



# India: Can a constitution change?

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**Later** this year, a special Commission set up to review India's constitution will report on its findings.

The Bharatiya Janata Party-led National Democratic Alliance had promised in its 1999 election manifesto that it would review the Constitution if elected to power. The special Commission is the result of that promise.

The government named Justice M. Venkatchaliah, a former judge of the Supreme Court of India, to chair the Commission.

Justice Venkatchaliah and his colleagues—who include former and present-day politicians, jurists, and journalists—are supposed to recommend measures to overhaul India's well-entrenched institutions of republican and parliamentary democratic governance.

They started their work in January 2000 and were to have reported one year later. But as their deadline neared, the government gave them an eight-month extension.

## **A broad mandate**

The Commission has been studying how the Indian Constitution—in place since 1950—has functioned during the last half a century, and it is working on suggestions as to how that relatively old Constitution might be improved.

Its final recommendations will be placed before the Government of India and the Union Parliament to form the basis for possible amendments to the Constitution.

The Commission's terms of reference confine its competence to designing a more 'proactive' Constitution: one that can relate to and address the changing requirements of "an efficient, smooth and effective system of governance", as well as the socio-economic developments of a

modernizing and "globalizing" Indian nation.

The terms of reference are hardly limiting. In fact, the scope of the Commission's mandate is very wide ranging, and includes:

- an examination of the ways and means to promote democratic institutions and their accountability;
- a review of electoral reforms;
- a review of socio-economic changes, development and poverty eradication;
- constitutional provisions to encourage the promotion of literacy, employment and social security;
- a review of federal-state relations, especially such critical issues as 'unwarranted' central intervention in the states and revenue sharing;
- the promotion of decentralized governance by the panchayats (local self-government institutions);
- expansion of the scope of fundamental rights, as well as rights of the minorities (Muslims, Christians, Sikhs etc) and weaker sections of the society such as the Scheduled Castes and the Scheduled Tribes;
- legal control of fiscal and monetary policies.

In the specific area of federal-state relations, the Commission has been examining such questions as:

- the imposition of "President's Rule" following a breakdown of constitutional machinery in states;
- and the appointment of Governors (the so-called agents of the central government) in the states.

## **Global economic forces**

The main context of the Commission's work is globalization.

The government wants the Commission to propose changes to the Indian Constitution in light of India's relatively new role as a dynamic, globally trading economy. As well, it wants ideas for how India might reform its governing structure to respond to the requirements of the World Bank, the IMF, and foreign investors.

And so issues such as good governance, especially financial governance, are high on the list of the Commission's priorities.

In essence, the government is looking to the Commission to suggest ways to circumscribe the role of the state and create a more market-friendly political system.

## **Fears and hopes**

As might be expected, such a fundamental review of a long established constitution has engendered fear and anxiety.

In the first place, the National Democratic Alliance government's appointment of the Commission provoked a national debate focussed on the propriety of such a 'momentous' decision, taken by a coalition government apparently not backed up by a clear mandate.

The NDA government, being an allegedly rightist 'Hindu nationalist' régime, has repeatedly been attacked by both the centrist Indian National Congress as well as left parties such as the Communist Party of India and the Communist Party of India (Marxist) at the national level and by several other regional parties in the states for its decision to create the Venkatchaliah Commission.

The Opposition is apprehensive that the BJP's alleged 'hidden agenda'—that is, promotion of Hindu majority chauvinism and the escalation of minority persecution—could be facilitated by this constitutional review.

The Opposition, moreover, has argued that the NDA government itself is an unstable coalition, based on short-term political convenience rather than any ideological affinity.

In the opposition's view the government does not possess the legitimacy to undertake such an important exercise as constitutional change.

In response the NDA government has repeatedly assured the Indian people that the unalterable 'basic structure' of the Constitution (as defined by the Supreme Court of India in 1973 and 1975)—that is, the objectives declared in its Preamble—would not be adversely affected in the process.

As for the people, opinion polls give some sense of what they hope (or expect) from the constitutional reform process.

Surveys show that the areas the people believe to be most ripe for reform are:

- the electoral system,
- institutions dealing with political accountability and transparency,
- empowerment of women and the less privileged sections of the society,
- decentralized governance,
- central intervention in the states,
- and federal-state fiscal relations.

### **50 years of practical experience**

Looming over the work of the Commission is the fact that India's Constitution is a most formidable document that does not allow excessive free play of judicial review (as in the United States of America) or unwritten, informal conventions (as in the United Kingdom).

Nevertheless, we may anticipate a useful review of India's Constitution by the

Venkatachaliah Commission if it is able to draw empirical lessons from the working of India's Constitution during the last 50 years or so.

India's federal dynamics more often than not provide important clues for understanding the polity's real

configurations—not just what is written on paper. Scrutiny of such configurations will help the understanding of the problems of Indian governance, and suggest techniques for more effective federal negotiation. 6

### **Earlier attempts at constitutional revision**

The current formal constitutional review is not unprecedented in India.

The Government of India appointed the Dhar Commission in 1948 to examine the case for a possible reorganization of states on the basis of language. But the Commission favoured reorganization on the basis of administrative efficacy rather than that of language. Moreover, the JVP Committee (December 1948)—that included veteran Congressmen like Prime Minister Jawaharlal Nehru, Home Minister Vallabhbhai Patel and Pattavi Sitaramayya—submitted its report in April 1948, and dismissed the possibility of states' reorganization along linguistic lines.

However, the government was later 'compelled' to create the Telugu-speaking state of Andhra Pradesh in South India (1953) after the 56-day hunger strike and death of Gandhian activist Potti Sriramulu and the widespread public disorder that followed this incident.

Nehru had to subsequently appoint the States Reorganization Commission (22 December 1953) that included Fazl Ali, KM Panikkar and HN Kunzru. The government finally passed the States Reorganization Act (November 1956) that was based on the Commission's report. This was the beginning of states' reorganization in India on a linguistic basis.

Three new states were created as late as 2000 on both linguistic as well as ethnic grounds. (See *Federations*, Vol.1, No. 3)

The Administrative Reforms Commission (1966-70) examined federal-state relations as a component of India's federal democratic governance.

Federal-state relations also emerged as a major federal concern during the 1970s and '80s when Prime Minister Indira Gandhi (of what is now known as the Indian National Congress) was almost coerced by the Opposition, both at national and regional levels, to appoint the Sarkaria Commission on 9 June 1983 to reconsider the working of India's federal system.

The Sarkaria Commission did not recommend a contraction of federal powers, nor a transfer of powers from the federal to the state level.

However, the Commission recommended a consultative exercise on the part of the federal government on all concurrent subjects (that involve both the Government of India and the states). The Commission, in the process, had introduced the idea of cooperative federalism in India.

It concluded that the distribution of powers between the Union and the States, as defined in the Constitution, reconciles the necessity of a powerful federal government in a multicultural society (underpinned by an essential pluralism) with the basic rationale of states' autonomy.

The Constitution of India has been amended 79 times since its commencement (26 January 1950, celebrated as India's Republic Day).