevailing political environment in the country and the influence it has on a citizen. It deals with issues related to the role of executive, judiciary and legislature with regard to the functioning of democracy in the country. It examines how power has become centralized over the decades, resulting in citizen alienation and apathy. The paper suggests several recommendations for improvement of the general political environment. It also proposes a role for the NGO's to help increase citizens' influence on the government and their participation in the democratic process. The analysis of power distribution in the government has been made by treating governmental set up as an organization.

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Monarchies, the world over, have practised a system of integration of powers. Thus, when a King issued an edict, it was the law, his gesture the order for execution and his utterance, the judgement. Democracies, by contrast, have followed the doctrine of separation of powers between three branches of government, namely, legislature, executive and judiciary. Under this doctrine, each branch has its independent jurisdiction and an associated system for its functioning. The purpose of functional separation, apart from the flexibility in operations, obviously is to ensure that concentration of powers does not become detrimental to the citizen interests.

When the Constitution of the Republic of India was framed, it was also guided by the principles of democratic set up, namely, supremacy of law, equality and liberty and a system of checks and balances to ensure separation of powers and independence of three branches of government. The hope was that constitutional provisions will help develop conventions that will govern relationships between the three branches. This has not happened. Instead, the intention of independence and separation of powers, has operated under severe constraints, constitutional, political and systemic. The net result has been an unrestrained enlargement of executive powers and an encroachment on both legislature and the judiciary. The purpose of this paper is to examine a citizen's influence on the government in light of the prevailing democratic systems and relations among the three branches in the country.

The Constitutional Lacunas

The first and foremost among the constraints is constitutional lacuna in that Executive, by definition, is a part of the legislature. As such in India no individual can become a member of the council of ministers for more than six months, without simultaneously being a member of legislature. Thus, by implication, no separation between the legislature and the executive is possible. Since executive must also have clear backing of the majority of the legislative members at any given time, executive attention is firmly riveted to ensure this majority. This has led to an unending stream of floor crossing in legislatures, prompted aided and abetted by the Executive. This, in turn has made a mockery of the principle of representation of people. The adoption of anti-defection law has only meant invention of more sophisticated techniques for floor crossing.

The second major lacuna in the system is the lack of a system of checks and balances to ensure that no branch is able to make a major expansion of its jurisdiction and inroads

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into the jurisdiction of another branch. This lack has encouraged the executive to expand its jurisdiction and proclaim its superiority over other branches. Two weapons have been used in the attempts by the executive to arrogate to itself the supreme authority: the brute majority in legislature, and an argument that people's will is supreme, since legislature is the only wing which is directly or indirectly chosen by the people.

The third major lacuna is the provision that any legislative business can only be initiated by the executive. This has resulted in suffocation of meritorious debate and, as a byproduct, has considerably freed legislative time to indulge in power politicking. Thus, bills have been conceived, prepared, presented and passed, with the entire process lasting less than a week. No wonder, no sooner is a bill passed, an amendment is required to overcome oversights and internal inconsistencies. Nor has it been necessary that laws enacted should conform to the touchstone of justice. Even today we have laws, passed by a strong executive with the backing of its legislative majority that deprive citizens of his fundamental right to life and liberty without due judicial process, thereby making his very existence a merciful act of executive.

Together, these three lacunas have resulted in a severe reduction in the influence of a citizen on the government and has virtually deteriorated it to a ceremonial casting of votes as and when elections are held. The spirit of democracy, obviously, goes much beyond the ritualistic casting of votes and aims at a participative set-up that truly reflects their concerns and treats them with dignity and respect. The Indian constitution, when framed, was one of the most up to date Constitutions in the world. This was possible because we had before us examples of several democracies and republics which had been in existence for a long time. If the net result of 40 plus years of constitutional practice of democracy is a general alienation among thinking citizens, then it is a definite cause for concern.

The Political Strains

Strains in the democratic functioning started emerging early in the history of our Republic. The initial trouble became evident with the emergence of a conflict within the three tiers of executive, namely the president, the cabinet and the administration. A tussle between the first President, Dr. Rajendra Prasad and the first Prime Minister, Pandit Jawahar Lal Nehru arose over the Hindu Code bill. The conflict centred around the role of the President and was resolved through the recognition of the real and titular head roles. While the intention was to prevent the possibility of a president becoming an autocrat, in actuality, it resulted in undue expansion of executive power over the president. Today the Head of the State is a sheer nominee of the majority coalition in legislature, and governor, an absolute nominee of the executive at the centre.

Once the tussle between the top two tiers of executive was over, the attention was shifted to the third tier. Various constitutional authorities like the Chief Election Commissioner, the Comptroller and Auditor General, the members of the Public Services Commission etc. were gradually, but surely, subjugated through selective appointments and promotions in the bureaucratic hierarchy. Statutory bodies like Reserve Bank of India

were similarly dominated to the extent that budgetary deficit meant automatic monetization, thereby completely negating its powers and supervisory role over money and banking in the country. Domination over administrative hierarchy, theoretically a neutral body, was achieved through arguments of ideological commitment and use of personnel management tools of appointments, transfers, promotions etc. and slowly but surely, the neutrality principle governing administration and the civil services was eroded. Today a stage has been reached where to find a neutral independent bureaucrat is to find a diamond in an abandoned coal mine.

Once the administrative set-up was subjugated rigging of elections became easy. And if rigging of election was not enough, we had rigging of both the Election Commission and the local electoral machinery. Enlargement of the Chief Election Commission from one to three persons, and appointment of individuals with known sympathies with the party in power are stark examples of attempts at total executive control of the electoral reforms bill were suspect in the eyes of general public. And no wonder the public response is so overwhelming, the moment they get a hope of finding a neutral bureaucrat who is willing to stick to the rules and reverse the power equation.

With the traditional executive edge, the fiscal powers and a docile administration usurping power base of the states and the opposition parties became a fair game. Thus the largest strain in the government started emerging and exhibited itself in the relations between the Centre and the State. Attempts to impose one man rule, often through a defeated leader of the party in power, are too numerous to merit specific examples. Conventions of respect for the opposition were thrown to the winds and the nation witnessed hijacking of newly elected majority party at the state level by the party at the centre with full cooperation of the executive. If any influence of citizen over the government was left despite the constitutional lacunas, it got erased by the political processes that emerged in their wake. The only hope left for a citizen now was with the judiciary.

The Executive – Judiciary Tussle

The tussle, with the judiciary has been most determined and got started during the Prime-ministership of Mrs. Indira Gandhi. The variety of tools used to impose executive will over judiciary, in addition to the ideological commitment argument and the transfers, promotions etc., have included unethical use of investigative and law enforcement agencies and an innovative tool of passing a law or an amendment to make it retrospectively effective. Using this device, at least theoretically, all inconvenient decision of the court can be over-ruled and judicial judgements made redundant.

If there is any learning from the functioning of democratic governments in the west, it is that unless all branches of the government respect jurisdiction of each other, result will be a constitutional chaos. This is evident from the sheriff of Middle sex case in U.,K. That Indian polity came very close to this level became evident when during 1970's the speaker of UP issued summons to the full bench of 40 plus high court judges in the Keshav Singh case. Although the situation was finally defused by the President who

referred the case to the Supreme Court and the matter was amicably settled, it has nevertheless left a mark on our democratic functioning and made the private citizen a mere play thing in the hands of government in general and executive in particular.

More recently, the tussle again reached a boiling point with the Speaker of the Manipur State Assembly refusing to appear before the Supreme Court. Finally, it was left to the Executive to persuade the Speaker to appear before the Court which it did in the manner that only a State can persuade. That the head of a legislature can declare himself to be above the law of the land can happen only in a democracy that has yet to find its feet.

The Bull Run

Watching the executive expand its powers and jurisdiction, the other two branches started their own expansion. Thus we have legislature merrily enhancing its salaries and perks, year after year without any regard to the per capital income or gross national product. Latest in this pursuit is the power to spend rupees one crore per year per member of parliament in his constituency. This fiscal indiscipline is in addition to the enactment of laws in every field often in areas where law is hardly enforceable and therefore remains merely a paper act.

Judiciary has similarly started pronouncing judgements which amount to taking over not only the executive role but also the commercial role of managing the economy and managerial role of running organizations and establishments. Society has generally appreciated judicial expansion of power when it has been used for advancement of justice. For example as in the supreme court's intervention on behalf of the prisoners languishing in jail without being brought to trial; or the suo moto intervention treating a letter to a newspaper editor as a petition, or interventions to protect the basic structure of the constitution. But issuing guidelines for improvement of working conditions of an organized segment without hearing the other affected parties goes against the basic tenets of judicial system itself. Although Judiciary has been dubbed as the "least dangerous branch" of the government, it is painful to note that we have successfully taken justice beyond the reach of an ordinary citizen by making it expensive, cumbersome and highly time consuming. If justice is not available, and judiciary also joins the merry bandwagon of legislature and executive, the future of a society cannot be very secure. It is a matter of concern if this bandwagon assumes proportion of a juggernaut since history is witness that juggernauts have left behind only dead citizens. One shudders to think, as to where will this cavalcade stop, and in what shape will it leave the country.

The Systemic Muddle

No discussion of relations between various branches of government can be complete without a note on the administrative set up for implementing law, popularly called the bureaucracy. That administrative set up in a democracy has powers outside the realm of constitution is eminently evident. "Yes Minister", the British tele-serial hilariously exemplifies the helplessness of a cabinet minister at the hands of a bureaucrat. The

situation in India, if any thing is worse as entrenched and constitutionally protected bureaucracy virtually rules and controls the ministers, many of whom do not even have the benefit of formal education.

Constitutions, the world over have failed to provide for a formal role and a separate jurisdiction for bureaucracy since bureaucracies are intended to be subordinate to the executive and derive their role legitimacy from the executive. The assumption underlying democratic constitutions is that the three wings: the legislature, executive and the judiciary represent collectively exhaustive distribution of power. This, however, is neither a reflection of reality nor a representation of current knowledge about functioning of organizations and human systems.

Organizational analysis tells us that junior levels in an organization and particularly in a large system like a bureaucracy, derive their powers from the rules, regulations and procedures that are formulated to implement a policy. Making of rules etc., is invariably left to the middle rung of the administrative set-up since senior members are generally occupied full time with the policy making, review and resource allocation. As a result the translation of policy into practice through subordinate legislation is left to the lower levels. This includes formulation, interpretation and implementation of rules etc.

The second tier of executive wing of a government, namely the cabinet of ministers, in any case, is never involved in this task of formulation of rules and regulations. This is a reflection of both a lack of inclination and time on their part. Yet, to an ordinary citizen, the only government that matters is the government that he deals with, which is often the junior-most level, the level that derives its power primarily through the interpretation and use of rules and regulations apart from the disguised but willful delay in implementation.

Theoretically, rules can be framed which expand the power of bureaucracy beyond the desirable intent of policy. Thus it is possible to frame a rule that a post card can be purchased only from the post office and buying it from anywhere else will be a cognizable offense punishable by imprisonment. Further, that a post card can be posted only during specified duration of a working day. Additionally, that to post a letter one needs to fill in an application form giving his statement of income and enclosing his previous three income-tax returns. That bureaucracies are capable of making such rules can be seen from the fact that one needs to fill in a form to obtain the application form for applying for a passport.

The point is that while bureaucracy and bureaucrats are not a formally recognized arm of the government, yet, in most democracies, including in the most developed democracies like the U.S. and the U.K., bureaucracies have moved beyond the control of any of the three branches of the government. More importantly, they tend to behave as a fourth branch without any checks under the constitution. This danger was recognized in U.K. and as a result, the Statutory Instruments Act (1946) was passed. Under this act all subordinate legislation prepared by the bureaucrats are to be published. This gives an opportunity to citizen and their associations to voice their opinion at an early stage. In India the problem was noted early as the Appleby report acknowledged that bureaucracy

is “impossible to control”. Unfortunately, over the years we have not developed any regulatory mechanisms of reining-in the bureaucracy. We have no laws like the Administrative Procedures Act of U.S.A. or Tribunals and Enquiries Act of U.K. Nor do we have any systematic publication and access to the rules which remain in the absolute safe custody of the administrators. Thus rule making is often without sufficient safeguards. While there is further saving grace in the developed democracies in that a bureaucrat is rewarded for his just behaviour, reward for loyalty is the prime consideration in India. Nor can a bureaucrat be easily held responsible for his lapses, intentional or otherwise as they are fully protected by the article 311 of the constitutions and the system of diffused responsibility. In India the worst thing that can happen to a bureaucrat for any offense of omission or commission is that he can be transferred for a brief period to a relatively insignificant place where he is socially cut off from the main stream of political life. The only exception being the summary dismissal by the Chief executive or a very senior bureaucrat, often as a scapegoat, which is invariably accompanied by the cries of “foul”.

That power tends to corrupt is known. That absolute power tends to corrupt absolutely is also known. By blending the functions of legislature, executive and judiciary in administration we have concocted a heady mixture that can shake our society to its core. No wonder our administrators consider themselves as demi-gods in the country.

This discussion on the role of administration and its hybrid enlargement of powers, in fact highlights the problem of intermixing of powers in an organ about which democratic constitution are silent the world over. That there is an urgent need to formally recognize this fourth estate and provide for a check to ensure control of unbridled use of administrative/bureaucratic powers is eminently evident. It is also evident that an assumption of infallibility of an organ is patently erroneous.

Bull In The China Shop

Elections in general, and General Elections in particular have invariably evoked excitement in the country that is reminiscent of the days of national freedom. To the electoral masses, particularly the illiterate and the rural, this has been the one chance of being able to express their emotions and opinions about the (mal)governance of the country. Combined with the excitement of the young getting ready to vote and those voting for the first time, it has given Indian elections a flair that is unique in the world.

Yet, it is also well understood that all is not well with our election system and the electoral process. The election process has progressively been contaminated with money, corruption, muscle power and criminality. All these factors continue unabated although a belated and somewhat miniscule cleansing process has started.

The election commission and its machinery, whose mandate it is to ensure a free and fair elections, has gone through several phases over time and in the process has itself become a source of controversy. Its actions have been perceived to vary between obedient execution of orders, a passive bystander and one taking major controversial decisions that

smack of power politics. Rare has been a decision or an action that has evoked universal applause. If and when that has happened in any part of the country, general citizens have been immensely appreciative. The recent controversy regarding voter identity card should be seen in this light. Holding elections without identity cards after repeatedly postponing them, is indicative of the election commission having joined the game of taking expenditure oriented decisions that all government department and agencies revel in. Similarly, spreading the election process in a few states over several months, on security reasons, has evoked doubts about intentions of election commission. Several observers have sensed in it a sort of power game which was hitherto restricted to the Executive, Legislature and Judiciary. It is argued that if elections in a few states require several months, at this rate the commission will need a year or two to conduct a general election in the country. Considering that a merely a decade ago, the entire general election process, including counting was satisfactorily completed in a week, it provides a sad commentary on the progress made by the election commission.

It is well accepted that election commission and its machinery must be a neutral body without political bias since elections can be influenced in several ways including through demarcation of constituencies, appointment of returning officers and staff, and timings of elections, apart from the local influences like bogus voting, capturing of booths and impersonation. A recent new addition to this is the inordinate delay between voting and counting. A relook at our system of governance should therefore also examine the role of the election commission and create adequate provisions in light of our past experience of holding free, fair and speedy elections in the country. The recent supreme court judgement has somewhat restored the role of election commission in its proper perspective. Nevertheless, a complete re-examination in light of the past events remains an urgent requirement.

A Citizen's Right to Influence the Government

It is well established that the frontiers of domain of various branches of government and their sub-sets cannot be static and must be reviewed in line with the citizens aspirations. All this points to the need for structural changes, review of relations among the three branches of government, role of the constitutional authorities and administration, and enhancement of an ordinary citizen's influence on the system of governance. If democracy means governance based upon popular will, then the structural arrangements provided for in the constitution must ensure due influence of the popular will not only through periodic voting, but also through a system which adequately provides for a citizen's right to influence his governance on ongoing basis.

It is obvious that in a democracy citizens are not only the architects of the government and the system of governance, but are also the consumers of the government; and therefore, and entitled to influence what they consume. Different democratic States have found different mechanisms to provide for this influence. Thus there is a system of legislator recall whereby an elected member can be removed from his position through a petition and by a popular vote. Citizen Advice Centres, education and assistance, legal seminar programmes, ombudsman, parliamentary commissioners, reforms and

adjudication processes are some of the other mechanism used to protect citizen interests. It is high time that we examine our democratic system in its entirety, including a review of the constitutional structure and address the issues squarely. A review of constitutional structure and its arrangement is paramount since only constitutional safeguards are sacrosanct in a fledgling democracy. Legislative enactments and procedural frameworks are alterable at will, while the right to influence the system of governance and government on an ongoing basis is the basic right of a citizen.

The Desired Direction

It would be naïve to suggest simplistic solutions to the complex problems including the problem of “unreined” bureaucracy, that have defied solutions even in the advanced democracies. However, suggestions for the desired direction of reform and associated improvements can be attempted. Here are some suggestions for wider debate:

Executive

- * Strengthen the role of President and Governors by specifying areas of their authority.
- * Allow President and Governors to speak their conscience while giving their address to the legislature. Let the Prime Minister and Chief Ministers voice the Agenda of the government while the President/Governor gives his counsel. In particular the governors should not be the mouth piece of the Union Government.
- * Provide for a much larger cabinet representation of representatives from various streams of life that do not normally enter the electoral politics, particularly the business, the education and the voluntary organizations. Appropriate modus operandi can be devised to bring forth the best talent that the nation holds at any given time.
- * The autonomy of States must be respected and provisioned properly in the system. This may require re-examination of the role of the governor and the re-allocation of the subjects between the centre and the state.
- * Review constitutional provisions for state finances to enable states be more autonomous in raising resources as also be more accountable for their financial status.
- * Redefine and strengthen the autonomy of the statutory bodies like RBI and that of the societies and associations that are substantially dependent on government grants.
- * Repeal Article 311 that unduly protects the Indian Administrative Staff and thereby ensure government servants’ answerability for their acts of omission and commission.

Legislature

- * Introduce for a constitutional provision for holding referendum on constitutional amendments and other specified issues.
- * Provide for a system of legislator's recall under specified circumstances.
- * Respect the role of opposition in the parliament and make provisions that eliminate/reduce attempts to break-up opposition parties into splinter groups.
- * Encourage introduction of private members' bill, including on priority basis, with a provision for prior scrutiny and comment by the government.
- * Provide for a mandatory period of a public debate through all media for every bill prior to legislative consideration.
- * Institute mandatory and systematic publications of subordinate legislation on the model of Federal Register of U.S.A. and Statutory Instruments Act of U.K.

Judiciary

- * Make judiciary answerable for efficient administration of the judicial systems by introducing provisions aimed at time bound, admission and disposal of cases. If necessary, provide for a penal clause in case of violation of time targets.
- * Reduce and refix the limits for both the number of times and total cumulative period for which a case can be adjourned by any court.
- * Simplify court procedures by use of modern computerized facilities and reduce the fees and charges to make justice more accessible to the common man.
- * Provide for free access to the court for public interest causes.
- * Reduce the number of court holidays.

The Election Commission

- * Specify sources for collection of funds by a political party to help reduce the rampant corruption that began with banning of corporate contributions.
- * Make maintenance of books of accounts mandatory for all political parties and subject these accounts to audit by an appropriate independent agency.

- * Hold elections as per a pre-set calendar. Calling elections at will of the party in power, apart from unfairly loading the dice, puts an unbearable economic burden on the society.
- * Provide for a system of checks on the powers of election commission to prevent unilateral rocking of the constitution as has been oft threatened in the recent past.

General

- * Enhance and bolster the system of constitutional checks and balances learning from the experience of USA.
- * Provide for greater access to information by a private citizen making amendments and introducing a bill on right to information.
- * Provide for the citizens' right to examine, debate and approve the sub-ordinate legislations by notifying all sub-ordinate legislations for public debate prior to its adoption.
- * Provide for a system of Ombudsman learning from the scandinavian experience for enquiring into cases for mal-administration and delays.
- * Also examine possibility of introducing a bill on the lines of Tribunal and Enquiries Act of UK to ensure that administrative judges are of appropriate background and experience to discharge their judicial functions.
- * Repeal legislations like Terrorists and Disruptive Activities act which enable executive to deprive a citizen of his life and liberty without the due process of justice.
- * Provide for the system of natural justice where no other laws apply.
- * Strengthen the Panchayati Raj institutions making them reflective of the citizens' will rather than the caste based politics.
- * Provide for a larger role of NGOs and voluntary organizations in the system of government, particularly the ones that have a large membership base; are not dependent on government or foreign funds; and their agenda is not the agenda of all the powerful chairman.

Conclusion

What we are witnessing in the society today is the frustration of citizens being capitalized by politicians and non-politicians alike in the name of caste, religion and other divisive criteria. This is threatening not only the peace and lives of people but also the very fabric of our society. What we need is to encourage and bring to the forefront those societal

forces which enhance missions and causes that are sacrosanct to the entire human race. Thus individuals and organizations that voice public causes and aim at enhancing quality of human life are the ones that need to be brought to the centre-stage and be given a place in the sun.

If we want a professionally managed society, the issue of citizens protection against the misuses of power must be addressed squarely. Ultimately a citizen's role can not be restricted to a periodic general election, where large number of citizens are deprived of their voting rights though muscle power and another large number feels alienated due to inability to influence the outcome. In the most appropriate sense, democracy is the decentralization and devolution of all three kinds of power that rest in the government. It must be remembered, the essence of democracy is that people affected by a decision must be involved in the decision making process. A system that takes democracy to the grass root levels and enables an ordinary citizens' influence on the decisions that affect him and the way he is governed is the need of the hour in all democracies. All well thinking citizens and cause committed organizations must take up this task on a priority basis and catalyze the parliament and government into action.

Today, as a nation, we are at a crucial stage in the history of republic when we must examine the entire system of governance in the country in general and relations between the three branches and segments of branches in particular. This is despite the recent removal of some distortions: like through the nine judge supreme court judgement holding that in the matter of appointment of judges the opinion of chief justice of the country will enjoy primacy over that of the executive or the withdrawal of the electrol reforms bills. These measures are good as far as they go, but still fall far short of examining the total scenario and a review of structural arrangements under the constitution.

In our review and search for alternatives, we must learn from the experiences of the entire democratic world. If necessary, we must re-examine the relative benefits of presidential versus parliamentary form of Government. During early 1980's, Vasant Sathe raised the issue of switching to the presidential form of government. The timing, unfortunately, was inopportune as the suggestion was perceived as a ploy to perpetuate the rule of congress party and Nehru-Gandhi dynasty in a tottering situation. Now that the parliamentary majority is a totally open question for the next general election, perhaps the leading political parties can examine the alternatives in a dispassionate manner. Let us hope, we will be able to restore to the citizen some control over his own life and destiny and reaffirm the dignity of human soul which seems to have been badly bruised in this country. Let us work towards a step that will take each citizen a bit closer to his own governance and make India a better place to live in and his world an improved global village to breath in. After all a citizen is, and always will be the smallest unit in a democracy. And when a large multiplicity of cells starts deteriorating the larger body cannot remain healthy for long.