DEMOCRACY IN INDIA - THE STATE-INSTITUTIONAL DOMAIN

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Paper prepared for the Project on

State of Democracy in South Asia

as part of the Qualitative Assessment of Democracy

Lokniti (Programme of Comparative Democracy)
Centre for the Study of Developing Societies
Delhi

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Introduction:

Reading any fragment of the Constituent Assembly of India debates, whether on secularism, federalism, minority rights or the structure of the judiciary, one is struck by the ubiquitous presence of the idea of democracy. In the debates, alternative proposals, say on secularism or federalism, were always justified by the argument that this particular proposal would be better at furthering democracy. With the experience of colonization behind them, the members naturally endeavored to frame a democratic constitution, where the people could be said to be self-governed, rather than being merely subject to an alien government.

Only a fifty odd years have passed since the time of those debates, but some of the ideals of that world seem to be already near death. Denizens as we are of a post Foucauldian world, and perhaps more importantly, living as we do in the time of George W. Bush, the dream of democracy now is always accompanied with a bitter aftertaste. Just as the costs of development, for so long justified as merely the control of nature, now seem unbearable, similarly many have begun to question the possibility of a democracy with any claim to universality. Is democracy only possible, when, never mind the rhetoric, it is democracy really only for a few, that is, that democracy for a few is made possible by the exclusion of the many others from democracy. Are we to see democracy as merely a legitimating device, to keep the subjects quiet by giving them the illusion of participating in their own governance? Surely not only in America, but in many a democracy, “its political rituals preclude any real possibility of the emergence of dissent and are designed to reinforce conformity and consensus.” [1] Or, can we still design institutions to successfully exemplify the democratic ideal of one person, one value. How does the institutional design that was put in place in India half a century ago measure up to its own democratic principle of one person, one value? [2] Did the constitution makers see democracy as a continuum between the ideas of one person, one vote and one person, one value, or did they, like Ambedkar, accept that the principle of one person, one vote, was only a faint approximation of the real democratic principle of one person, one value.

In this paper, we propose to look at some of the institutional features of Indian democracy. If we look at some of the main components of the frame of Indian democracy, as envisaged by the constitution makers, - such as citizenship rights, federalism, an independent judiciary, - we can see these as being put in place as separate checks on the powers of the legislature and the executive, specially those of the central government. Framed as the debates on the Constitution were, constantly in the background of a conversation about a majority and several minorities, it was quite clear that democracy did not merely mean the government of the majority, but also that, whichever government it were, it was to be a limited and accountable government. After all, when we say, one person, one value, that applies first of all to the equality between those in government and those governed.

Let the record show, the critics of Indian democracy claim, that it has failed this benchmark of accountability. The government at the center, of whichever party it has been, has been able to get away with the most extreme of violations of the rights of religious minorities, whether Sikh, Christian, or Muslim. Judges at different levels of the Indian judiciary have been superceded at will, and the federal structure has been bent, often enough, at the behest of the central government, again of whichever party. In so far as the bureaucracy is concerned, stories of extreme corruption, as exemplified by the case, for example, of Akhand Pratap Singh, are legion. Perhaps this explains why representation has increasingly become such an important theme of Indian democracy. Failing to check the government through the different mechanisms as mentioned above, several groups have raised the demand for better representation in the government itself as a more adequate way of defending their interests. This issue was very much alive during the Constituent Assembly debates as well, and it was not just Ambedkar who spoke of guaranteed representation for different groups in the elected legislatures, the cabinets at different levels, and the bureaucracy. The demand today, by women, by Muslims, and by the ‘backward classes’ can be seen in this light – at least one of the motivations behind it has been the failure of the institutions designed by the framers to keep the government in check and accountable. Instead of strengthening the mechanisms of accountability, should Indian democracy go along the road of representation or are the two processes interlinked? Before we answer this question, let us look at some of the features of the institutional design in more detail.

1. Democratic Citizenship in India:
1a) Inclusiveness of Indian citizenship:

It is not surprising that the citizenship provisions took, in the Constituent Assembly, "an exceptionally long time - nearly two years - to reach the stage of finality." [3] After all, the first thing that democracy does is to convert subjects into citizens. The status of a citizen entitles one to rights and privileges, therefore it was important, the members of the Assembly believed, that this status be conferred only on those who felt some sense of allegiance to India. Just the swearing of allegiance would not do, what was required was that "in order to be a citizen of the Union at its inception, a person must have some kind of territorial connection with the Union, whether by birth or descent or domicile." [4] Alladi Krishnaswami Ayyar pointed out that citizenship was usually granted on the basis of two principles, lex sanguinis, where citizenship was determined by blood and race, regardless of place of birth, and lex soli where citizenship was determined mainly on grounds of birth. Most countries combined the two principles, and after much debate, so did the Indian Constituent Assembly, with the articles on citizenship stating that the status of citizen was to be acquired by "every person who or either of whose parents or any of whose grandparents was born in the territory of India and who has not made his permanent abode in any foreign country, after 1st April, 1947." To include those who had migrated from what was now Pakistan, another clause read that citizenship would also be granted to "every person who has his domicile in the territory of India, provided he has not voluntarily acquired the citizenship of any foreign country." [5]

There were some dissatisfied voices till the very end, with one member claiming that Indian citizenship was 'cheap' in the sense that the requirements for becoming an Indian citizen were very minimal. The condition of domicile could be fulfilled by a mere declaration before a designated official. This condition of domicile has actually been ignored totally in the recent acquiescence, by the Congress government, to the demand for dual citizenship by people of Indian origin. The 'territorial connection' that was so emphasized in the Assembly is now being based only on descent, with descent becoming the basis of the sought after allegiance of the citizens. The requirement that an Indian citizen must not have 'made his permanent abode in any foreign country' is no longer considered relevant in this case.
Actually, the 'territorial connection' to India had already been undermined in another disturbing way by developments in India soon after independence. The Constituent Assembly had decided against dual citizenship of India and the provinces, which meant that the phrase, 'territory of India' was a reference to any part of India. Articles 15 and 16 prohibited discrimination on grounds of place of birth, and Article 19 gave Indians the right of movement to, and residence in all parts of India. The locus of citizenship was India, not one of the specific states. But this idea soon came into contradiction with many state governments passing laws mandating domicile requirements (usually a period of ten to fifteen years) for education and employment within the state. There have also been many 'sons of the soil' movements – take, for example, the movement in Assam – ostensibly to get rid of foreigners, but it was "as if the Assamese were using the conflict over the electoral rolls as an opportunity to force non-Assamese citizens of India out of the state."[6] That this issue of domicile/descent as the basis of citizenship is still a live issue can also be seen in the recent repeal of the 1983 Illegal Migrants Determination by Tribunals Act.

1b) Cultural Rights:

Democratic citizenship is supposed to be built on the lateral links holding the citizens together, with the citizens seeing themselves as bound to each other. But have the policies of the government succeeded in fostering this sense of 'allegiance' to each other, irrespective of certain sociological criteria like class, caste and religious affiliations. Given the persistence of severe inequalities between Indians, how is it possible to foster this sense of democratic citizenship?
Democratic citizenship is based on the idea of equal citizenship, on equality in terms of rights. Whereas the rights enjoyed by subjects under a monarchy are assigned arbitrarily - it is the monarch who decides which ones of his subjects enjoy certain privileges till when - in a democracy on the other hand, citizens are entitled to equal rights. The modern idea of citizenship was the idea of democratic equality. [7] There were many debates in the Constituent Assembly of India about the specific rights that Indian citizens were entitled to. Did the conception of equal rights require that the list of fundamental rights include not only civil and political rights but also economic and welfare rights? Did it require that not only individuals be considered as the bearers of rights, but that group rights be also made a part of the fundamental rights?

Whereas economic rights were not included in the chapter on fundamental rights, place was made therein for group rights. A new nation tends to always emphasize the idea of every citizen being part of the same political community. At independence, this emphasis, however, came along with the warning that the Indian political community was not homogeneous - this is the idea of multiculturalism and the related idea of cultural rights. Cultural rights are controversial because they seem to be an attribute not of individuals but of groups. Cultural rights have become inextricably linked to the idea of group rights and minority rights, but I think it serves a useful purpose to remember that these are analytically distinct categories. When some of the members of the Indian Constituent Assembly, like K.M. Munshi demanded a wider right to the practice of religion, they did it not in the name of minorities, but in the name of the cultural integrity of every Indian, whether belonging to the majority community or any of the minority communities. The reason why cultural rights seem to be a specific demand of minority groups is because not many people notice that the supposedly neutral liberal democratic state actually promotes the culture of the majority. In the official language the state uses, in its list of public holidays, in the language the state uses in state schools – the state respects the culture of the majority. This forces groups belonging to a different cultural community to demand, in the name of equality, that their language also be, for instance, used in state schools, or their religious festivals also be declared as public holidays, thus creating the association of cultural rights with minority rights.

The Indian Constitution did recognize the importance of cultural rights: it not only gave every Indian an all encompassing right to the practice of religion, it also gave distinct linguistic and cultural groups the right to preserve their language, script and culture. When this latter right was being debated in the Constituent Assembly, there were some protests from some members, like Z.A. Lari, who pointed out that in changing the wording of the right from its earlier formulation, the Drafting Committee had actually watered down the right. Lari's protests went unheeded, however, and Article 29 was passed in the form it now has in the Constitution. Many commentators have raised the opposite fear from the one voiced by Lari – in accepting the idea of cultural rights for the minorities, they argue, the Indian Constitution opened the door to the idea of cultural rights per se, and where there is such an overwhelming cultural majority of one community, there is the danger of the idea of cultural rights being used to impose the culture of the majority.

1c) Rights to Freedom:

If cultural rights given to minority groups were somewhat a novelty in the Constitution, the Indian Constitution also contains a listing of the standard rights to freedom. Article 19, clause 1, sub-clauses a), b), and c) grants all Indian citizens the rights to freedom of speech and expression, to assemble peaceably and without arms, and to form associations and unions. But clause 2) of the same article also lays down that nothing in sub-clause a) of clause 1) shall prevent the state from imposing, by law, reasonable restrictions on the right to freedom of speech and _expression in a number of circumstances, including in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality. Similarly, clause 3) allows reasonable restrictions on the right to assembly in the interests of the sovereignty and integrity of India or public order. Finally, clause 4) allows reasonable restrictions on the freedom of association for the sake of the sovereignty and integrity of India, public order or morality. Of course, the Supreme Court has contested the reasonableness of the restrictions on these rights that have often been imposed by the government, but, nevertheless to allow for these restrictions in the Constitution itself places these rights under threat. The inclusion of clauses relating to prevention detention in Article 22 in the very chapter on fundamental rights has also been a sore point in the history of the rights to freedom in India.

1d) Right to Constitutional Remedies:

The chapter on fundamental rights ends with Article 32 conferring the right to constitutional remedies. Article 32 guarantees 'the right to move the Supreme Court for the enforcement of the fundamental rights.' The courts have not hesitated in opposing the government in their attempt to protect these fundamental rights. One can cite many cases from the early history of the Supreme Court – the Ramesh Thapar and Brij Bhushan cases pertaining to freedom of the press, the right to property cases, the Golak Nath case – in which the Supreme Court declared as unconstitutional any abridging of the fundamental rights. The Supreme Court also played this role to some extent in the Emergency years. This right to constitutional remedies is effective in all times except in the case of an emergency imposed by the government. According to Article 358, inspite of Article 32, the freedoms guaranteed by Article 19 remain suspended during an emergency, and so do all the other fundamental rights,

except Articles 20 and 21.Thus we can see that there are several lacunae in the way citizen rights were set up as the first major check on the powers of the government.

2. Democratic Accountability in India:

The democratic form of government is said to be distinguishable from other forms of government on the basis of the twin principles of representation and accountability. Many recent studies have scrutinized mechanisms of accountability in various democracies – from 5th century Athenian 'euthynai' to checks on the executive in modern representative democracies – to see whether these mechanisms really measure up to the principle of accountability. [8] In so far as Indian democracy is concerned, a recent study clearly concludes that the Indian Parliament has performed its function of representation much better than its function of accountability. [9]

2a) Legislative Process:

In India, the executive is made accountable to the legislature through several constitutional mechanisms. According to Article 112, every year, the Lok Sabha scrutinizes a statement of the estimated receipts and expenditure of the government for that year. According to Article 113, all expenditure, other than that charged on the Consolidated Fund of India, has to be submitted in the form of demands for grants to the Lok Sabha, which has the power to refuse or to assent to these grants. However, despite these mechanisms of budgetary control, it is a common consensus that "[t]he Parliament has been far less successful as a means to control the exercise of executive power." [10]

To strengthen executive accountability to the legislature, in 1993, apart from the earlier Standing Committees of Parliament like the Public Accounts Committee, the Committee on Estimates, and the Committee on Public Undertakings, new standing committees were created. These are called Department Related Standing Committees (DRSCs) and these twenty DRSCs are to "scrutinize the work of ministries and departments and their implementation of planned objectives on an ongoing basis, in addition to examining their demands for grants in the budget." [11]

Parliament is also the site where various bills are turned into laws, after as many as three readings for each bill. Many recent commentators have pointed out, however, that from about 120 sittings in the early years after independence, Parliament had only 78 sittings in 1995 and only 65 sittings in 1997. Whereas the first Lok Sabha spent 49% of its time on legislative business and managed to pass 82 Acts, the ninth Lok Sabha, for example, spent only 16% of its time on legislative business and enacted only 28 pieces of legislation. This also means that most bills are passed with very little discussion, and given that most of these bills come from the government benches, the government is usually able to pass its favored pieces of legislation without much opposition. These developments naturally hamper and weaken the effectiveness of Parliament to oversee policy formulation. [12]

2b) Judiciary:

The Indian judiciary is an integrated structure with the Supreme Court as the final court of appeal, High Courts at the intermediate level, and many kinds of lower courts. The Constitution tries to maintain the independence of all these courts in several ways – the jurisdiction, for instance, of both the Supreme Court as well as the High Courts is written down in the Constitution. Not only the jurisdiction but the salaries of the judges of these Courts are also laid down in the Constitution and can only be changed through constitutional amendment. Judges of these courts are not permitted to take up employment in a private concern once they retire so as to further maintain the independence of the judiciary from the executive and the legislature. It has also become customary to appoint the Chief Justice of a High Court from out of state to ensure that the judge has no connection with the lawyers practicing in that state. Inspite of all these constitutional and extra constitutional measures, instances of corruption in the judiciary are common, and as one commentator astutely points out, does not the 'extreme reluctance, of the higher branches of the judiciary, to deny admissions of appeals', point to the 'tacit acknowledgement that procedures of the lower courts are suspect and faulty'. [13]

2c) Civil-Military Relations:

According to some scholars, it is not so much any constitutional provisions as the separation and isolation of the Indian military from the structures of society through the kind of recruitment practiced, training given, and the physical isolation imposed, that have ensured that the military will not be a danger to civilian rule in India.[14] In the early years after independence, the army officers were seen as stooges of the British, since they had not participated in the struggle for independence, and therefore they were kept out of contact with the Indian political elite and even with bureaucrats. That is why even when the army has been used extensively for civil purposes, for example in suppressing insurgency in the North-eastern states and in Kashmir, the army has not posed any danger to civilian rule. Even military decisions, for instance, the decision of when to begin a war, have come often from the political bosses and not from the military high command.

2d) Emergency Provisions:

Part XVIII of the Indian constitution provides for the proclamation of three kinds of emergency in the country. According to Article 352, in case of war or external aggression or armed rebellion, the President is empowered to proclaim an emergency in the whole of the country or any part thereof. Under an emergency, the executive powers of the states are taken over by the Union. Under Article 356, the President can proclaim a failure of constitutional machinery in any state, and assume to himself all or any of the functions of the government of the state. Article 360 provides for the imposition of a financial emergency in the whole of India, or in any part thereof.

Emergency powers have been misused by various governments in India. Failure of constitutional machinery in states has been proclaimed more than 120 times since independence; there was some restraint in using Article 356 only after the Bommai case. In 1975, the Congress government imposed a national emergency in the country and many of the fundamental rights of the citizens were suspended during that time.

2e) Amendment of the Constitution:

Article 368 lays down the procedure for amending the constitution. Any bill seeking to amend the constitution can be introduced in either house of Parliament; some provisions of the Constitution are amendable by the bill being passed by a simple majority in both Houses before the President gives his or her assent; some provisions require a two thirds majority in both Houses; and some require both a two thirds majority in both houses as well as ratification by one half of the states. No joint sitting of Parliament can be convened in case of deadlock between the two houses over a constitutional amendment. Over the last fifty five years, the Constitution has been amended more than hundred times, as compared to the American constitution which has seen much fewer amendments over a longer period. There were some unfortunate incidents with respect to the Indian constitution's amendment – for instance when the Congress government imposed an emergency in the country in 1975, it passed a number of constitutional amendments including the 42nd, and when the Janata party came to power in 1977, it also passed a number of constitutional amendments to reverse the earlier ones. But such incidents are few and the constitutional amendment procedures are, on the whole, impartial.

3. National Coalitional Politics and Federalism:

Just as rights are a mechanism to keep the government in check, federalism is also a system of dividing political power among a number of levels and of taking political power closer to the people who are governed by it. In India, not only are there two levels of the Union and the provincial governments, there is a third important level of local government with its own panchayati raj institutions.

At its inception, federalism in India was strongly linked to the issue of minority rights, as a federal structure or even a confederal one was demanded so that those provinces where national religious minorities were actually in a majority could be self governing as far as possible. The numerous princely states, most of them autocratic, also favored a confederal structure, but the Partition of India put paid to all schemes of this kind.

The borders of the provinces in 1947 were a hangover of British annexation policies and so were naturally illogical. The princely states were also extremely heterogeneous in size and make up. It was clear from the beginning that the states/provinces would have to be reorganized but the principle of reorganization was not clear.[15] The government did not want to reorganize the states on a linguistic

basis because of fears of encouraging sub-nationalism but due to a popular movement it had to so, beginning in 1953, and then in a major way in 1956. The Congress government tried to save its face by arguing that linguistic homogeneity would, in the long run, lead to more administrative efficiency. It was these administrative, economic and financial concerns which were behind the creation, in 2000, of three new states by the BJP government and so the establishment of Uttaranchal, Jharkhand and Chhatisgarh, cannot be taken as a sign of the weakness of the Central government versus the states.

3a) Division of powers between the Centre and states:

With the creation of Pakistan and with the 'integration' of the princely states, the Constituent Assembly decided on a federal structure with a decidedly unitary bias. This is clear when we look at Part XI of the Constitution which governs the legislative and administrative relations between the Union and the states. Article 246 gives Parliament the exclusive power to make laws with respect to any of the subjects enumerated in the Union list. The seventh schedule of the constitution contains three lists of subjects– the Union list, the State list, and the Concurrent list. Parliament can make laws on subjects both on the Union and Concurrent lists; the states can make laws on subjects both on the State and Concurrent lists. If there is a conflict between a Union and a state law over a subject in the Concurrent list, the Union law prevails. The Union and Concurrent lists have grown longer in the years after independence, whereas the State list has become somewhat shorter. More significantly, this chapter of the constitution also provides for a number of situations where Parliament is empowered to make a law on a subject even on the State list.

A long standing grouse of the states has been that the constitutional division of financial resources between the Union and the states is skewed. The Union list gives Parliament the power to impose, for example, taxes on all income other than agricultural income, to impose customs and export duties, excise duties, corporation taxes, and estate duties. The states, on the other hand have been assigned taxes, such as taxes on agricultural income and sales taxes, which generate much less revenues in comparison with Union taxes. A result of this imbalance is that whereas the states of other federations, like the USA can meet about 70% to 80% of their expenditure from their own resources, Indian states can only meet about 40% of their expenditure from their own revenues and have to depend on the Union for the rest of the resources. For instance, for the poorest states of the Indian Union, central transfer of resources accounted for nearly 62% of their spendings in 1992-93. The comparable figure for even the richest states was 46%. "Both the poor and rich states have come to depend extensively on central resources."[16] It is to rectify this imbalance that the Tenth Finance Commission has recommended the mandating of the sharing of the gross proceeds of all central taxes in a manner that will leave an assured share of 29% with the states.
For the reasons outlined above, Indian federalism has often been derided as being a kind of quasi federalism. Contemporary theorists of federalism, however, now claim that "India today is not less but more of a federation than it was in 1950" [17] The earlier accusation was based, in part, on the constitutional division of legislative and financial powers between the center and the states being biased in favor of the center. Other institutional features, like the office of the Governor, Article 356, and the role of the Planning Commission, were also cited to point to the weaknesses in the Indian federal system.

Many scholars now argue that much of this has been overridden by the changes in the Indian party system. Along with the breakdown of the dominant one party system, came the rise of a number of state based parties like the DMK and the AIDMK, the Telegu Desam and the National Conference. One scholar of comparative federalism, after listing the Supreme Court judgement in the Bommai case, and the onset of liberalization, cites this change in the party system as the third most important factor in the strengthening of federalism in India. He points out that the percentage of Indians voting for one of the national parties has declined from 85% in 1991 to 67% in 1999. National governments in the 1990s have only been formed with the help of many state based parties. The ruling national coalition is actually put together with one national party and at least 8-10 regional parties. The national parties are so dependent, for their continued rule, on these state level parties, that they weaken their own state level units to appease the state level dominant party.

Despite these positive changes in Indian federalism, and inspite of a historical legacy of 'multicultural federalism', the central government is still prone to misuse its powers in attempting to forestall the coming to power in the states, of any government of a party which is not part of its own alliance.

3b) Panchayati Raj in India:

Irrespective of problems with Indian federalism, the recent changes at the third level of government can certainly be seen as a positive input into Indian democracy. According to some scholars, the provisions of the Constitution (Seventy-third Amendment) Act, 1992 – article 243 with clauses 243A through 243O in Part IX – have created an 'opportunity space' for a 'second wave of democracy' in India. [18]Unlike the earlier system of local government, these provisions, being constitutional in nature, have first of all established a uniform system of panchayati raj institutions across all Indian states. This panchayat system is made up uniformly of three tiers – the gram panchayat, the block panchayat and the zilla parishad, with a gram sabha in every village;

Article 243D provides for reservation of seats for scheduled castes and scheduled tribes in proportion to their population, at all three panchayat levels. One third of these reserved seats are to be further reserved for women belonging to the Scheduled Castes and Scheduled Tribes. In total, one third of all seats to the panchayats are to be reserved for women and may be allotted by rotation to different constituencies in a Panchayat. The reservation for scheduled castes, scheduled tribes and women is also extended to the office of the Sarpanch (Chairperson) at each panchayat level.

Article 243G lays down that the Panchayats are to have 'the power and authority' to implement schemes for economic development and social justice. The eleventh schedule contains a list of subjects including agriculture, land reforms, women and child development, and the public distribution system which are pertinent to these schemes. Similarly the 12th Schedule contains a list of subjects like urban planning, water supply, public health, and urban poverty alleviation which the Municipalities in cities are made responsible for by Article 243W. The Constitution (Seventy-fourth Amendment) Act, 1992 established a uniform structure of Nagar Panchayats, Municipal Councils and Municipal Corporations for urban areas, with reservation of seats for scheduled castes, scheduled tribes and women at each of these levels. [19]

The passage of a decade since the establishment of this new structure of local government has elicited both negative and positive responses: although there have been many complaints about the inability of these new structures to shake entrenched power relations in rural India, there has also been some hope, that with time, the new panchayats will be able to run democratically and autonomously.

3c) Federalism and the Supreme Court:

According to Article 131 of the Constitution, the Supreme Court of India is entitled to hear any dispute between the Government of India and one or more states, or between the Government of India and a state or states on one side and other states on the other side, and between two or more states. By making both the Union and the states subject to the decision of an independent judiciary in any dispute, the Constitution has sought to prevent the encroachment of the power of the lower tier by the higher. The Supreme Court has proved to be the defender of the states against the Union's arbitrariness. In the Bommai case, for instance, when the petitioner questioned the imposition of President's rule under Article 356 in several states including Karnataka, Meghalaya and Nagaland, the Supreme Court declared this imposition as invalid. Additionally, the Constitution has also made many of its provisions subject to amendment only when the amendment is not only passed by both houses of Parliament, but also ratified by one half of the states.

4. The Steel Frame of Indian Democracy?

Since its inception, the bureaucracy in India has been subject to the charge of being undemocratic, ineffective and corrupt. At independence, when the British established Indian Civil Service was replaced by the Indian Administrative and Allied Services, the charge was that the ethos remained the same. These Indian officers of the bureaucracy continued to see themselves as the 'masters' of the vast 'unwashed masses'. They continued to understand their function in terms of administering and controlling their areas instead of understanding that their function now was to work for the development and welfare of the area they were assigned to. Many reforms have been undertaken with respect to the bureaucracy – both at the level of the All India and State services – to bring the administrators closer to the people and to make the officers more accountable to them.

4a) Entry into the Civil Services:

Both at the All India level, and at the level of the states, open, competitive examinations govern entry to the higher levels of the bureaucracy. These examinations are conducted by Union and State Public

Commissions, which are constitutional bodies. Candidates are entitled to give the exams in all languages of the eight schedule of the Constitution. Since the upper bureaucracy is dominated by the upper castes, reservation is provided in these services for the scheduled castes, scheduled tribes, and now also for the other backward classes to ensure that all sections of the population get an equal opportunity to enter these services.

4b) Control of political executive over administration:

One of the structuring principles of the Indian bureaucracy is the principle of neutrality according to which the administration is not supposed to bend itself in tune with the changing ideologies of different governments. In the face of this, the political executive has sought to exercise control over the administration, often in a negative way. There are many stories rife in the bureaucracy about certain officers in certain states being transferred every few years when they fail to do the bidding of their political bosses.

4c) Freedom of Information Provisions:

In May, 2005, the Lok Sabha passed the Right to Information Bill, and the President signed it into an Act on 15 June, 2005. This central law on the right to information is one example of the government being successfully pressurized by a people's movement. Although freedom of information laws existed in several states and the media reported regularly on 'jan sunvayis', a central law on the right to information was lacking.

Modern government is a gargantuan affair, and a freedom of information act is an additional mechanism of keeping this behemoth accountable. From information on how the government's public works contracts are awarded, to what are the wages paid to workers on the governmental construction projects – such like information is now accessible to citizens.

October 12, 2005 was the day when the Right to Information Act was to be 'fully functional' in every city and village in India. Therefore it is necessary that the Central Information Commission as well as the State Information Commissions provided for, by the new central law, be set up as soon as possible. It is these Commissions headed by Chief Information Commissioners which are to monitor implementation of the Act. Although penalties are in place, with an officer, delaying disclosure of information beyond the prescribed time frame, liable to pay Rs. 250 for every day's delay, subject to a maximum of Rs. 25,000, it is not clear how other violations, such as 'knowingly giving incorrect, incomplete or misleading information' are to be dealt with. It is the Information Commissions which are to sort out these issues.

4d) Anti-Corruption Provisions:

If the question is whether there are institutional mechanisms in place to check graft and corruption in the bureaucracy, the answer has to be in the affirmative. But if the question is whether these mechanisms have been successful in checking this corruption, the answer is resoundingly negative. India is placed 68th in the index of non-corrupt countries; this is not surprising, since, as a recent study of the Comptroller and Auditor General, the Central Vigilance Commission, and the Central Bureau of Investigation, three anti-corruption bodies in India, concludes, their record in checking corruption has been dismal. [20]

In India, there is one Comptroller and Auditor General (CAG) for the central government as well as the state governments. It is a statutory body and its independence from the executive is maintained through constitutional provisions. However, the audits conducted by this office rely on procedures which have not changed for centuries, where audits are conducted on the basis of replies and documents provided by the government departments. Independent investigation beyond these replies is not allowed; neither is the 'summoning of a departmental official to appear in person and explain matters encouraged'. The inordinate delays in the audit of anything means that corruption scams are public knowledge much before the CAG gets into the picture, and therefore the CAG's role in checking corruption can be said to be marginal.

The Central Vigilance Commission, founded in 1964, receives corruption complaints against government officials and gets its cases investigated through either the Central Bureau of Investigation or through the Central Vigilance Officers of various governmental agencies. The fact that innumerable positions of

the Central Vigilance Officers are lying vacant in governmental departments and in public sector undertakings, and that during the decade from 1989 to 1998, the Central Vigilance Commission was able to get prosecution recommended in only 2% of its cases also shows its inability to counter corruption.

Finally, the Central Bureau of Investigation also shares this bad reputation. Its investigation of most of its own cases has often been faulty and it is often said to sabotage its own cases. The Supreme Court has even suggested that the government appoint a panel of lawyers to review the CBI's work and fix responsibility for unsuccessful investigations. The CBI's failure has made 'corruption a no-risk, high profit activity in the country'.

Conclusion:

The question of institutional reform is always in the air, and when we think about some institutions, for example, elections, major reforms have been debated and undertaken.

Even our cursory description of the institutional domain of the Indian state reveals much that is problematic about India's political institutions: on the issue of accountability, a fundamental democratic value, for instance, neither the legislators, nor the members of the executive, nor the judges, or the bureaucracy seem to be accountable. When the working of institutions over a long period reveals lacunae, is faulty institutional design held to be responsible? Problems in the working of the legislature and the executive have led not so much to attempts to reform or redesign them as to letting the Indian judiciary perform the formers' functions. Does the shifting balance between these institutions solve the problem of non-accountability? Making the legislature more representative on the one hand, and allowing the judiciary, a non-representative institution, to pick up the slack of the executive and the legislature, on the other, seems to be the way the problem of institutional reform is being handled in India today.

End Notes

1. V. Lal, 'Torture: An American Success Story', *Economic and Political Weekly,* Vol. XL, No.11, March 12-18, 2005, p. 1011.

2. Ambedkar clearly defined democracy in these terms in the Constituent Assembly. See the explanatory notes to his Memorandum on Rights in B. Shiva Rao, *The Framing of India's Constitution – Select Documents – Vol. II.*

3. B.Shiva Rao, *The Framing of India's Constitution – A Study*, 1967, p. 150.

4. Ibid, p.158.

5. Ibid, p. 162.

6. M. Weiner & M.F. Katzenstein, *India's Preferential Policies*, Bombay: Oxford University Press, 1981, p. 92. Also see M. Weiner, *Sons of the Soil – Migration and Ethnic Conflict in India,* Delhi: Oxford University Press, 1978.

7. D. Heater, *What is Citizenship*, Cambridge: Polity Press, 1999: 'The title of citizen (citoyen, citoyenne) was adopted by the French revolutionaries to pronounce the symbolic reality of equality: the titles of aristocratic distinction were expunged.'

8. A Przeworski, S.C. Stokes & B. Manin, *Democracy, Accountability and Representation,* Cambridge University Press, 1999.

9. See A. Agrawal, 'The Indian Parliament', in D. Kapur & P.B. Mehta, *Public Institutions in India – Performance and Design,* New Delhi: Oxford University Press, 2005

10. A Agrawal, 'The Indian Parliament' op. cit, p.78.

11. Ibid.

12. A.K. Mehra & G.W. Kueck, *The Indian Parliament: A Comparative Perspective,* 2003

13. P.B. Mehta, 'India's Judiciary: The Promise of Uncertainty', in D. Kapur & P.B. Mehta, *Public Institutions in India – Performance and Design,* New Delhi: Oxford University Press, 2005, p.181

14. S.P. Rosen, *Societies and Military Power: India and its Armies*, Delhi: OUP, 1996. Also see S. Cohen, *The Indian Army: Its Contribution to the Development of a Nation*, 1990.

15. See E. Mawdsley, 'Redrawing the Body Politic: Federalism, Regionalism and the Creation of New States in India' in A. Wyatt & J. Zavos, *Decentering the Indian Nation,* London: Frank Cass, 2003.

16. J. Dasgupta, 'India's federal design and multicultural national construction', in A.Kohli, ed. *The Success of India's Democracy*, 2001, p. 70.

17. D.V. Verney, 'How has the proliferation of parties affected the Indian federation? A comparative approach' in Z. Hasan, *India's Living Constitution*, 2002.

18. See P.R. deSouza, 'Decentralization and Local Government: The Second Wind of Democracy in India' in Z. Hasan, et. al., *India's Living Constitution,* 2002.

19. See P.M. Bakshi, *The Constitution of India,* 1999.

20. See S.K. Das, 'Institutions of Internal Accountability', in D. Kapur & P.B. Mehta, *Public Institutions in India*, op. cit.

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