PRESIDENTIAL DEMOCRACY
The Need of the Hour

- JASHWANT B. MEHTA

When will the time be ripe for our dear motherland to be
governed by a cabinet of honest professionals / intellectuals who
have no vested interest in the politics?

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People of India have been yearning for better governance free from rampant and widespread corruption.

Annaji’s crusade against corruption has provided the necessary spark for a fire which was waiting to be ignited.

While the appointment of Lokpal as contemplated is indeed welcome, let us endeavour for a system which will eradicate the disease itself rather than treat the symptom.

It is time now to get ourselves free from the shackles of a political system which has led to such a sorry state of affairs putting the nation to a shame.

Let us get rid of a system where even an honest and forthright Prime Minister would be a mere spectator unable to prevent mind-boggling seams coupled with misgovernance nothing sort of virtual loot of the country by greedy politicians.

Let us have a system where people can directly elect honest and deserving person to the highest office of the government and enable him without any pulls and pressures to induct talented professionals / intellectuals with a proven track record and who have no vested interest in politics.

The only answer is a truly democratic presidential system.
PRESIDENTIAL DEMOCRACY

The Need of the Hour

JASHWANT B. MEHTA
To

My Fellow Country-men, misruled and exploited by the unscrupulous Politicians under the cloak of Parliamentary Democracy
There is an ever increasing frustration and discontent among the people against the present political system on account of its several drawbacks and, as a result, the very faith of the people in the efficacy and sanctity of our current democratic setup has been seriously undermined. It is an admitted fact that our existing system has spawned an obnoxious breed of self-seeking politicians jostling for power for personal gains in utter disregard of the interests and welfare of the people at large.

The dubious means of election funding, the criminalization of politics, the rampant corruption among bureaucrats and politicians, (where sky seems to be the limit now!) the absence of any in-built provisions which would compel our legislators to do the necessary home work on legislative matters, the frequent arbitrary changes of ministers, the recurring instability of governments both at states’ and central level, the failure of the existing system to bring forth leaders who could command people’s confidence, all these factors have contributed to the loss of people’s faith in the present system.

Based on study and analysis of mature and liberal democracies of several countries including the USA, Germany, Britain, France, Australia, etc., a truly democratic Presidential System with certain modifications would be lot more suitable than our present parliamentary system for better governance of the country.

The several advantages of the system such as its stable character, direct induction of top professionals in the Cabinet, separation of executive from the legislature and lesser emphasis on the party including absence of party whip on legislative matters are too vital to be ignored. The system of direct elections adopted under the Presidential system right from the Mayor’s post upwards makes it easier for better and deserving personalities to be more fittingly groomed for higher level leadership. The Forum also strongly recommends some of the novel features as incorporated in the present Constitution of Germany viz. law on regulating political parties, state funding of elections and mixed proportional representation in lieu of the present first past the post system which does not truly reflect popularity enjoyed by the parties in the legislature.

The rampant and widespread corruption which has led to mind-boggling scams such as Spectrum 2G, Commonwealth Games and many others followed by Anna ji’s crusade against corruption has provided the necessary spark for a fire which was
Waiting to be ignited. While the movement for a Jan Lokpal Bill providing wide powers to Lokpal as contemplated is most welcome, we must endeavour for a system which will eradicate the disease itself rather than treat the symptom. Under our present system, even an honest and forthright Prime Minister may remain a mere spectator unable to prevent mind-boggling scams coupled with misgovernance nothing sort of virtual loot of the country by greedy politicians.

While many eminent persons from various walks of life which include B.K. Nehru, Nani Palkhivala and J.R.D. Tata all of whom have strongly advocated Presidential System of democracy, unfortunately, no organised and sincere efforts have been forthcoming in this regards.

Number of new political parties have also been formed and registered by concerned citizens from various walks of life more out of sheer frustration and discontent against the present political system. Unfortunately, none of these political parties have a clearly defined goal as to the alternative model of political system envisaged by them. In this regards, the Forum happens to be the only political party registered with a clearly defined manifesto for presidential system of democracy as a required change for better governance.

In the following pages, an attempt has been made in brief to elaborate the concept of ‘Presidential Democracy’ and its advantages vis-à-vis our present political system in a question-answer format as part of the mass awareness campaign for facilitating the introduction of Presidential democracy in India with suitable modifications for the benefit of the readers.

Some of the illustrations in the book have been drawn by Vasant Halbe and included from my book ‘Quest For A Better Democratic Alternative’ published earlier. I am also grateful to R.K. Laxman for his kind permission to include some of the cartoons which have appeared in his popular feature ‘You Said It’ in The Times of India. My thanks are also due to my Steno, Sonali Churi for her secretarial assistance and Suresh and Jayesh Malpekars of Nimi Printers for their personal interest in printing this book.

Mumbai

JASHWANT B. MEHTA
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20th October, 2011
For Presidential Democracy
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Q. What is the Presidential system of democracy?

A. There are various types of Presidential system of Government prevailing in many countries. In all these systems, the President is the Executive head of the Government. The most popular and democratic system is the American one. Under this system, the President, as the Executive Head of the Government, is directly elected by the people for a fixed term of 4 years. Once elected, he is free to select his team of ministers and other administrators directly from the top intelligentsia of the nation as per his discretion. The ministers cannot be a part of the legislature. In case they happen to be from the legislative body, they have to resign their seat in the legislature before joining the cabinet. The legislature (the upper and lower houses popularly known as Senate and the House of Representatives respectively), mainly serves the function of enacting the legislation and keeping a check on the Executive comprising the President and his cabinet. The President has to get all the appointments (executive as well as judicial) approved by the Senate although he is at liberty to remove any of his aides without the approval of the Legislature.

The U.S.A., like our country, is also a Federal State having in all 50 States as its constituents. At the State level, the Executive Head is the Governor, who is directly elected. In our country, the Governor, like the President, is only a nominal head and all executive powers at the State level are vested in the Chief Minister and his cabinet.

Q. How does our present Parliamentary system of democracy function?

A. Under our present Parliamentary system, the members of the legislature are elected by the people and the Executive or the Government is formed almost totally out of these elected members. The political party gaining an absolute majority or the coalition in case no single party commands a majority, elects a leader, (Prime Minister at the national level or Chief Minister at the state level) who in turn picks up from amongst the members of Parliament or State Assembly (as the case may be) his team of ministers assigning a specific portfolio to each one of them.
The Prime Minister as well as the Chief Minister can continue in the office only as long as they command the confidence of the majority of the members of the legislature.

All the executive powers vest with the Prime Minister at the national level and the Chief Minister at the state level. Elections are usually held once in 5 years unless the State Assemblies or Parliament are dissolved earlier. The status of the President at the national level is more like the King of England who reigns but does not rule. He is a mere symbolic Head of the State without any executive powers.

Q. Why did the framers of our Constitution prefer the British system of Parliamentary Democracy to that of Presidential Democracy?

A. An analysis reveals that it was mainly the familiarity of the framers of our Constitution with the British system which had induced them to opt for the British model. While some discussion did take place in the Constituent Assembly about the suitability or otherwise of the other popular form of democracy viz. the Presidential system, an overwhelming majority was so highly influenced by the British tradition that it almost prevented a real constructive dialogue in the matter.

The eminent jurist, late Shri M.C. Chagla¹, had said ‘The preference for the former (parliamentary democracy) was mainly due to (i) before Independence we had been working our legislatures both at the Centre and in the States more or less on the British model and so, we were accustomed to the practices and conventions of that system, and (ii) an elected President as the head of the executive was too reminiscent of the kings and emperors who had ruled us in the past.’

Shri B.K. Nehru², distinguished civil servant, who had served as India’s Ambassador to the U.S.A. and India’s High Commissioner to the U.K. had observed : ‘Furthermore, the Constituent Assembly was dominated by lawyers, trained solely in the British tradition and in the British system of Law, who constituted a substantial proportion of the membership of the Assembly. Their knowledge of constitutional law was largely

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confined within the horizon of the British Constitution."

It may be mentioned that even while adopting the Parliamentary System, we have deviated to make it convenient for our politicians to suit their interests. Thus, according to the conventions of Westminster, the ministers are not allowed to take decisions in individual cases. They are required, as a rule, to confine themselves to the formulation of policy, approval of guidelines and the overall supervision of administration so as to ensure that the prescribed policies and guidelines are duly implemented. Should the Minister violate these conventions and interfere in any decision taken in individual cases by the appropriate civil authority, they would instantly invite a strong criticism in the parliament.

On the other hand, the position under our system is quite different. As observed by B.K. Nehru¹ “It is often the civil servant who formulates policy and the civil servant who lays down the guidelines but invariably the actual application of the policy or the guidelines in particular cases is left wholly in the hands of ministers. Permissions to start technical institutions, leases of government lands or forests, grant of building permits², the allocation of controlled commodities such as cement and steel and the myriad other permissions that under our economic system are required to be granted by governmental authority, are reserved for ministers themselves and merit and the guidelines laid down are only minor considerations in their decisions”. (see Chapter 3 'The Cabinet')

¹ B.K. Nehru, ibid. ² E.g. in Maharashtra, the most lucrative portfolio is the Urban Development Dept. which is usually held by the Chief Minister himself for obvious reasons.
Q. Why did the framers of American Constitution prefer to choose a different model?

A. While we opted for the British model mainly on account of our familiarity, the pertinent question would arise as to why did the framers of American Constitution, a large majority of whom were themselves British citizens before migration opt for a different model. The debate preceding the framing of U.S. Constitution reveals the most important aspect which the founding fathers of our Constitution seem to have overlooked but which having watched the performance during last 60 years of the British model we have adopted, requires serious consideration.

While considering the British model, there was a lurking fear in the minds of the framers of American Constitution that unlike Britain the U.S.A. ‘with its vast geographical expanse, sectional interests and diversity of views did not possess the basic criterion of the two-party system’. Although the majority of the first lot of immigrants were of English origin, as a nation of immigrants it had already started attracting immigrants from various countries of Europe including France, Germany, Holland, Spain, Italy, Portugal etc. On account of their strong national identities including that of language, there was every possibility of each of these immigration groups forming independent political parties based on their roots and the nation may end up with several political parties and a parliamentary form of government under such a multiple party formation may lead to a weak and unstable government which may be exploited by the political parties to suit their vested interests and in due course there could be even demand for independence by these various groups. They therefore preferred a different model providing for a stable government with fixed tenure for

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2 With a continuous flow of immigrants from various countries of the world it is literally a melting pot. In fact, the word ‘melting pot’ has become synonymous with the U.S.A.
the Executive head of the government directly elected by the people.

How true was their fear is borne out of our own experience of last sixty years! While initially we almost started with a dominant single party Congress rule both at Centre and in almost all the States, over a period of time, we have now witnessed a plethora of regional/languages/caste based political parties in most of the states, such as Shiv Sena in Maharashtra, Telugu Desam in Andhra Pradesh, the Two DMKs in Tamil Nadu, Jharkhand Mukti Morcha in Jharkhand, Akali Dal in Punjab, National Conference & PDP in Kashmir, Assom Gana Sangram Parishad in Assam, the Biju Janata Dal in Orissa, Trinamool Congress in West Bengal, the Mizo National Front in Mizoram, Nagaland People’s front in Nagaland, Manipur People’s party in Manipur and Maharashtrawadi Gomantak party in Goa besides caste-based parties such as Republican Party of India, Bahujan Samaj and Samajwadi Party in U.P and Rashtriya Janata Dal in Bihar etc.

Q. How will the Presidential System compare with regards to the stability aspect with our present Parliamentary System?

A. 1. Under our present set-up, unless the ruling party has a comfortable majority, the Prime Minister or the Chief Minister, as the case may be, is always under the pressure from the legislators of his own party or from the coalition partners to fulfill their demands lest he may lose the majority support and he is never sure how long his tenure would last. Even when the ruling party has an absolute majority, on many occasions we have witnessed an unseemly power game taking place within the party itself with the dissidents trying to dislodge the Prime Minister or the Chief Minister as the case may be, for their self-seeking ends and on most occasions the former has to play a tight-rope walking game for his mere survival.

2. While at the State level, there have been many occasions\(^1\) when the Chief Ministers have not been able to complete

\(^1\) At state level, the stories of defections, toppling and realigning of political parties to suit their vested interests is endless and beyond the scope of this book to include them. Just to get a glimpse of the sordid state of affairs, our biggest state U.P. had as many ...... (contd. to pg 6)
(The parties fighting against each other with all their bitterness often come together after the elections just for the sake of the loaves and fishes of the office) their full terms and have been forced to resign either due to the loss of majority support on account of defections from the ruling party or due to the loss of support from coalition partners or due to the murky power politics within the party itself, this phenomenon is now becoming a recurring feature at the national level also. In the last two decades we have had 7 Lok Sabha elections (including 3 mid-terms) and 10 Prime Ministers.

(6)

(…..contd. from pg. 5) as 6 governments between 1995 & 2002 which included three spells of Mayawati as Chief Minister besides the spell of Kalyan Singh, Raj Prakash and Rajnath Singh with President's rule imposed in between. The State had 3 elections during this period. It also had a dubious distinction earlier of having as many as 8 governments between 1967-74 which included 2 spells each of C.B. Gupta and Charan Singh besides T.N. Singh, Kamlapati Tripathi and H. N. Bahuguna with President’s rule imposed on two occasions in between. It had witnessed as many as 4 elections during this period. The stories of our smaller states are even more shocking. Meghalaya had witnessed 12 governments in a 15 year spell between 1992 and 2007 besides the President’s rule in between. Perhaps, among all, Goa’s case is most striking. The state had as many as 14 governments during a period between 1990 and 2000. Besides it had President’s rule in between on a number of occasions. The Chief Minister’s post was rotated like a musical chair on 7 occasions between Pratap Singh Rane, Dr. Wilfred D’Souza and Ravi Naik during this period.
During the short span of 18 months of 11th Lok Sabha (1996-98), we had as many as 3 governments, the shortest tenure being that of Shri Vajpayee which lasted just a fortnight. Earlier, the tenure of 9th Lok Sabha had lasted for a mere 16 months (1989-90) during which 2 governments collapsed prematurely.

The NDA coalition headed by Vajpayee (1999-2004) consisted of a motley group of 21 parties. Inspite of continuous pull and push among various coalition partners, it somehow managed to complete its tenure of 5 years. The Congress led UPA government (2004-09) under Manmohan Singh consisted of 22 parties. It was lucky enough to survive the crisis at the time of passing of Civil-Nuclear deal when CPM withdrew its support and Mulayam Singh’s Samajwadi Party which was a bitter opponent of Congress stepped in to save the coalition.

There were open allegations of pay-offs made to M.P.s for voting in favour of the ruling party, almost a repetition of

(7)

1 (see details in Chapter VI ‘Corruption’ regarding deal struck by Mulayam Singh in bargain).
Wiped out corruption, improved the lot of the common man, brought prosperity to plenty, when he governed as the chief minister between 17th March, 1997 and 24th March 1997 A.D.!

the story which had taken place earlier during Narsimha Rao’s tenure during 1991-96 as Prime Minister when he had just managed to survive a vote of no confidence by resorting to dubious means.

The tenure of 2nd term of UPA led coalition (2009 onwards) makes a sickening story of unprecedented scams and scandals that has almost led to the complete loss of people’s faith in the political system. (The interested reader may refer Chapter 14 ‘Endless Game of Defections, Toppling and Lust for Power’ in author’s book ‘Quest for a Better Democratic Alternative’ see page 63).
I had the majority support for full two days. If he had allowed me, I would have formed a government by now!

The Presidential system presents a sharp contrast to the above dismal picture.

1. The President elected directly by the people has a fixed tenure. (In the American system, the tenure is 4 years whereas in France it is 6 years). Once elected, he has a full term before him to prove his mettle irrespective of his margin of victory. He is free from the worries of being dislodged by power-crazy legislators except under certain extraordinary circumstances in which charges of corruption, treason or other high crimes and misdemeanour can be proved against him and is able to devote his full time to carry out the duties and responsibilities expected of his high position.

2. He has full freedom to select his team of ministers and administrators from amongst the top professionals and intellectuals of his choice to deliver the results.

Q. Besides Britain, there are other countries such as Germany, Italy etc. where Parliamentary system is adopted. France too had a Parliamentary system earlier. What is the experience of these countries in the matter of political stability?

A. France:

France had a bitter experience of Parliamentary system in the past. During the period of the Fourth Republic, there were as
many as 26 different governments in the twelve-year period between 1946 and 1958. The coalitions between various disparate parties and groups led to differences and in-fighting for sharing the spoils of power. The situation had reached its peak in 1958 when General Charles De Gaulle was called upon to govern the country. The prestige of France had gone down considerably in the international polity and its economy too had deteriorated. A new Constitution was drafted by De Gaulle and was approved by 79.2 per cent votes.

The sharp contrast between the old and the new Constitutions was the dominant role of the President and the reduced role of the National Assembly. It reinforced the Presidential prerogatives. The Executive branch relied on top civil servants, administrators and talented brains of the country, who displaced the politicians in the cabinet posts. The growing influence of these so-called technocrats was resented by the Parliament members but their effectiveness was clear. A long series of much-needed reforms, many of which had been formulated earlier but ignored during the Fourth Republic (1946-1958), were put into operations. All these factors coupled with the ability to take assertive decisions in foreign policy led to the revival of the prestige of France both at home and abroad.

Italy:

The most striking example of the failure of the parliamentary system is that of Italy, where within a period of 61 years from 1948 to 2009 there were as many as 62 changes of government under a multi-party system. Uptill now, no party has been able to obtain a majority and attempts to form coalition governments have not achieved the desired results.

Britain:

Britain, the bastion of Parliamentary System, which has presently two strong parties viz. Labour and Conservative and where power has been generally shared between these two parties, had its share of troubles when three strong parties were in existence in the earlier part of the twentieth century. It was a situation in which no single party could command a majority and there was a spate of coalition governments which did not function well.
Germany

German Republic, (Third Bundestag) before the rise of Hitler is another example of unsuccessful Parliamentary Democracy. No political party could obtain a majority and there were as many as twenty cabinets in fourteen year period between 1919-1933. In fact, one of the important causes for the rise of Hitler was the frustration and chaos arising out of unstable governments during this period.

With this earlier experience, the present Constitution has incorporated some novel changes to ensure stability. The Chancellor, who is the executive head of government after being elected by the majority votes of the Bundestag (Federal Parliament), is not obliged to resign even in the event of a successful vote of censure or no-confidence. Unless the Bundestag elects a new Chancellor with a clear and absolute majority, the one in power need not resign. This precludes the negative vote so often witnessed in our system and prevents the parties from dislodging the incumbent without first reaching an agreement on his substitute. This pattern of government also known as ‘demi-authoritarian’ has provided for a practically stable rule inspite of the fact that an authentic two-party system has not materialized uptill now. Currently, there are four major political parties and only once in 1957 elections, the Christian Democrats were able to form their own government without any collaboration with other parties.

Q. Can we not adopt the German model for stability in place of American model?

A. Germany is a much smaller country consisting of people having one common language and identical culture. The advantage of American model will not only be its beneficial effect in promoting a healthy two-party system but will also help in providing better caliber leadership with wider vision beyond the narrow considerations of regionalism, sectarianism and casteism for the country. This aspect has been dealt with in chapter 7 on “Promotion of Leadership Qualities” as well as in chapter 5 on “Checks and Balances”. It is therefore felt that the direct election of the Executive head at State or Central and even City level will be better suited than the German model for our country.
Q. What will be the impact of Presidential system on party structure in our country?

A. Strange as it may sound, but it is true that in spite of there being no emphasis given to the party system for the successful functioning of the government, there has been a gradual evolution of a healthy two-party system in the American democracy. Many political pundits attribute this to the system itself and argue that by its inherent character, it promotes the two-party system. A majority of the electoral college votes are required for the election of the President and unless there are two strong parties or a coalition of like-minded parties (before the election), it is impossible to achieve a majority of electoral votes. A study of the pattern of elections for the U.S. Presidency indicates that the emergence of smaller parties is not encouraged as it does not have an overall impact on the electoral votes. Thus, for example, in the 1968 U.S. Presidential elections, Alabama's racist Governor, George Wallace, who founded the American Independent Party, had secured 13.59 per cent of popular votes. However, this did not have an overall impact on the final outcome and his party soon faded away. Similarly, even in 1980 Presidential elections, another powerful personality, John Anderson, a republican had broken away from the main party and contested elections as a third party candidate securing 6.6 percent of total vote. However, this had hardly any impact on the final outcome of the elections and in the subsequent elections Anderson himself endorsed the candidature of the Democratic party nominee in the subsequent election.

In sharp contrast, our system encourages the proliferation of smaller parties or interest groups and splits among major parties. This is mainly because even these smaller parties or interest groups or regional parties have realized that they can play a dominating role and dictate terms at the national or state level especially when no single party on its own is able to achieve the requisite majority. Among some of the most striking examples is that of Jayalalitha whose AIADMK Party which had supported Vajpayee's coalition during his second tenure (1998-99) as a Prime Minister. With a mere 18 members out of total of 542 M.P.s in the House (i.e. less than 3.5%), she could manage to dictate terms as per her whims and ultimately also managed to bring about its downfall. The recent mind-boggling Spectrum 2G scam of Rs.1.76 lakh crores clearly indicates as to what extent small / regional parties could dictate terms and extract its pound of flesh to support the coalition government.
France is another classic example of effect of Presidential form of government on party system. They had a Parliamentary system of Govt. and like us had witnessed a continuous process of unstable governments as mentioned earlier.

There was also an endless process of formation of new parties as well as splitting of existing parties. The country much smaller in size than ours had as mentioned earlier as many as 14 political parties and during a 12 year period between 1946 – 1958 had as many as 26 different governments. After the adoption of the Presidential form of government in 1958, not exactly of the U.S. model, but with many similarities with it, there is not only a stable government but a drastic reduction in the number of parties.

Against the 14 parties existing earlier, there are now only 4 major political parties and even these 4 parties now in vogue are divided in two large coalitions of the left and the right leading to the much-needed bipolarization.

This is becoming a nuisance a code must be evolved so that no government can be toppled for at least a couple of months!
The words of Dr. Babasaheb Ambedkar (in his Memorandum to Constituent Assembly in 1947), almost sound prophetic today “In view of the clashes of castes and creeds there is bound to be a plethora of parties and groups in the Legislature in India. If this happens, it is possible, nay certain, that under the Parliamentary System, Executive is bound to resign upon an adverse vote in the Legislature. India may suffer from the instability of the Executive. For it is the easiest thing for groups to align and realign themselves at frequent intervals and for pretty purpose and bring about the downfall of the Government. Constant overthrow of the Government is nothing short of anarchy. The American form of executive is an equally good type of a democratic and responsible form of the Government.”

(From the notes provided by Late Shri Chimanbhai Mehta, a veteran politician and former union cabinet minister)

While most of us have regarded Dr. Ambedkar as the framer of our Constitution, he himself had repudiated this claim in no uncertain positive words. He told the Rajya Sabha on 2 September 1953. ‘Sir, my friends tell me that I have made the Constitution. But I am quite prepared to say that I shall be the first person to burn it out. I do not want it. It does not suit anybody...’ (Source: ‘The Parliamentary System’ by Arun Shourie, Edition 2007 pp 18). It is nay certain that had Dr. Ambedkar lived long enough to watch the performance of the system that has thrown up the type of persons in our legislature and council of ministers then he would have put his thoughts in practice.
Chapter 3

THE CABINET

Q. How does the Presidential System as adopted in the USA differ with our Parliamentary System in the matter of the selection and functioning of Cabinet?

A. Separation of Cabinet from Legislature

There are various types of Presidential system of government. The ideal model is that of the USA where there is a separation of cabinet from the legislature. In some of the Presidential forms of government, the ministers are appointed from amongst the members of the legislature which is not a desirable model as it fails to provide the required checks on the President or the Cabinet from the Legislature (see chapter 5 'Checks & Balances')

Well-defined Selection Process

1. There is a well defined procedure for the selection of Secretaries (the ministers are known as Secretaries in the American System) and other important Administrators in the Presidential system as adopted in the U.S.A., the selection is generally made by the President from amongst the highly successful professionals or top intellectuals of high standing in the country. In case, the President wants to select a Minister from amongst the members of the Congress, then the concerned member has to resign from the Congress before joining the cabinet. The practice of selection of members from outside the Parliament is also followed in France where, like the American system, the ministers have to resign their seats in the Parliament.

2. The Senate has been given full powers to investigate into the credentials of the candidates concerned, which include interviews with the candidates, and it is only after receiving the Senate’s approval that the President can confirm all major appointments including those of the Ministers. There are several instances in which the candidates proposed by the President have been disapproved by the Senate Committees in which case the President has no choice but to propose an alternative candidate.
3. The FBI investigates in confidence the background of these candidates and gives a confidential report on them.

4. In the debate that takes place in the matter, everybody including the Members of the Opposition and the media play significant role which brings out all the facets of the candidate’s personality including his strong and weak points. There is a total time interval of nearly 2½ months after the President is elected and his Cabinet is sworn in.

**Better Efficiency**

As the Ministers are not distracted by the necessity of constant attendance in the legislature and as they are not linked to any party politics, the efficiency of administration increases. They are also free from the populist compulsions of being required to socialize with the public for building up a favourable image for themselves.

**Other Examples**

It may be mentioned that the practice of selecting ministers from outside the Parliament is also adopted in other countries where Parliamentary system is adopted. For example, in Japan where the Diet (Parliament) is supreme, the Prime Minister has an option to select nearly half the Cabinet ministers from outside. Even the German Constitution allows the Chancellor to select his team from anywhere outside the Bundestag (Federal Parliament) inspite of adopting a system wherein the Chancellor has to be elected by the majority of the Bundestag members.

In sharp contrast to the above, our system presents a disconcerting picture as indicated below:

**Lack of Professionalism**

There is hardly any process for scrutinizing the credentials of the candidates for Ministerial berths. Sometimes, the Ministers themselves are not even aware of the portfolios they are going to be assigned till a few hours before the swearing-in ceremony takes place. It is an acknowledged fact that be it any portfolio, either defence, home, external affairs, finance or housing, our ministers are supposed to be fully knowledgeable (Mr. Know All) and having the supposed omniscience of handling any
portfolio entrusted to them at all times.¹

Political clout main criteria for selection

The distribution of portfolios among our ministers is made on the basis of their political clout in the party and the confidence they happen to enjoy with the Prime Minister or the Chief Minister, as the case may be, rather than on the basis of their expertise, intellectual attainments and personal integrity. Shri Arun Shourie, former Union Cabinet Minister in the NDA alliance (1999 – 2004) has observed² “In selecting his ministers competence is way down on the list of considerations which the Prime Minister has to keep in mind. Indeed now the choice of who from RJD or DMK shall become a minister has to be left to the controllers of that party. So, if only to make his own case less or an exception, Lalu Yadav were to nominate only those from among his MPs who have criminal cases pending against them to be ministers they are the ones who will be ministers.”

If you have a hold, you have a post!

¹ (Sardar Swaran Singh, who was a Minister for External Affairs for sometime, had handled so many portfolios that he was nicknamed “Eternal Minister for all the Affairs!”)

² The Parliamentary System 2007 (p. 176)
Means to prevent toppling the government

The game of toppling the government is often prevented by the Prime Minister or the Chief Minister by the dubious method of increasing the strength of the ministry\(^1\) which may not be justifiable on merit at all. As the late M.C. Chagla observed ‘Ministership has often been the badge of disloyalty rather than the reward for merit or efficiency’. In the words of N.A. Palkhivala ‘The difference between a minister selected for his political cunning and a minister of high mental and moral calibre is the difference between a lightning-bug and lightning’\(^2\).

No, not the Assembly Hall – this is the new Cabinet Room!

The 91\(^{st}\) amendment to the Constitution passed in 2003 has restricted the size of the Council of Ministers to 15% of the total

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\(^1\) It may be mentioned that those legislators belonging to the ruling party who cannot be accommodated in the Cabinet are given the posts of Chairmanship of various public corporations or similar such posts. We have even amended the Constitution to make this easier. In Britain the basic rule of Parliamentary government that any office of profit under the Crown (except for ministerships) disqualifies for membership of Parliament has no exceptions. Thus, even while adopting the Parliamentary System, our politicians have managed to distort it to suit their vested interest.

\(^2\) N.A. Palkhivala, *We the people* Strand Book Stall 1988, p. 45
number of the legislators in the Assembly\textsuperscript{1}. In case of smaller states, the total number of ministers is restricted to 12. Thus, in case of Central Government, based on our Parliament strength of 543, this number works out to as high as 82. (The present strength of Manmohan Singh’s cabinet is 77). This unwidely number is in sharp contrast to the US cabinet which consists of only 20 members. Even while adopting the Parliamentary democracy we have chosen to ignore the fact that the size of cabinet in Britain is also restricted to about 20 members, such norms are also established in other democracies such as Japan wherein the Constitution itself has limited the strength of cabinet to 20 at the maximum. This restriction is based on the principle that the small strength allows the Cabinet to work as a cohesive team and facilitates discussions and decision making leading to the efficient governance of the country. Unfortunately, in India, the size of the Cabinets in the various States is determined by the considerations of political expediency of buying peace by distributing the largesse of the highly coveted ministerial berths amongst the dissidents within the ruling party. Prior to the abovementioned Constitutional Reform during Kalyan Singh’s tenure, U.P. had established a record of 92 member-cabinet.

\textit{Ministership, a badge of disloyalty!}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{image.png}
\caption{Ministership, a badge of disloyalty!}
\end{figure}

\footnote{\textsuperscript{1} Venkatachaliah Commission on Constitutional Reforms had recommended to restrict the cabinet size to 10% of the strength of the legislature in case of larger states and maximum number of 7 in case of smaller states having less than 40 legislators.}
The rumour is he is looking for a couple of really new faces to include in the new Cabinet!

The selection of ministers from amongst the legislators often leads to region-wise and caste-wise demand for representation in the cabinet. In the process, competence and efficiency are often overlooked and the Prime Minister or the Chief Minister is required to perform the tight rope-walk of pleasing the various interest groups and sections of the people.

**Busy with other commitments**

Under our present system, the ministers being usually the party leaders, are perforce required to devote a great deal of their limited time and energy for attending to their party affairs to the detriment of their ministerial duties. Whether they like it or not, the affairs of their party are required to be accorded a higher priority over the legitimate claims of their ministerial responsibilities. It is also essential for them to continue to maintain their hold on the party, which has enabled them to gain their position of eminence and prestige as Ministers. The attendance in the Parliament, the nursing of one’s own constituency with an eye for future elections and the active participation in party affairs, all leave very little time for the ministers to concentrate on their onerous tasks and responsibilities demanded by their position as the top men of the administration.
Whether at home or office, obsessed with Party work!

**Eye on vote-catching measures**

It is also noticed that there is a strong tendency on the part of our Ministers to avoid, as far as possible, proposing measures which are likely to be unpopular, however salutary they may be otherwise. This is because the Ministers are more anxious to propose those popular measures whose chief merit is the “vote-catching quality”.

**Volte face to woo the voters!**

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Weakening of Party-organisation
The system of selecting ministers from the members of legislature also deprives the party of competent persons required to keep the organization strong and viable. The irresistible attraction of ministership leaves very few capable persons free to man the party organization. There are several instances where politicians have resigned or refused the presidentialship of a party in order to become a minister. This has greatly reduced the importance of the party organization. Even the staunch supporters of parliamentary set up will admit of the existence of this great handicap.

Secondary role for knowledgeable experts
It is an established fact that inspite of possessing a large pool of talented professionals and knowledgeable experts in their respective fields, we have not been able to utilize to the maximum extent the talents and expertise of such distinguished persons. It is a common knowledge that such professionals and experts have had to rest content with playing a secondary role as mere advisers, critics, authors of books or members of committees whose reports rarely play any significant role in shaping the vital policies of the State.
ROLE OF LEGISLATURE

Q. How does the legislative process in the U.S.A. operate and what is the precise role of legislature in the Presidential democracy?

A. Well-defined legislative process and freedom to vote as per one’s conscience

Under the US system, while the members of US legislature are not a part of the Executive, they have been assigned a role where their involvement in the legislative process is nearly total. The heart of the American legislative system is the Committee system. Most of the work in the Congress is done through Committees. Their task is to consider the proposed legislation and recommend action. (Each Committee specialises in specific areas of legislation such as foreign affairs, defence, banking, agriculture, commerce, education, labour and other fields). There are 23 standing committees in the House of Representatives while the Senate has 18 such committees. Each Committee covers the legislation pertaining to its specified field. (Most of the Senators serve on 2 or 3 Committees). Every bill introduced in either of the 2 Houses is referred to the concerned Committee for study and recommendation. The Committee's action on the bill is a major factor in determining its future.

When the proposed legislation is sent to the appropriate Committee, it schedules a series of public hearings in order to permit presentation of views by persons in favour of or opposed to the legislation. Expert witnesses are also called to testify either for or against the bill. The hearing process thus opens up the legislative process to public participation and scrutiny. After a Committee has completed its study and finalised its report on the bill, the same is sent to the floor of the Congress for open debate. Every member of the Congress (a word commonly used for both Houses in the U.S.A.) is given full freedom to vote on any legislation according to his judgment and conscience. There is no such word as ‘whip’ in the American system as found in our system.

It may be mentioned that several countries including Germany, Australia, etc. have followed the U.S. model of Committee system for thorough scrutiny of legislative matters.

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Even Britain has now made suitable changes by setting up a complete system of Department Select Committees in 1977 under which 14 Committees have been set up for dealing with various subjects.

As against the above, under our present system,

1. An in-depth and detailed examination of the proposed legislative measure is not generally done by most of our legislators. On many occasions, there is a tendency to rush through the passage of the legislation without giving due weightage to its likely repercussions on the economy and the society at large. There is a lack of active and serious participation from a large number of legislators in this regard.

2. Rather than merit, the proposed legislation is voted upon more on the pre-determined party lines. It is also a practice of the parties to issue a 'whip' on important issues and the members are obliged to vote in accordance with the instructions of the party high command irrespective of the personal views they may be holding based on their own study and conviction.
When I was in the opposition I believed that the government was ruining the nation. Now that I am with the ruling party I can see that it is the opposition which is doing it!

3. Except for three permanent committees viz. the Public Accounts Committee, the Public Undertakings Committee and the Estimates Committee which are mainly concerned with the financial matters, we are yet to develop a permanent Committee system on the lines of the American, German or Australian pattern where all proposed legislations are thoroughly examined before their final enactment as Law. Sometimes, for a detailed study of certain highly controversial bills, they are referred to Select Committees, which are ad hoc committees formed from amongst the M.Ps. The Select Committee is required to report on the concerned proposed legislation. As soon as its report is presented in respect of the bill for which it is formed, it is dissolved.

It is obvious that under the system requiring the appointment of committees on a permanent basis, the members would have a lot more motivation and attachment to develop specialized knowledge in the subject or field they represent. Our Select Committees do not have the benefit of the same specialization on the part of their members as they cannot have the same attachment to the subject or the field as is the case under the permanent committee system prevailing in the US and other countries mentioned above.

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4. Under our system, each ministry has a Parliamentary Consultative Committee attached to it. These Committees were created in order to develop an expertise and specialization among the members in regard to those activities of the State in which they are interested and to give the concerned members an opportunity to look closely into the activities of the various ministries. But looking to the mode of working adopted by these Committees, it can be said without exaggeration that they are only nominal committees without any substantive statutory powers. They are no more than cosmetic pieces of embellishment of our parliamentary system. No minister is obligated to answer questions asked by members of the Consultative Committee attached to his ministry. It is up to the Minister to choose what should be discussed. Quite often, the agenda bulges with items, but only a few of them can be taken up for discussion. Meetings begin with a long statement by ministers. Sometimes, the opposition members indulge in political oration. There is indeed very little consultation and involvement of MPs in the Parliamentary Consultative Committees. The late Mr. M.C. Chagla described them as “mere appendages to the indifferent ministries”.

5. Many a time, we have committees or commissions formed from amongst members outside the Parliament for submitting reports on various subjects. While these committees do consist of experts and top intellectuals, their reports are not binding on the Government and on many occasions, they are consigned to cold storage.

At times, it is also noticed that whenever such reports are submitted, the Government has a tendency to stress or utilize that part of the report which suits it best ignoring the rest. On a number of occasions, while the report of an earlier Committee is pending consideration, another Committee is formed to report on the same topic, which betrays a lamentable lack of seriousness on the part of the Government in the matter.

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1 India Today, ‘Feb. 28, 1980’
Q. Since under the US system, the legislative authority fully vests with the Congress and the President is directly elected, is it not likely that when the President's own party does not have a majority in the Congress, there could be a stalemate between the President and the Congress on legislative matters?

A. As mentioned earlier, every member of the Congress is given full freedom to vote on any legislation according to his judgement and conscience. On several occasions, the members of the President's own political party hold different views on various issues and nothing prevents them from voting against the legislation favoured or proposed by the President. On the other hand, many a time, it is the support of opposition members which helps the President more than that of his own party legislators. If a legislation proposed by the President is defeated, he is not obliged to resign.

As a measure of checks and balances, the President is given the power to veto the legislation passed by both the Houses of Congress, which, in turn, can be over-ridden by a two-thirds majority of the Congress. The President is further empowered to call the Congress in a special session and recommend the legislation. Thus, a situation is generally reached where a compromise is arrived at between the Congress and the President. While overall the process is a bit slow, it is more complete and effective.

President V/S Congress – A Delicate Balance!
Q. What is the possibility of Presidential system degenerating into dictatorship?

A. The general misconception about the Presidential system is the fear that it may degenerate into dictatorship. The likelihood of any democracy, whether parliamentary or presidential, degenerating into dictatorship is dependent on the provision of in-built checks and balances. In a short span of 7 years (1932-1939) during the ‘Third Reichstag’ in Germany (1920-1939) Hitler could assume all the powers of a dictator by circumventing the then existing parliamentary democracy. Even in our own Parliamentary system, we had a near dictatorial regime during the emergency rule of late Smt. Indira Gandhi. The Forty-second Amendment to the Constitution passed during this period was a nearest step to dictatorship as it had empowered the Parliament to amend Article 368 of the Constitution thereby enabling it to change any part of the Constitution which could not be questioned in any Courts on any ground. Fortunately, this Amendment was repealed during the Janata regime.

In a truly democratic Presidential system as adopted by the U.S.A. based on the principle of separation of powers between the executive, legislative and judiciary branches, chances of the system degenerating into dictatorship are extremely remote or none at all as has been evidenced in the 235 years of US history in spite of the fact that there have been some very popular and powerful personalities elected as the President.

Apart from the full legislative authority and power vested in the Congress in the matter of the confirmation of all major appointments made by the President, the US Congress has also been provided with the following powers which serve as a check on any excessive exercise of the executive authority by the powerful President.

1. Investigating Body: Along with the Lower House, the Senate has the power to conduct investigations into a great variety of matters including the conduct of other branches of government and affairs of the nation. Investigations are conducted regularly by the standing committees of the lower house and the Senate and sometimes by the special committees also.
2. **Ratification of foreign treaties**: The Senate also shares the power of confirming treaties. While the President formulates and negotiates treaties with other nations, a treaty cannot be operative unless it is ratified by a two-thirds majority of the Senate. Thus, no President can go his own way in the domain of foreign affairs without securing the necessary co-operation of the Senate.

3. **Power of Impeachment**: The Senate has been granted the power of impeachment and thereby remove any official in the legislature, judicial or executive branch including the mighty President if they are found guilty of bribery, treason or other high crimes. The impeachment proceedings are initiated in the Lower House and the Senate proceeds as if it were a Court. Had President Nixon not resigned due to his role in Watergate scandal, it was almost certain that he would have faced impeachment proceedings.

4. **The War Powers Act**: The War Powers Act passed in 1973 allows the U.S. President to commit troops without a Congressional declaration of war but it provides that the Congress must be informed of this action within 48 hours and it also empowers the Congress to order a withdrawal of the troops.

**Restriction of Tenure**

The restriction on the tenure of office for the President in the American system has also played an important role. Under the
22nd amendment to the U.S. Constitution passed in 1948, no President is allowed to continue in Office for more than two terms. Such restriction also applies to the office of the Governor in most of the States. Till the election of Franklin D. Roosevelt in 1932, a tradition was followed whereby all Presidents followed the example set by George Washington, the first President of the nation. Inspite of being immensely popular, Washington voluntarily refused to accept nomination for the 3rd term as he firmly believed that ‘absolute power corrupts absolutely’ and was keen to establish a healthy tradition for his successors to follow. This tradition was broken when upon completion of Roosevelt’s 2nd tenure in 1940, the crisis of 2nd World War necessitated to have leadership of highest calibre which Roosevelt had provided. Even in 1944, upon completion of his 3rd tenure, the crisis had continued as the war had not ended and he was elected for a record 4th time. However, upon his death in 1946 as the tradition was broken, the overwhelming public opinion went in favour of having a constitutional amendment so as to prevent future Presidents to follow Roosevelt’s example. Such a restriction is not found in the French system where the tenure of President is also for 6 years as against 4 years for the U.S. President.

It was during the midst of great depression when Roosevelt assumed office for his first tenure in 1932. His exemplary leadership played a vital role for the U.S.A. to come out of this severe crisis.
Presidential System in other countries

Apart from the U.S.A. & France the Presidential system of government has been in existence in many other countries such as Mexico, several countries in Latin America, Indonesia, Sri Lanka, Philippines, South Korea and many African countries. However, in the absence of the required checks and balances, the political systems in some of them are leaning towards dictatorship. Thus, for example, in Mexico, a presidential system has been adopted under which the president after being elected, enjoys enormous powers. The laws passed by him cannot be challenged in the court of law or vetoed by the Senate. The only redeeming feature in this respect is the ban on the President against contesting for the second term. A leading Mexican politician has nicknamed their President as “Semi-King” and “Semi-Pope” enjoying a rule for six years. Similarly, in Sri Lanka, the executive (the cabinet) is constituted from amongst the members of the legislature and is, therefore, subservient to the latter. Such a legislature cannot provide the required check on the President and the cabinet would also be deprived of the services of top professionals and talented experts which is not the case in the model adopted by the U.S.A. or France.

While comparing the French and the American model, the American system would be more suitable having regard to the following:

1. In certain respects the French President has even more powers than his American counterpart. As mentioned above, the French President has the power to dissolve the Parliament which is not the case in the American system. This would have dangerous repercussions.

2. The tenure of French President is for 6 years whereas the American President has a tenure of 4 years. The French President has also no restriction of tenure in that he can be elected any number of times unlike his American counterpart who cannot continue for more than 2 terms i.e. for a maximum period of 8 years.

   There are also provisions in the French system for recourse to referendum in certain specific legislative areas which may not be possible for a large country like ours.
Q. What will be the impact of Presidential system on the Federal character of our Constitution?

A. The system of direct election of executive head at the State level and giving them the security of tenure and the requisite executive authority and freedom will certainly strengthen the federal character of the Constitution. This would stand in sharp contrast to our present system where our Chief Ministers on many occasions have to look to “Delhi Durbar” for guidance and approval even in regard to matters like the confirmation of the ministers in their cabinet. In case they belong to the same party as that of the Prime Minister, they have to perforce remain in the good books of the “Delhi Durbar” all the time, failing which the central leadership would be ever ready to replace them as and when an opportunity arises. In case they belong to the opposition party there are several instances of their being dismissed by the President at an opportune time.

![Pleasing the Delhi Durbar!](image)

The direct election of the Chief Executives at the State level (as is done in the case of the Governors in the U.S.A.) with the full security of tenure and providing them with freedom and authority in the administration of the State (which would automatically include the freedom to select, their team of Ministers and other administrators as per their choice) would prevent the Central leadership (the Prime Minister and the members of his team) from influencing or interfering with the administration of the state. This would enable the States to assert their legitimate rights vis-à-vis the Central Government.
Q. How would you compare the effect of caste, religion and regional factors between the two systems especially as regards the election of Executive heads viz. Mayor at City level (especially major cities) Governor at the State level and President at the National level?

A. All these factors have been playing a dominant role in our present system. Many of the candidates for municipal council or for State Assemblies and even for the Lok Sabha not only get nominated but also get elected because of the influence of the dominant caste or religion in the Constituencies from which the election is contested. We have also seen that persons even with a proven criminal record are able to get elected. Once elected, it is possible under our present system for such persons to play a dominant role because of their ability to manipulate and manoeuvre the legislators and also manage to get elected as Chief Minister or may be, even as the Prime Minister.

As against this, under the Presidential system where the entire city / state / country becomes a single large Constituency for the election of Mayor / Governor / President respectively, the narrow sectarian considerations based on caste, religion or community cannot play a dominant role. The background of prospective candidates will be subjected to a very careful scrutiny by the entire City / State / Nation and such a person has to have a broad outlook and credibility acceptable to the majority of the electorate in such a large constituency to get himself elected. Hence the impact of caste, religion or regional factors will be certainly much less as compared to our present system. As a consequence, the election of such candidates as Executive head at City/State/National level would help the process of national integration also forcing the candidates contesting the elections to rise above the narrow sectarian considerations of caste, religion and community and appeal to the wider common interest of the entire electorate.

It will lead to a scenario where the vote-bank politics resorted to by our politicians based on religion, caste or language will get much less mileage.

Q. Will it not be disastrous if an inefficient person or one with dubious background gets elected as a President (at the national level) or as a Governor (at state level) as it would be difficult to remove him till he completes his tenure?

A. In the first instance, as mentioned earlier, the possibility of an inefficient person or one with dubious background getting
elected as the Chief Minister or even a Prime Minister is much more under our present system than under the Presidential system. Even assuming hypothetically that a person with a dubious background by any remote chance gets elected as Governor or President, then the Senate has all the powers to check him and, if necessary, even to remove him by initiating impeachment proceedings if he is found to be guilty of bribery, treason or high crimes.

Further, as discussed earlier, the authority to confirm all the major appointments including the ministers would vest with the Senate. It may be mentioned that in the case of President Nixon, who was almost sure to be impeached because of his near criminal role in the Watergate scandal, nothing adverse was proved against any of the members of his cabinet. In fact, the performance of his team was as good as that of any other Presidential cabinet.

As regards the inefficiency aspect, it has been found in the U.S.A. that even in such cases, the calibre of the professional cadre of the cabinet members has played an important role to cover up the shortcomings, if any, of the President.

Q. What is the role of judiciary in the Presidential Democracy and how does it compare with our current system?

A. The role of judiciary in a truly democratic system would be to exercise a check both on the executive and the legislature and also to ensure that the fundamental rights guaranteed to the people in the Constitution are zealously safeguarded without any encroachment from the executive or the legislature.

Under the US system, the President has the power to appoint all the Federal judges with the advice and consent of the Senate. However, the judges can be removed only by recourse to impeachment.

Although we have opted for the British system for the functioning of the Government, the practice of judicial review of the Acts passed by the Parliament is similar to that of the American pattern. In England, as the Parliament has been considered ‘supreme’, the Acts passed by the Parliament are not allowed to be challenged in the Courts. Inspite of this, the Courts do have powers to review the Acts passed by the local or lower level legislatures.

The principle of judicial review i.e. the power of Supreme Court to review the laws passed by the legislature or to decide whether any acts performed by the executive are in conformity
with the Constitution, has played a very important role in providing checks and balances in the American political system. In the last 235 years, as many as 80 legislations passed by the Congress have been declared as ‘unconstitutional’ by the Supreme Court, whereas, at the states’ level, the number of such Acts having been declared as unconstitutional has been many more. In fact, during President Roosevelt’s era as many as 11 legislations passed by his government were struck down by the Supreme Court. This was despite the fact that Roosevelt was among the most powerful Presidents.

The 24th Constitution Amendment (passed in 1971) and the 42nd Constitution Amendment (passed in 1976) have been the most controversial of all the amendments. The 24th Constitution Amendment enabled the Parliament to amend any part of the Constitution including the Fundamental Rights. This Amendment sought to introduce an additional provision in the Article 368, viz. “Notwithstanding anything in this Constitution, Parliament may, in the exercise of its constituent power, amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article.”

The 24th Constitutional Amendment was challenged in the famous Kesavananda Bharati V/S. State of Kerala case in the Supreme Court in 1972. Nine of the thirteen judges upheld the Parliament’s right to amend the Constitution but not its basic structure. Later on, during the emergency in 1976, the 42nd Constitution Amendment Act tried to reinstate the supremacy of Parliament. The said amendment of Article 368 virtually granted unrestricted power to Parliament including suppression of fundamental rights. As so amended, the said Article, inter alia, provides that ‘No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this Article (whether before or after the commencement of the 42nd Constitution Amendment Act, 1976) shall be called in question in any court on any ground.’ This 42nd Amendment was repealed by the Janata Government by passing the 43rd and 44th Amendments of the Constitution.

It is an admitted fact that in our country as the executive (Cabinet) forms part of the legislature, on many occasions especially when the ruling party has a large majority, the legislature has not been able to provide a required check on the executive and the people have more often looked to the judiciary to check any excesses committed by the executive and the legislature.

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Q. What are the Judicial Reforms recommended by the Forum?

A. 1. **Appointment of National Judicial Commission**

   The appointment of National Judicial Commission is among the most important judicial reforms suggested. The Commission would consist of persons from the judiciary, the executive and the legislature, and their recommendations with regard to appointment of judges should be made binding on the President and the Chief Justice. The present mechanism for appointment of judges of higher courts has become very dilatory and ineffective. The Supreme Court’s judgment arrogating to itself the complete power of appointment of judges has made the remedy worse than the disease. The Commission should also be empowered to try an errant judge and upon its recommendation, the President should be empowered to remove the judge held guilty of high crimes and misdemeanor.

   Presently, without the prior approval of Chief Justice of Supreme Court of India, no FIR can be registered nor any criminal investigation can be initiated against the judge. Once appointed, High Court or Supreme Court judge cannot be removed except by a complicated impeachment process by members of Lok Sabha and Rajya Sabha. Even in Justice V. Ramaswami case in 1990s when there was a clear evidence against him, the Congress members had preferred to abstain from voting when the motion was moved for his impeachment.

2. **Expediting the justice**

   The huge number of backlog of court cases and the abnormal delay has led to a situation where the very faith of people in judiciary system is shaken. Presently, the number of judges are extremely inadequate to clear the huge backlog of court cases. The Supreme Court judgment of April 2002 has directed the Govt. to increase the judges strength from 10.5 judges per million population to 50 judges per million people but it is yet to be implemented. It may be mentioned that the number in UK is 51, in Canada it is 75 and in U.S.A. it is 107 for one million population. It is also necessary to increase the number of working days of our Courts (as per the Supreme Court’s calendar for 2007, out of 365 days a year, there were only 176 working days) and we
must have two shifts in Court as an immediate measure to reduce the backlog. The 125th Law Commission Report has also recommended this measure.

Q. How do we prevent the criminals from joining the politics and becoming members of legislature?1

A. In the 2009 election, 128 of the 543 MPs elected faced criminal charges including 84 for murder and extortion. One MP faced 17 murder charges. No party is clean – all have criminals in their list. The reason why they are given tickets inspite of their criminal record is because of the ability of these candidates to raise money, muscle power and have network of patronage and every party has found it useful in winning the elections. The criminals themselves are also keen to contest the election and get elected as it is possible for them upon being elected to influence the government machinery including police and use their clout to delay, tone down and brow beat the witnesses and ultimately succeed to have the cases dismissed against them and thereby thwart subversion of justice.

While we need judicial reforms which may take its own time to be implemented, a Law mandating that all pending criminal cases against MPs, MLAs and Municipal Councillors ought to be given top priority for speedy disposal. Under such a law these cases must be heard on a day to day basis until they are completed.

Such a provision will go a long way in ensuring that such candidates with criminal record will be refrained from contesting the elections as they would not like their cases to be on ‘priority trials’ unless they are wrongly framed. Such a reform will help to check the existing perverse intentions of these politicians and end the outrageous situation where such criminals are tempted to join politics to escape their criminal activities. They even manage to become cabinet ministers or occupy important positions in political parties in the absence of the speedier disposal of their criminal cases.

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1 Based on an article by Swaminathan Ankleshwar Iyer Times of India (Sunday Edition) dtd. January 9, 2011.
Chapter 6

CORRUPTION

Q. Corruption has been among our biggest problems. It is increasing by leaps and bounds. In fact, the very faith of the people has been completely shaken in the political system on account of such mind-boggling scams as Spectrum 2G, Common Wealth Games, Land and Mining scandals etc. How does the Presidential democracy compare with our present system in this regards?

A. While no system can be fool-proof vis-à-vis corruption, the chances of corruption are minimized under the Presidential system for the following reasons:

1. A lot more scrutiny is carried out for the post of ministers and other top administrators as adopted in the USA before their appointment is finalised. The integrity and honesty of the ministers and other top administrators to be appointed is thoroughly investigated beforehand and the President (at National level) or the Governor (at State level) need not have to induct a controversial person with a dubious record in the cabinet simply because of his clout in the party. As mentioned earlier, various agencies including the concerned committee of the Senate, the F.B.I., and, of course, the media play an active role in the scrutiny of the prospective candidates.
2. In such a system, the Executive Head of the Government (President at National level or the Governor at State level) has all the freedom to institute an enquiry into the charges of corruption against his cabinet members as and when necessary as he would not have any fear of causing any damage to his own security of tenure. Under our present system on most occasions the Prime Minister / the Chief Minister is unwilling to set up such an enquiry against the corrupt minister lest it may displease the legislators, who are owing allegiance to or are under the influence of the concerned corrupt minister. In case of coalition government (which is now almost a norm at the centre and most of the states) it is virtually impossible to initiate any action against the concerned minister/s nominated by the party/parties forming a coalition as the very survival of the government would be at stake. Besides unlike our scenario the Members of Congress in the USA have no axe to grind in exposing the corrupt ministers as they do not form a part of the cabinet and there is no nexus between the two\(^1\). Even Senators from President’s own party are not reluctant to expose the corrupt minister unlike in our system where the ruling party has always shown a tendency to drag on the ministerial scandals for the reasons best known to all of us.

A survey of enquiries held in our country in the last 60 years shows that it was only when the public outcry was too loud and irrepressible that the enquiries were instituted by the Prime Minister or the Chief Ministers concerned against the Ministers of their own party and even in such cases the Prime Minister or the Chief Ministers concerned conducted themselves in a highly partisan manner. In almost all the cases – right from the “Jeeps Scandal” way back in 1948 (in which V.K. Krishna Menon was involved) till the latest Spectrum 2G and Karnataka land-mines scandals, the government in power has been reluctant to institute enquiries against delinquent ministers. In many cases, it was only when the opposition had come to power or Supreme Court gave directions that the enquiries were set in motion.

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\(^1\) Late Shri Chimanbhai Mehta, a veteran politician & former Union Cabinet Minister (1989-90) who had taken active part in initiating campaign against corruption in nineties had come to a firm conclusion that a truly democratic Presidential system wherein ministers will be inducted from outside the parliament will be lot more effective in combating corruption than our present political system.
I am more honest than you are. There are eight corruption charges against you and only six against me!

In the last 20 years, we have witnessed an era of hung parliaments, unstable governments and unprincipled coalitions among the political parties merely to share the spoils of power. As mentioned earlier, during this period, we have had as many as 7 Lok Sabha elections including 3 mid-term elections and 10 Prime Ministers heading coalition of several parties. While the corruption had always been an issue, the ministerial level corruption has now reached a scandalous proportion and sky seems to be the limit. In fact what we have witnessed in the coalition politics is virtual loot of the country as a price to support the government as is evident from the 2G Spectrum scam. It has vitiated the entire culture of the country and has adversely affected the morale of the entire administration. As the famous Sanskrit proverb says, ‘Yatha Raja Tatha Praja’ (As is the King, so are the People). Corruption, if it seeps from the top, rapidly contaminates the lower layers of social and political life; and that is why we find it corroding and eating into the vitals of almost every phase of our social and political structure.

The Dubious Role of the CBI (Central Bureau of Investigation)

CBI, the apex investigating agency set up under Home Ministry and having its motto as Industry, Impartiality and Integrity has now been blatanty politicized and has virtually become a tool in the hands of the ruling party at the Centre. Almost in all cases where politicians or their close associates from the ruling party have been involved, it has acted at the whims of the forces at the centre. The autonomous character remaining only on paper.
To cite few examples the agency gave a clean chit to Congress politician Jagdish Tytler in the 1984 anti-sikh riots case and withdrew a red-corner notice against Bofors scandal accused Ottavio Quattrocchi. It abandoned years of enquiry and allowed the United Progressive Alliance government to manipulate it to favour railway minister Laloo Prasad and wife Rabri Devi in a case of disproportionate assets. It was told by the Supreme Court in March 2007 to probe an allegation of disproportionate assets of Mulayam Singh Yadav. In October, it claimed to have sufficient evidence to book him but in July 2008 the agency changed its stance after the turn of events in Parliament when the Left Parties withdrew support over the nuclear deal. The Samajwadi Party led by Mulayam Singh supported the congress in winning over the ‘No Confidence’ motion on the Civil Nuclear deal. Soon after on December 5, 2008 the agency moved the Supreme Court to withdraw the application to register a case against Yadav. Although the flip flop drew adverse remarks from Justice Altamas Kabir and Justice Cyriac Joseph who remarked that the agency was not acting independently but was acting on behalf of the Central Government. As things turned sour before the Lok Sabha elections of 2009 between the Congress and Mulayam Singh regarding distribution of seats in U.P. the agency made another ‘U’ turn stating that “it stands by its recommendation of October 2007 that a disproportionate assets case is made out against Mulayam”\textsuperscript{1,2} virtually making a laughing stock of itself.

Lokpal Bill

The rampant and widespread corruption which has led to mind-boggling scams such as Spectrum 2G, Commonwealth Games and several others followed by Anna ji’s crusade against corruption has provided the necessary spark for a fire which was waiting to be ignited. After having been stalled for 60 years, the government is now under tremendous pressure for enactment of Lokpal Bill under which Lokpal an independent authority will be fully empowered to initiate investigation and prosecution against any bureaucrat or legislator including all Ministers, Chief Ministers and Prime Minister for corruption charges without any interference or requirement of any sanction

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\textsuperscript{1} Source: DNA Newspaper dated May 4, 2009 with inputs by the author.

\textsuperscript{2} The way it has functioned in many such cases it has been nicknamed, ‘Collaborating (with the ruling party) Bureau of Investigations’.
from the government. This also includes the provision to have CBI or CVC merge with the Lokpal. It is also insisted to include all the categories of public servants including the lowest level. The higher judiciary is also proposed to be included within its purview.

It is a common perception that under our present system whenever there is any corruption scam involving politicians, all the enquiries and investigations appear to be a mere eye wash. This has led to complete loss of faith of the people in the present system. Under the circumstances, the appointment of Lokpal, as an independent authority, with requisite powers will certainly be a welcome relief. However, in the euphoria generated following Annaji’s relentless campaign and the fast undertaken by him, we must not forget that the appointment of Lokpal cannot be the panacea for eradicating corruption. The most effective and the logical way to eradicate/minimize corruption would be to have a revamp of the system which would ensure appointment of honest and capable people at top level i.e. at Ministerial level in the first place with in-built checks and balances in the system itself and Lokpal should only be an additional check and balance mechanism as a final recourse.

The demand of merging CBI and CVC into Lokpal will tremendously include the workload of Lokpal. It would be advisable to have CBI or CVC under the purview of Lokpal rather than merging with the Lokpal. As regards investigation against public servant is concerned, it would be appropriate to have Deputy Secretary and higher category Officers covered under Lokpal Bill rather than include all categories. Regarding demand to bring higher judiciary under the Lokpal, it is suggested to have National Judicial Commission empowered to try an errant judge (see Chapter 5 ‘Checks and Balances’ - Judicial Reforms) rather than putting judiciary under the Lokpal.

One of the major sources of corruption is Election Campaign Finance and it is suggested to provide State Contribution/Funding to recognized political parties towards election expenses as implemented in several counties to minimize this evil (see Chapter 8 ‘Electoral Reforms’ where this topic is discussed).

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1 An honest bureaucrat or a politician is almost becoming an extinct species. In a scenario such as this which may involve almost entire bureaucracy and majority of M.P.s., M.L.A.s and Ministers to establish an administrative cum legal set-up for investigation & prosecution would be a colossal task and difficult to manage.
Chapter 7

PROMOTION OF LEADERSHIP QUALITIES

Q. What will be the effect of the Presidential democracy in promoting the leadership qualities?

A. One important aspect of the Presidential system which needs to be stressed is its healthy and beneficial effect on the promotion of leadership qualities as a whole. It has been emphasized time and again that the quality of leadership in our country has been steadily deteriorating. Isn’t it a bit surprising and intriguing to find that a country which could produce in the pre-Independence era a galaxy of such dedicated, sincere and highly respected leaders as Dadabhoy Naoroji, Mahatma Gandhi, Sardar Patel, Subhash Chandra Bose, Jawaharlal Nehru, Lala Lajpat Rai, Lokmanya Tilak, Gopalkrishna Gokhale, Jayprakash Narayan, Rajaji and several others, has been bereft of leadership of matching calibre in the present times? This is despite the fact that we have achieved a higher percentage of literacy and the Press and other media have become much more powerful while we have also a large educated electorate, as compared to the position in the pre-Independence era.

It may be argued that in the pre-Independence days, there was a general spirit of patriotism and we were fighting a common, alien enemy, which is not the situation now. While this argument can hold ground to some extent, it cannot provide the full answer.

City Level

Under our current system, Mayors of our large cities mainly act as mere show-pieces not having the requisite executive authority and any wider popular backing. In fact, on most occasions, citizens in our large metropolitan cities are not even familiar with the names of the mayors elected.

The direct election of a mayor for a fixed tenure and providing him with wide executive powers (with the necessary checks and balances exercised by the municipal councillors) would go a long way in attracting better personalities for the elective office as is the case in several cities in the U.S.A. In the process, such a system is apt to bring about a better calibre of leadership which would, in due course of time, be groomed for higher responsible elective positions.
The Mayor – A Mere show Piece!

In Germany also, the Mayor, who is the effective head, is elected directly by the people. For this purpose, the citizens have two votes, one for the election of the Mayor and the other for the election of the members of the city parliament.
In a semi-literate country like India, the large metropolitan cities consisting of better educated and enlightened citizens are likely to provide appropriate environment for promoting higher caliber of leadership. However, our present system of functioning of municipal bodies, which provides for the election of mere show-piece mayors for a short period without any real executive powers, does not create the conducive environment for the development of effective leadership qualities. Even a leading metropolitan city like ‘Mumbai’ having a population of over fourteen million cannot boast of a single person with a mass backing. Thus, apart from other factors, our present system of local administration has played its contributory role in creating such a pathetic scenario.

State level

Because of the security of their tenure and the scope provided by the system to enable them to assert their rights effectively, the Governors at the State level in the Presidential System are also able to develop their own personalities without any fear or pressure from the President or other federal leaders. In sharp contrast to the above, our Chief Ministers very often fail to promote a strong middle-level leadership because of the drawbacks of the system. More often, they are busy struggling for their very survival and are under the constant threat either from the influential rivals from within their own party or the members of the opposition if the ruling party or the coalition to which they belong has only a slender majority. In case they belong to the same party as that of the Prime Minister, they have to perforce remain in the good books of the “Delhi Durbar” all the time, failing which the central leadership would be ever ready to replace them as and when an opportunity arises.

Effect of Fixed Tenure

The effect of fixing a maximum ceiling on the tenure in the case of the directly elected Chief Executive not exceeding two terms has also a beneficial effect on the promotion of leadership qualities for the party as well as the nation. As mentioned in chapter 6 on Checks and Balances, the President under the U.S. Constitution is allowed to hold office for a maximum period of two terms. (In some of the states in the U.S.A., this stipulation also applies to the election of governors).
Looking to Delhi Durbar for Survival!

This provision implies that the nation prepares itself well in advance to face the situation when the President would be due to complete his second term. At times, the retiring President himself plays a constructive role and lends his active and moral support in favour of grooming the prospective presidential candidate.

As against this, under our current set up, the Prime Minister or the Chief Minister can continue to hold office for an indefinite period. There is, therefore, little interest shown by the people or the ruling party or the incumbent Prime Minister/Chief Minister himself in looking for any fresh talent or blood to replace them. On the contrary, they are prone (consciously or subconsciously) to discourage smooth selection of their successor, with a view to eliminating the potential rivals in order to safeguard his own position so as to facilitate his stay in power as long as possible.
Q. How are the candidates selected for elective offices under the Presidential system and how does the process compare with that of our present system?

A. A disturbing feature of our present political system is the selection process for party candidates for elective offices. The popular parties and especially the one in power, are usually flooded with applications for tickets for contesting the elections. Currently, there are no norms required to be followed by any of these parties in the matter of nomination of candidates. The selection of candidates is decided practically at the whims and fancies of the party bosses. It is a known fact that the party leaders themselves are keen to get their own nominees selected so as to strengthen their hold on the legislature and consequently, their own power base. It has been observed that many a time, the selection of candidates itself has been one of the focal points for a rift among the party leaders. The candidates are also prone to use all sorts of means to impress and influence the party leadership in favouring their own selection.

In such a scenario it is usual to find that many deserving candidates are left out of reckoning in favour of non-deserving but influential candidates whose main merit for selection is the support they enjoy with their party bosses or their ability to raise resources for the party by any means, fair or foul. Many a time, the aspiring candidates, who are left out of the selection, stand for the election independently or they may even launch a new party on their own. These rebels, if elected, become the chief pawns in the game of defections and the toppling of governments. They are out to settle old scores with leaders who denied them a ticket. In case of a defeat, they are likely to join the opposition in anticipation of their being expelled from their own party.

In the USA, in order to avoid the above arbitrary and irrational method of selection of candidates, a system known as the ‘primary’ system of elections has been adopted. The basic principle underlying the system is the intention to provide for utmost participation of the people in the selection process. If
we hold that the democracy is a system ‘of the people, for the people and by the people’, then there is no other way to make it really democratic than by providing an opportunity to the very people to participate in the process of selection of the candidates. The party candidates are nominated on the basis of the popular votes secured by them. These elections called the ‘Primaries’ are held to ascertain the popularity of the candidates.

It was the desire to free the voter from the domination of corrupt party bosses that had led to the Primaries becoming a popular mode of selection. There are various forms of Primaries in the USA. They are customarily classified as open, closed or blanket Primaries. A closed Primary is supposed to exclude all the voters who are not adherents of the given party. Under this system, one must declare several weeks in advance, that one is a registered member of the political party in whose Primary one wishes to vote. About forty States have closed Primaries. In an open Primary, any registered voter can participate and the voter’s choice of ballot is neither known nor recorded. Under this system, one can decide when one enters the voting booth on the election day as to in which party’s Primary one wishes to participate. While one is given every party’s Primary ballot, only one vote can be exercised.

In the blanket Primary (used only in Washington and Alaska), the voter may choose office by office, which party’s primary he or she votes in. Thus, in the voting booth, the voter marks a ballot that contains the names of candidates for nomination of all the parties.
The ballot in the Primary is printed at the State expense. It carries the names of all those who have been properly entered as candidates. It is administered by persons, who are sworn to conduct the election according to law. Government funds pay the cost of administering the primary elections. As in the case of general elections, the voting is secret. While the choice of the party is secret, every party is open to each voter. Thus, the ‘Primary’ is almost a mini-election.

Q. State contribution/funding to recognize political parties towards election campaign expenses have been suggested as one of the major electoral reforms. It has also been implemented in many countries. What are Forum’s views in this regards?

A. Election Campaign Finance:

This has been one of the biggest sources of corruption. The Forum strongly suggests State funding in a regulated manner. The principle of state support/funding has been implemented in many democratic countries such as Germany, Australia, Canada, U.S.A etc. This prevents the reliance of the political parties / contestants to lean heavily on the wealthy donors and interest groups, for providing the necessary financial support, howsoever dubious and suspect the sources of money may be. This reliance on ‘fat cats’ regardless of the genre they belong to i.e. whether they wear the respectability garb of businessmen, industrialists or criminals and anti-social elements for financial support has the effect of grossly corrupting the election process.

Reliance on fat cats!

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The wealthy donors and special interest groups are ever willing to provide the necessary financial assistance to those promising candidates, who, they feel, would be agreeable to espouse their self-serving causes on being elected. The acceptance of the large amounts of money from such sources inevitably results in the political parties and candidates becoming obliged to them to the detriment of the larger national interests. Among all, the German example seems to be an ideal one. The law on election funding provides for reimbursement of election expenses by the state in a regulated manner to political parties. An amount of Euro 0.85 (Rs.56.00) per valid vote up to a limit of 4 Million votes and Euro 0.70 (Rs.46.00) is earmarked for every additional vote for each person entitled to vote.” This amount is distributed in proportion to the number of votes obtained by the parties in the previous elections. A minimum of 5% of votes is required by the parties for being eligible for this funding.

U.S. example:¹

In the US Presidential elections, the nominees of major parties (those that have received 25% or more of popular votes in the preceding Presidential election) are eligible to receive full public funds to finance their election campaigns. In 2004 elections, this figure amounted to $ 74.6 million for the funds of each of the two candidates of major parties. Candidates of minor parties (those receiving between 5 per cent and 25 per cent of the votes in the previous election) are also eligible to receive partial public financing. Further, candidates of parties which are ineligible to receive public financing on the basis of votes received by them in previous elections can be atleast partially be reimbursed after the current election if they receive atleast 5 per cent of the votes in the current election in question. The availability of public funds enable the candidates to present themselves and their policies to the electorate so as to make the elections more competitive. It will also minimize the need for donation from wealthy donors and interest groups, which constitute a fertile source of corruption in the body politic.

General election candidates, who accept public financing, may not accept private contributions to further their election campaigns, although they may accept private contributions up to

¹ Wikipedia, the free encyclopedia on the Website.
the specified limits, in order to help them defray the costs of complying with the election laws.

It may be mentioned that presently under MPLADS (Member of Parliament Local Area Development Scheme) funding in our country, each M.P. (both Lok Sabha & Rajya Sabha) has been provided a funding of Rupees Five Crores per annum to be spent in his constituency as per his discretion. This amount is grossly misused. Based on the total strength of 543 MPs for Lok Sabha and 240 MPs for Rajya Sabha, it works out to a total of Rs.20775 crores. This huge amount can as well be utilised for contribution as state funding to recognized political parties subject to these political parties being regulated by enactment of a suitable Law as mentioned. The average contribution of state funding per Lok Sabha seat will work out to Rs. 38.25 crores adequate by any standards to take care of legitimate election campaign expenses for all recognized political parties. This amount can be divided between State Legislative elections and Lok Sabha elections. Part of it could also be apportioned for meeting expenses to be incurred by the State for holding primary elections for nomination of candidates by the parties.

Q. One of the major electoral reforms being discussed is the system of Proportional Representation. What is Forum's stand on this?

A. Many European countries including our neighbour Sri Lanka have adopted the system of Proportional Representation to avoid the distortion of results witnessed in the 'first past the post system' prevalent in our country. On most occasions our present system does not truly reflect the popularity enjoyed by the political parties and on several occasions the seats secured by the parties are widely disproportionate to the percentage of votes.

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1 It may be mentioned that apart from MPLADS funding, there is also MLALAD (MLA Local Area Development) funding available in most of the States. Even this funding is also mis-used and the amount disbursed is Rupees One Crore per annum per constituency.

2 In view of its gross misuse, L.K. Advani while he was leader of Opposition had himself made this suggestion for utilization of this fund towards the state funding of elections in 2005. Apart from Advani, Second Administrative Reforms Commission and also CAGE in its report in August 2010, National Commission for Constitutional Reforms and prominent political leaders including Sonia Gandhi have all strongly mentioned about abolishing this scheme in view of gross misappropriation of the funds.
votes polled by them. The most striking example of this distortion was witnessed in 1991 Tamilnadu Assembly elections when AIDMK secured 44.4 votes but managed to get 163 seats out of total of 232 seats i.e. 70.2%. As against this, DMK could win only one seat though it secured 21.4 percent votes. At national level, in 1984 elections (following Indira Gandhi’s assassination) the Congress Party led by Rajiv Gandhi managed to secure 401 seats out of 508 contested by them i.e. 79% against 49.2% votes cast in their favour. Many such examples can be cited of gross vote seat distortion.

However, allocating the seats purely on the basis of percentage of votes polled by the parties may lead to a situation wherein many of the constituencies may not have a direct representative in the legislature. In order to avoid this situation and also remove the anomaly as witnessed in our present system, the introduction of mixed proportional representation as adopted in Germany is recommended. Such a system would entitle a voter two votes, one for the choice of the party and the second part for the individual candidates. (Many times, voters find the individual candidates of a particular party has better credentials whereas they may prefer to choose different party for ideological reasons). In such a system 50% of the seats in legislature are apportioned to the parties based on percentage of votes polled by them and remaining 50% are allocated for individual candidates based on highest number of votes polled by the candidate as per our present system. Such a system would also prevent distortion to a large extent in the end-results.

Inequitable relationship between the party’s share of votes and the share of seats!

(52)
of the polls as reflected in our present system. This would also result in all constituencies being represented in the legislature. We can consider Rajya Sabha members being nominated by the Parties based on the percentage of votes polled by them in the State elections. It is necessary to have the list of candidates published by the party before the elections in order of preference for being eligible under percentage quota. This will also enable the electorate to judge the merits of candidates proposed by the party for nomination beforehand. It will also enable the top party leaders to be nominated directly and thus provide an opportunity to have a wider perspective as they will not represent a particular constituency.

Q. What other changes the Forum suggest in the US model to suit our country?

A. In the U.S.A. the ministers are not allowed to attend the Parliament. We can allow the ministers to attend both the houses and allow them to be heard at their request as permitted in the French system of Presidential democracy. We can restrict question-answer session to be taken up by the M.P.s in the relevant committee meetings where the concerned minister may be allowed to remain present if necessary. (Our present system of having question-answer session open for all members of Parliament results in so much wastage of time of entire parliament). (Every minute of time wasted in the Parliament costs the nation a staggering Rs.26035/- per minute)\(^1\).

We must also include the Law on Political Parties which is an important electoral reform. In this connection, a study of the position prevailing in the various democratic countries reveals that the "Law on Political Parties" enacted by the Federal Republic of Germany in July, 1967 contains many noteworthy provisions aimed at regulating the conduct of political parties in that country. The law makes all political parties accountable for source of funds and assets and mandatory to publish audited accounts every year. It also ensures among other things that the internal organization of party must confirm to democratic principles. Presently, we do not have any legal provisions casting any obligation on the political parties to render public account of the origin of the funds received by them from diverse sources, as a result of which lot of corrupt practices and abuse of money have crept in the functioning of the political parties.

\(^1\) Based on Citizens Report on Government & Development 2008.
Q. What is the stand of major political parties as regards the Presidential system of democracy?

A. L.K. Advani the Senior leader of BJP has spoken strongly in favour of a change of system from the Parliamentary system of Govt. to the Presidential democracy. Atal Bihari Vajpayee (when he was the Prime Minister) had also spoken about urgent need of a national debate on the subject. (This was during his second tenure as Prime Minister when his government was constantly under the threat of being toppled). Even Ex-Chief Minister of Karnataka, Hegde had also strongly spoken in favour of Presidential system of democracy. It may be mentioned that none of these political leaders have clarified the exact model of Presidential system they were contemplating and have till now put any serious efforts for bringing about any change in the present political system. During Indira Gandhi’s regime, Antulay and Vasant Sathe who were among some of her ardent supporters had strongly advocated Presidential System. However, a study of Antulay’s utterances creates doubts as to whether he was in favour of a genuine presidential system of democracy. In an interview given to Fatima Zakaria of the Times of India on November 16, 1980 while he was the Chief Minister of Maharashtra, he has mentioned, “For instance, if the President is elected as the supreme executive of the nation and he wants to do certain things, he should be in a position to do so and should not be allowed to be voted down by a Senate or a Congress”. Such a model would fail to provide required check on the President from the legislature. It must also be clarified that a Presidential democracy without separation of cabinet and legislature will not be a desirable model as it cannot provide the required checks and balances.

Q. How will the change of system in favour of Presidential Democracy affect the common man?

A. As mentioned above, the Sanskrit adage says, "As is the King, so are the people" (Yatha Raja Tatha Praja). The Chief Executive and his cabinet in democracy take the place of the King and his team. The country’s lot depends a great deal on
the calibre of the rulers and their performance. If the rulers are inefficient or corrupt and not able to perform, it would adversely affect the morale and quality of life of all the citizens and the progress of the country would suffer. The present system has also undoubtedly deprived the nation of services of talented people to participate in decision making process at highest level living it to the whims and fancies of the politicians. The rampant corruption at highest level among politicians has had a cascading effect on entire administration. Large majority of bureaucrats are even ready and willing to oblige the politicians and in the process it is the common man who is the sufferer. The people always look to the character and integrity of the rulers as this generally sets the example for all others to follow. Over a period of time, the change of system is bound to show a substantial and qualitative change in the governance also minimizing the scope for corruption.

Q. How will it be possible to bring about the required change from the present Parliamentary System to the Presidential form of government?

A. It would be possible to bring about such a change by means of a valid amendment to the Article 368 of the Constitution under category two which would require two-thirds majority of the members of Parliament since it does not involve any alteration to the basic structure of the Constitution as regards the guarantee to the fundamental rights and the independence of the judiciary. However, we must accept the fact that any such attempt would be staunchly resisted by our present politicians who have developed a vested interest in the continuance of the present system. The proposed alternative of a presidential democracy with separation of cabinet from the legislature would deprive them of coveted ministerial berths and other offices of profit to which they have been accustomed.

To bring about the required change would need massive awareness campaign to convince all sections of society that a truly democratic presidential system with necessary checks and balances is in the best interest of the country.

Q. Is it necessary to have a registered political party to achieve the goal?

A. 1. The author along with Shri Chimanbhai Mehta and others had founded an NGO ‘National Forum For Presidential Democracy’ in late 90s. Over a period of time, it was felt that
unless a nationwide mass awareness campaign is launched, it will be difficult to bring out the required change. Having a political party with the manifesto for a truly democratic Presidential System will ultimately lead to building up an organization with an established identity.

2. For a Political Party registered u/s. 29 A of the Representation of the Peoples Act 1951, Individual / Company donations are fully exempted u/s. 80 GGC of I.T. Act and u/s. 80 GGB of I.T. Act. respectively. This would enable to mobilize the required funds necessary for a nation wide mass campaign.

3. The membership of a party gives commitment to an individual to work for a cause.

4. The following chart will show as to how by joining hands and even with small commitment the movement can grow exponentially. Starting from a base of 500 Active members and with commitment from each Active member to enroll 10 Primary members and 2 Active members every 12 months in a 3 year period, the Membership of the Party could grow as under :-

<table>
<thead>
<tr>
<th>Period</th>
<th>Active</th>
<th>Primary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 year</td>
<td>1500</td>
<td>15000</td>
</tr>
<tr>
<td>2 years</td>
<td>4500</td>
<td>45000</td>
</tr>
<tr>
<td>3 years</td>
<td>13500</td>
<td>135000</td>
</tr>
</tbody>
</table>

If we are able to launch a movement in all major cities with a population of over one million, we can end up with a wide base which can pose a challenge to all political parties to consider our agenda seriously and it would be possible to face the elections also in due course.

Q. What is the future action plan of Forum?

A. The Forum aims to launch a massive awareness campaign about the necessity of a truly democratic presidential system of democracy in the best interest of the country simultaneously followed by enrollment of as many active & primary members as possible. The immediate target would be to enroll atleast 1% of the registered voters as Primary Members in as many Lok Sabha constituencies as possible. When this target is achieved, the members of the concerned constituencies will be encouraged to nominate a candidate for election to Lok Sabha or State Legislative Assembly.
The Model of Presidential Democracy as favoured by the Forum

i) Direct election of the Executive Head of the Govt. by the people at the National and State levels including major metropolitan cities (known as the President, the Governor and the Mayor, respectively).

ii) Providing for a fixed tenure of the Executive Head of the Govt. so that they are not dependant on the mercy of legislators for their survival.

iii) Separation of Executive (i.e. Cabinet) from the Legislature so as to provide an opportunity for the Executive Head to select the best available talent as members of his team.

iv) Introduction of adequate checks and balances between the Executive, Legislature and Judiciary. Judiciary to have full power to review any legislation which would affect the fundamental rights of the people. In order to prevent criminals from entering the legislature, the pending criminal cases against the legislators to be run on day to day basis.

v) No Executive Head of the Govt. whether at State or Central Govt. to remain in Office for more than two terms.

vi) Introduction of a legislative system whereby legislators will have full freedom to vote according to their judgment irrespective of the party line and the establishment of a strong committee system whereby any proposed legislation shall be analysed in an impartial and professional manner.

vii) Primary system for nomination of candidates wherein the members of the party will elect the candidates in a secret ballot (wherein the party-bosses will have no role to play for nomination).

viii) Providing state funding in a regulated manner to the parties so as to minimize / eliminate their dependency on other private sources.

ix) Implementation of Mixed Proportional Representation for Legislature. (To allot 50% of seats in the Legislature as per our current ‘first past the post’ and balance 50% to the parties based on percentage of votes polled by them. The ballot paper to consist of 2 parts, one for the choice of candidate and one for the choice of party.

x) Enactment of Law on Regulation of Political Parties making all political parties accountable for source of funds and assets and mandatory to publish audited accounts every year and also to ensure democratic working of the Party.

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Questionnaire

1. Do you agree with the conclusion contained in the book that the parliamentary system of Government as practiced in our country has failed to provide good governance leading to rampant and widespread corruption and a truly democratic presidential system will be a better alternative?
Yes [ ] No [ ]

2. Do you agree that to bring about the required change will need massive awareness at all levels and a political party with the manifesto to change the system will be helpful in the long run?
Yes [ ] No [ ]

3. Have you any additional / alternative suggestions to make in the matter of building up a national consensus in favour of evolving a truly democratic presidential system?

4. Would you like to send this book to your friends, relatives and business associates?
Yes [ ] No [ ]

Signature of the Reader

Date

Name …………………………………………………………………………
Profession ………………………………………………………………….
Address ……………………………………………………………………
………………………………………………………………………………
Pin Code …………………………………………………………………
Tel Nos: Landline ………………… Mobile ………………… …………
Email Id……………………………………………………………………

I am sending herewith a sum of Rs._________/- to cover the cost of ______ copies* of the book along with the list of addresses for mailing. (We shall insert your name in every copy mailed on your behalf).

* @ Rs. ________/- per copy including mailing charges.
“The tyranny of a Prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy”.

Montesquieu
Well-known French Thinker & Jurist (1689 - 1755)

“A bad government is the inevitable consequence of an indifferent electorate. Politics will never be cleaner, and our economic future will never be brighter, unless and until our citizens are willing to give of themselves to the land which gave them birth”.

N.A. Palkhivala
Eminent Jurist
MEMBERSHIP FORM

I/We Mr./Ms./M/s. ____________________________________
endorse the aims and objects of the Forum For Presidential Democracy (FFPD) and want to join the FFPD as Primary/Active Member. Kindly enroll me as the member of FFPD, accordingly.

Applicant's Name (in full): _____________________________
Date of Birth : __________________
Educational Background : _____________________________
Occupation : ________________________________________
Mailing Address : ____________________________________
_____________________________________________________________________
Tel. : Office : _________________ Res. : _________________
Fax : ______________       Email : ______________________

I am sending herewith by cash/demand draft/M.O./Cheque* a sum of Rs._______ of which Rs.150/- / Rs.300/- membership fee respectively for a 3 year period for Primary / Active Membership and the rest as donation to the Forum.

Would you be willing to offer the benefit of your voluntary services to the Forum ?  Yes  No

If yes, in which specific area(s), you would like to offer such services?
€ Organizational work € Awareness Campaigns
€ Resource Mobilisation € Membership Drive   € Any other

SIGNATURE OF THE MEMBER

You can also register your membership & send donation online.

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Selected Extracts

Corruption
- Corruption if not checked has cancerous growth.
- Politicians will have hundred excuses to support their corrupt practices.
- To check corruption honour the honest and the forthright.
- Tolerating corruption is a sure sign of degeneration of a society.
- System of checks & balances is pre-requisite to control corruption.
- Corruption can never be eliminated but can be minimized.

Democracy
- Man’s capacity for justice makes democracy possible; but man’s inclination to injustice makes democracy necessary.
- Success of democracy depends on checks and balances.
- The corruption and incapacity of bureaucrats and deficiencies, mediocrity and mistakes of politicians often lead to loss of people’s faith in democracy.
- Legislative, executive and judiciary are the three main pillars of a democracy.
- Corrupt judiciary is the last straw for a democracy.
- Independent judiciary is the watchdog of a democracy.

Our Present State of Democracy
- A functional anarchy.
- It has provided an opportunity to self-seeking politicians ‘to exploit the masses’ for their personal interests.
- It is said that Democracy is of the people, for the people, by the people. The word people has been replaced by the politicians.

Dictatorship
- Dictatorship means power without checks.
- The cause of the emergence of dictatorship is many a times disillusionment of people with the unsatisfactory functioning of democracy.
- Dictatorship breeds stooges who are too eager to share the spoils of power with the dictator.
- Remedy worse than the disease.

Politics
- Politics is a dirty game but it can be cleansed only by participation of clean and honest people.
- If intelligent and talented people enter politics without a vested interest, the destiny of a nation can change for the better.

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1 Source: ‘Quest For A Better Democratic Alternative’ by the author
2 Reinhold Niebuhr (1892 – 1971) a noted American Theologian with deep political insight
Suggested book for further reading

“Quest For A Better Democratic Alternative”

pp - 232   Rs. 125/-

“It is a thought-provoking publication written in a simple and easy to understand language and the apt illustrations add a touch of humour”.

- Late Shri Nani A. Palkhivala
  Eminent Jurist and Former Ambassador of India to U.S.A.

“I did find it interesting, informative and quite provocative”.

- Dr. Fredie A. Mehta
  Director, Tata Sons Ltd., Bombay

“Undoubtedly, the issues facing our country and the author’s thought-provoking analysis will be a great help to eradicate the malady which has taken deep roots in the country”.

- Late Shri Chandra Shekhar
  Ex-Prime Minister, Govt. of India

“I have found the book to be highly educative on many of the major questions that are of concern to us presently”.

- Shri M.G.K. Menon
  Member of Parliament (Rajya Sabha)

“In your masterly analyses, you have diagnosed the problem with a rare courage and suggested ways and means to plug the loopholes for making our institution stronger. I wish that the book should start debates and discussions amongst the intellectuals and ultimately pave the way for improving our ailing system. The humorous sketches enhance the impact of your persuasive discussion”.

- Shri Y.P. Trivedi
  Noted Advocate & Member of Parliament
  (Rajya Sabha)

“Shri Mehta has written the book after a deep and thorough study of the subject having thoroughly analysed the issue from all angles”…..

“Shri Mehta’s intense feeling in the matter is worth emulating by others”.

- Loksatta
  (Express Group)
“Presidential System A Better Alternative?”

By Jashwant B. Mehta

“I am happy to find in your book such well documented and argued support for a proposal which I advocated for many years”.

Late Shri J.R.D. Tata

“Mehta’s line of argument may create a stir, if ever a good book as this can do the trick among the professional politicians. More so for Vasant Halbe’s illustrations drawn in lighter vein on recent developments, which makes the book all the more lively and interesting”.

Amrit Bazar Patrika, Calcutta

“The author makes out a cogent and lucid case in favour of the Presidential System for India….Mr. Vasant Halbe’s acerbic and pungent cartoons the foibles and frailties of our politicians who are running after power. They are incisive and devastating.

Moderately priced and elegantly produced, the book could as well serve as the pad for the public debate”

Deccan Herald, Bangalore

“The book is written in a lucid language and is enriched with several humorous illustrations depicting the country’s political situation. It is a thought provoking work written in a very simple language. It can be understood by even a layman. All students of politics must go through this book”.

Gujarat Law Reporter

“You have made out a good case for introducing a Presidential System and you argued cogently, though in a lighthearted way, how the Presidential System, as found in Sri Lanka and elsewhere, with some adaptations would prove to be the best alternative to the present chaos under parliamentary democracy…..you have made good contribution to the present debate on this question and I Congratulate you”.

Late Shri Harish Mahindra, Ex-Chairman
Federation of Indian Chambers of Commerce & Industry

“I have read your book with interest and you have very well advocated the case…..I was agreeably surprised that an Engineer has so much interest in constitutional problems and so well”.

Late Shri Chimanjil C. Shah
Member of the Constituent Assembly

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ABOUT THE AUTHOR

Shri Jashwant B. Mehta is a well-known Architect and Consulting Engineer holding a Master’s Degree in Civil Engineering from the U.S.A.

Like many other perceptive intellectuals in India, the Author being disenchanted with the existing political system because of its unsatisfactory and dismal performance owing to its inherent shortcomings as witnessed during the last more than six decades, undertook an in-depth study of the causes underlying the present political situation despite his belonging to a different professional fraternity. The present book being published under the auspices of the Forum for Presidential Democracy is a product of an intensive study and analysis undertaken by him of the political situation prevailing in our country. Earlier he had authored two books viz. (1) “Presidential System – A Better Alternative?”, (2) “Quest for a Better Democratic Alternative”, which have been widely acclaimed as making a substantive contribution to the debate on the issue.

Apart from his abiding passion for evolution of a better democratic system, he is also involved in social & charitable activities especially prevention and cure of blindness being the Founder Member and Ex-President of the ‘Eye Bank Association of India’ and the Chairman of the ‘Eye Bank Coordination And Research Centre, Mumbai’. He has also been honoured by the International Federation of Eye & Tissue Banks, Baltimore, U.S.A. in June 1994 for “selfless devotion to improving the future of the corneally blind in India” and also in May 2002 for “dedication to Sight Restoration through Eye Banking”. He has also authored a book on ‘Eye Donation & Eye Banking in India’.

He has contributed several technical papers and articles on Civil Engineering, Architecture & Urban Planning in various professional journals and other publications. His book on “High-Rise Buildings” was the first book on the subject in India. He was invited and had presented papers at the World Congress on Tall Buildings held at Paris (1979), Chicago (1985) and Amsterdam (1995) and also in World Conference held in Mumbai (2010). He had also chaired sessions at all these venues. He was representative of the Council on Tall Buildings & Urban Habitat in India during 1992-2003. He is a recipient of Gold Medal awarded by the Institution of Valuers. He was Executive Committee Member of Maharashtra Chamber of Housing Industry (MCHI) (1986-2009) and also Practising Engineers Architects & Town Planners Association (PEATA) (1983-1993).
The Forum For Presidential Democracy is a political party, registered under section 29 A of the Representative of the Peoples Act, 1951 committed to the cause of national awakening aimed at establishing Presidential Democracy in India, it being a better democratic and stable alternative system than the current ineffective, corrupt and highly unstable system.

Towards this end, the Forum aims at organising a mass awareness campaign for spreading the concept of a truly democratic Presidential system of Government with the necessary checks and balances, suitable to the conditions prevailing in India. An overwhelming majority of the people in our country are increasingly frustrated and disillusioned because of the prevailing unsatisfactory state of affairs resulting from the current political set-up. However, for most of the people, there appears to be no satisfactory way out of the present grim predicament.

The Forum aims at providing the much-needed beacon of light out of the present murky situation by having a truly democratic Presidential system of Government with suitable modifications as outlined in this booklet.

An Appeal

The Party appeals to all the Conscientious citizens to lend their most valuable support to the national cause undertaken by the Forum For Presidential Democracy for introducing the system of Presidential democracy in India in the interests of the country, by enrolling themselves as its members (as per the Membership Form appended hereto) and through generous Donations to the Party to strengthen its multifarious activities.

For a Political Party registered u/s. 29 A of the Representation of the Peoples Act 1951, Individual / Company donations are fully exempted u/s. 80 GGC of I.T. Act and u/s. 80 GGB of I.T. Act. respectively.
“It often happens that (in the U.S.A.) the Democrats support the President not only by their votes but also by their speeches. Similarly, it also often happens that the Republican members vote and speak against proposal by the President who belongs to their party. It means that the members are elected like the President on party tickets but after election they cease, in practice, to belong to the party and act in a way which they consider best for the nation. It may therefore be said truly that they have always a national Government and not a party Government in office. We must investigate and find if this analysis is correct. If so, we must then consider how far we are right in copying the British party system in all its details”.

Late Dr. Rajendra Prasad (Former President of India)

“My first proposal is, therefore, to separate entirely the legislative from the executive function by making it impossible for any member of the legislature to hold any office of profit under the Government including Ministries. The Chief Executive of the country or the State i.e. the President or the Governor as I would prefer to call them, will be elected separately and will appoint such Ministers as he may wish from outside the Legislature. There will be no authority under the Constitution to give anybody the right to waive this prohibition.

“My second proposal is that the President or the Governor will hold office for fixed term of years without any possibility of his removal during the term, except by impeachment of acts of moral delinquency”.

Late Shri B. K. Nehru (Eminent Civil Servant & Former Ambassador to U.S.A. & High Commissioner to U.K.)

“The two basic elements we need are an effective – that is a strong and competent – Executive, especially at the Centre, and a continuing sense of belonging among the population at large, a feeling that the system of governance is responsive. To ensure the first of these objectives, two features in the Constitution should be recast to provide

- The head of the Executive, the President, is directly elected.
- He is free to select as his ministers person from within or outside the legislature”

Shri Arun Shourie (eminent Journalist and former Union Cabinet Minister)

“Our parliamentary system has entered the era of instability where governments survive on the mercy of caste and group based bosses. Under the existing arrangement a Prime Minister or a Chief Minister depends upon the support of MPs and MLAs. A President under the Presidential System, depends upon the entire national electorate and his tenure is secured for a fixed term. Therefore, no unprincipled compromises occur”.

Late Shri Chimnabhai Mehta (Former Union Cabinet Minister)
Leading public figures from various walks of life have time and again pleaded for this change.

“Presidential Democracy will enable the country to be free from the grip of the professional politicians having vested Interest. It will provide for better stability, help national integration and will enable the induction of talented people in the Cabinet.”

Late Shri J.R.D. Tata (Eminent Industrialist)

“The tremendous problems facing this country can never be solved by professional politicians, few of whom are equipped for the task. If the corrupt and inefficient administration is to be toned up, it can only be done by ministers with integrity, ability and knowledge who are vested in the art of management. If poverty is to be banished, it can only be done by men of vision and practical understanding of the ways in which the wealth of nations is created. If the under-privileged of this country are to rise above their ageless squalor, it can only be done by experts in finance, production and marketing, and specialists in social engineering and deployment of resources. Our bureaucracy without purposeful leadership at the ministerial level operates only as a guarantee of social inertia........”

“....I am convinced that the democratic presidential system – as it prevails in the United States of America and in France – would be better suited to India than the Westminster model which prevails today.”

Late Shri N.A. Palkhivala (Eminent Jurist)

“I really enjoyed the discussion we had on your views and analysis of the Presidential System. Frankly after listening to your meticulous analysis of the comparative merits, I must say I am veering around to your view........I am convinced that your objective is a pure one and is not aimed at pursuit of any political gains but to the promotion of a nationalist ideology. I am pleasantly amazed that our country still has persons like you. You have no personal ambitions in the matter. It is indeed gratifying that a highly qualified Engineer and Technologist like you should be taking such great interest in promoting a larger national cause.”

Shri M.N. Venkatachaliah (Former Chief Justice of India & Chairman, Constitutional Reforms Committee, Govt. of India - 2002)

When shall we put it into action?