

INDIA'S GOVERNANCE — AN AGENDA FOR CHANGE SOME SUGGESTIONS

Justice V.K.Mehrotra

President State Consumer Disputes Redressal Commission, U..P.

For good Government it is necessary that there should be accountability as well as stability. The system of Government, under the Constitution of India, follows the pattern obtaining in U. K . Experience of nearly ten years has shown that no single party has been able to secure absolute majority at the centre and in several States, causing great anxiety and concern to the people of the this country. In addition, it has also resulted in distracting the attention of the Leader of the party, which has formed the Ministry, in keeping the flock together and thereby ensuring un-interrupted tenure for the Ministry for the full term for which the Legislature has been elected. Every day there is danger of some people leaving the majority party or, otherwise, creating a situation in which the Leader of the House has to compromise with *quality* in the formation of the Ministry or retaining a good set of Ministers for a reasonable period of time. The ultimate result is that instead of giving un-divided attention towards good Government the Leader of the House has to make compromises and has to bother continuously to keep the numerical strength intact at a level where his Ministry does not become vulnerable. In the present system, as soon as the majority in the House is lost, the Ministry has to quit. Besides, in order to keep the members of his party in good humour the Leader has, of necessity, to induct such people in the Ministry or retain them who may otherwise be unworthy for the purpose. The country suffers for lack of good Government.

How, then to ensure both *quality* as well as *stability* of the Government together with its *accountability* to people through their elected representatives in the Legislatures. One method can be to adopt a system in which the person commanding the largest number of votes in a Legislature is entrusted with the task of forming the Ministry in which he may be free to induct even out-siders, having regard to their quality and desirability, and further to ensure that the leader and the Ministry formed by him has undisturbed tenure for a reasonable period of time. Together with it the Legislature should have control over the functioning of the entire Ministry which should be accountable to the House and, thereby, to the people who elect the Members of the House.

It is not necessary that we should find ourselves bound to follow the British pattern or any other pattern from amongst those prevailing in U.S.A., France, Germany or the like, which have a democratic form of Government, in its entirety.

Whatever may have been the position when our Constitution makers were debating the issue and ultimately adopted the Constitution in its present form, our experience based on the functioning of the governments during the past nearly fifty years has brought out some inadequacies in the system. We must ponder over the matter now, in the light of our experience, and make such changes which may be found necessary to ensure a good Government in the country.

The suggestions made by the former President of India, Sri R. Venkatraman in his address "Stability in Governance: An Alternative to Party System" on the occasion of the inauguration of the M.A. Institute of Public Affairs of Trupati (on April 22, 1995), deserve serious thought. They involve minimum amendment in the Indian Constitution which will be confined to only a few articles thereof. The suggestions are included in substantial measure in the proposals contained hereafter.

There shall be a President to be elected in the same manner as at present.

Clauses 1, 2 and 3 of Art. 75 (name'y, 75(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People, shall be deleted.

The Prime Minister shall be elected as soon as may be after a general election or on the occurrence of vacancy in that office by death, resignation or otherwise, by the Lok Sabha by means of single transferable vote. The Prime Minister shall secure the support of more than 50% of the total membership of the House.

The Prime Minister need not be a member of either House of Parliament but he shall not continue in office unless he gets elected to either House of Parliament within six months of his assuming office. The same provision shall apply to members of the Council of Ministers.

The number of members of the Council of Ministers shall be fixed at 11 per cent of the strength of the Lok Sabha.

The inclusion in the Council of Ministers shall be subject to confirmation by a Standing Committee of the Rajaya Sabha.

A person who has served as "Speaker" of any House or 'Governor' of a State shall be disqualified from subsequently becoming a Minister in any Govern-

ment or seeking election to the Lok Sabha.

The Prime Minister and the Council of Ministers shall hold office for the term of the Parliament and shall continue till the new Council of Ministers is appointed in the manner provided.

Decision of the Council of Ministers shall be made by a majority of members present and voting. They shall not be removed by a vote of no confidence or on the failure of any of their proposal in Parliament except till a new Prime Minister is elected by the Lok Sabha by single transferable vote, with the support of more than 50% of the total membership of the House.

The existing power of the President under Art. 111 of the Constitution to return the Bill etc. shall be retained.

Any member of the Council of Ministers may resign from his office in writing addressed to the Prime Minister.

Parliament

The term of the Lok Sabha shall be five years and it shall stand dissolved at the end of term. The Lok Sabha shall not be subject to dissolution before the expiry on its term of any account. Subject to the rules of procedure, there shall be in the House of Parliament complete freedom of expression and vote and restriction thereon shall be void and of no effect.

In the light of the changes envisaged under this Scheme consequential amendments to several Articles in the Constitution will have to be carried out.

Art. 355 should be strengthened to ensure that the Government of the State functions in accordance with the Constitution.

The nation has to be protected against corruption and abuses by the irremovable executive, namely, the Council of Ministers. It is, therefore, necessary to provide for a Constitutional Authority in the Centre to handle such cases with effective powers like in the State of Karnataka and Madhya Pradesh and unlike in other States to enforce its decision and should have necessary infrastructure. This authority shall have the same immunity as the Judges of the Supreme Court. It may be named as Lok Pal and shall have jurisdiction over the Ministers including the Prime Minister and other elected functionaries of the Government including Members of Parliament and senior beurocrats

The States should likewise have a similar Constitutional Authority to deal with cases under this category.

The present election process including delimitation of constituencies shall

be maintained.

- (1) People standing for elective offices should –
 - (a) have minimum educational qualification of higher secondary level,
 - (b) not be involved in activities involving moral turpitude or serious criminal action, that is, there should not be allegations against them, prima facie established by conviction in a criminal Court or detention under any preventive Detention Law or binding over under Sections 107 to 110 Cr. P.C. or an externment order or is in custody where bail has been refused that they were concerned with activities casting doubt upon their integrity and personal character.
- (2) Reservation in constituencies should not be extended beyond January 26, 2000.
- (3) An elected member changing his party or forming a new party should first vacate his seat and seek re-election.

Similarly, an independent member should also resign, if he wants to join a party in the House.

A member elected on one mandate should not be allowed to betray it.

- (4) In Art. 102 (1) (a) and Art. 191 (1) (a) the words "other than by law". (i.e. power to issue declaration that a particular office will not disqualify as an office of profit), shall be omitted.
- (5) **In Xth Schedule:**

..... Election Commission to take the place of Speaker in paragraph 6. Paragraphs 3 and 4 relating to split in and merger of political parties shall be deleted.

- (6) Ministers should be precluded from simultaneously holding office as President or Secretary in their political party.
- (7) There should be more effective control of the Legislature upon the Government through Committees, like in U.S.A.

To discourage frivolous candidates, provision may be made that a candidate whose security deposit is forfeited shall not be eligible to contest any election for 6 years.

No person shall be permitted to stand as a candidate unless at least one elector from each Gram Panchayat or Ward of a local body in the constituency proposes his name for a seat in Parliament or State Assembly.

An appreciable increase should be made in security amount.

No candidate shall be permitted to seek election except from only one Constituency.

Electoral reforms to ensure free and fair elections, to reduce money power and to ban appeals based on religion, caste, creed language or region shall be given highest priority. Appeal to members of any community, caste or religion to vote for any particular candidate or party should be made a penal offence and a disqualification for the candidate in whose favour it is made with his consent or connivance. Political parties shall not be recognised unless they publish their audited accounts of income and expenditure and file them with the Election authority, which shall have the power to get it audited itself.

Chapters on Fundamental Rights and Directive Principles of State Policy shall be maintained and cheaper methods of enforcement of fundamental rights devised.

Practices based on British precedents, like Addresses to Parliament and State Legislatures by President or Governor may be abolished.

The scheme envisaged differs from the Presidential Government of the United States in the following respects –

1. The President is not the executive head of Government.
2. The Prime Minister and a Council of Ministers elected by the Parliament shall be executive authority of the State.
3. The Council of Ministers shall be members of either House of Parliament.

But it is in consonance with the American system in the following respects:

- (i) The House of the People shall not be dissolved during its stipulated term.
- (ii) The executive authority of the State, namely, the Council of Ministers shall not be subject to removal during the currency of their term except till a new Prime Minister is elected by the whole House (Lok Sabha) by single transferable vote.