Democracy and Good Governance

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Role Played by Constitution in Assuring Good Governance:

Constitution and Constitution making has become part of the democratic credentials that international political, financial and trade organizations increasingly seek for new nations to join and deal with the world community. Aftermath of colonialism and defreezing of ideological gulfs that emerged after the First World War has now opened up differences of a sectarian nature and has brought out new minority and ethnic divisions. These divisions have put pressure on the emerging nations to rewrite or write anew their own constitutions to deal with changing circumstances.

Constitution is often referred to as the supreme law of the land. It defines the rights, obligations and the relationships of the states and citizens. A the supreme law, the constitution assumes good governance. It has to provide for and ensure that all arms of the state conduct their affairs on principles of good governance.

Good governance in the context of my discussion refers to transparent and accountable behavior in carrying out the duties in the relationship that exists between the state and the citizen. The onus for good governance is generally pushed in the direction of those charged with the responsibility for managing the affairs of the state.


Using this report as a spring board, I wish to critically revisit the context of constitution making and good governance in Fiji.

The report makes the point that:
- In the twenty first century constitution making is seeing a shift from being a handiwork of experts to the ‘sphere of democratic participation’.

- The **Process** of constitution making has become as important as the content, if the final product has to have legitimacy.

- Specific right to participate in constitution making is seen as desirable but difficult to enforce. Public participation is often taken to mean exercising the right to vote through a referendum.

- Increasingly citizens are taking the initiative “to create an open constitutional conversation in which the public shares in agenda-setting, content and ratification.

- Genuine public participation requires social inclusion, personal security, and freedom of speech and assembly. It requires a strong civil society, civil education and channels of communication between all levels of society. It requires considerable commitment of time and resources to make genuine public participation possible.

- In offering solution, the report states that constitutions cannot be written in a hurry nor can it be written for a nation. An “Interim” or “transitional” constitution that guarantees for a continuing, open, and inclusive process for the longer term offer one solution to urgent needs for a framework of governance in new, divided or war-torn nations.

- The report concludes by saying that participation in constitution making is emerging to be a right. It is a fact of constitutional life. Despite difficulties of definition and implementation, a democratic constitution making process, in the words of African observer, Julius Ivonhbere, is “critical to the strength, acceptability and legitimacy of the final product”.

**Power Sharing in the Fiji Constitution:**
One of the central provisions in the Fiji Constitution is now facing a challenge and it has thrown up all the issues of constitution making that the U.S report outlines, Intertwined with the central concern of power sharing is the issue of governance, leave alone good governance.

The concept of multi party government as an innovation has raised questions on the motives of the innovators. Who precisely made the arrangements? Was the public involved in the decision making on this issue? Was or is the concept clearly understood? What are its implications for Parliamentary democracy and good governance? Have the people accepted the changes? All the questions that are raised in the U.S report on constitution making, can be raised for the Fiji Constitution, in particular on the central tenet of power sharing.

At the outset let me clear, that the Fiji model of constitution making adopted strategies in my opinion was closer to the peoples participation side on a spectrum ranging from a completely elitist model to one with full people’s participation.

Attempts at making a constitution between 1987 and 1989 failed either because some political parties were not involved in the discussions or because on some issues the committee charged with submitting a report had developed major differences amongst themselves.

The 1990 Constitution therefore was seen to be an imposition, a unilaterally imposed authoritarian and a racist document which only had the support of the Military and their sympathisers.

However, one redeeming feature of the 1990 Constitution was that it was to be reviewed in ten years. So in a real sense, the people’s representatives in the House of Representative were allowed to work on a new Constitution. The old one could be said to be ‘transitional’.

Racially polarized parliament still allowed the leaders to work on this common agenda. A Commission was appointed and charged with the responsibility to submit recommendations to the parliament which was to form the basis of a negotiated Constitution.
So the people’s participation in the making of the Constitution was through the Reeves Commission. Apart from public hearings, the Commission invited experts to provide research evidence and opinions on special issues. The Commission also visited and studied other countries and systems of governance in similarly placed societies.

When the report was finally presented to the House, a Joint Parliamentary Select Committee (JPSC), consisting of Government Ministers, Senators who were nominees of the Council of Chiefs and members of the Fiji Labour and National Federation Parties was set up. In a real sense, by the time the JPSC met to look at the Reeves Commission’s recommendations, public participation was completed. So was the contribution of experts, activists, academics and those others who made submissions to the Commission.

Once the JPSC began work, there was no open channels of communication with the people. Political parties which had representatives in the Committee were expected to keep their own channels open for continuous discussion and dialogue in pocket meetings in their constituencies and with interested individuals and groups. Given the level of commitment to constitution making, resources, understanding and literacy, it was left to the political participants to solicit public views and keep the constituents informed. Once at the JPSC, the political channel was the only one left.

The committee adopted most of the recommendations. The crucial departure was in the shift from Reeves recommendation for a multi-ethnic cabinet to the committee’s adoption of a multi-party one. Whatever may have been the shortcomings of the JPSC in keeping an open channel with the public once decisions were being made; the committee strived very hard, given the context in which it was working to provide the most democratic constitution it could. The innovations introduced needed a new approach to the workings of Cabinet democracy and the operations of the Parliament. New roles were found for direct involvement of the people in Parliamentary Democracy. The innovators were convinced that the new approach to Parliamentary Democracy would make more accountable and transparent.

I wish to briefly explore what was envisaged by the JPSC Committee but let me first explain why the choice of multi-party over multi-ethnic Cabinet.
Multi-party Vs Multi-ethnic. The Reeves Commission had recommended that Fiji should move in the direction of multi-ethnic Government. The JPSC had deliberated very carefully on the subject. It is important to understand that while the Reeves Commission recommended Multi-ethnic composition of the Cabinet, it did not recommend specific ways by which it could be realized. In a system, which encourages political parties to fight elections based on presumably different ideologies and different manifestos and given the aspirations for multi-racial political parties, it is not easy for any system to throw up a Cabinet based on ethnicity.

For the FLP, this would have been in contradiction with its basic founding principles. The party is founded on principles of multi-racialism and it would have been very difficult for the party at that time or at any time in the future to accept a Cabinet based on ethnicity. In any case given the predominantly racial voting and the fact that some seats in the House is elected on a communal basis, it may have been possible from within the multi-party provision to have a multi-ethnic Cabinet.

In a Constitution which has at its theme a move away from ethnicity, in as far as it was acceptable to the two major communities, a stated multi-ethnic composition of Cabinet would have been defeatist. In the face of an acceptable notion of multi-party, the committee felt that it would be easier, more relevant and in line with International Covenants and practices to focus on multi-party rather than on ethnicity.

However, had the Reeves Commission pointed out some specific ways by which multi-racial political parties could reasonably and rationally participate in a multi-ethnic cabinet, the committee could have well considered that option. There was no such option available, which would allow a multi-ethnic cabinet without compromising with the general direction of the thinking of the Committee and coming in contradiction with some party principles.

Nevertheless, at the back of the minds of the negotiators there remained the thought that a multi-party cabinet would throw up a multi-ethnic composition. But they were not prepared to make it a stated goal in the hope that in the future, political parties will become increasingly multi-racial in composition.
Power sharing through a multi party Cabinet was going to demand major restructuring of the Parliament. For one thing and this has concerned a number of people unable to break through the barrier of a ‘government and opposition’ model. In this the Opposition is seen as an alternative government for ever opposing with alternative options. The question asked is who will be the Opposition?

What is often ignored is the central basis of the ‘Government Opposition’ model. The Westminster system is more than just about Government and Opposition. It is about holding the government accountable to the people. That is the function of the group of people styled as ‘the Opposition’.

The innovators decided that the issue of accountability in a Parliament that had a tendency to breakout in to race based arguments, good governance was the prime concern. The committee had to find other ways to hold the Government accountable.

**Sector and Standing Committees:**

The Constitution provides for five standing Sector Committee. The inspiration for this also came from the Reeves recommendations. The Standing Committee of the House comes from previous parliamentary practice and are provided for in the Standing Orders.

The function of holding the cabinet members under scrutiny for transparency does not fall entirely to the hours dedicated for the debate in the full house but can and is referred to any of the committees for more detailed examination. The most important of these committees is the Public Accounts Committee which primarily examines the Auditor-General’s report in order to further question the way in which tax payers money has been spent. This committee enables the Parliament to investigate into and interview the officers responsible for expenditure and mercilessly quiz them on compliance with civil service rules and procedures. This has been the strongest tool of Parliament and perhaps the most feared.

The membership of Sector Committees were to come from back-benchers of all sides of the House in accordance with the Standing Orders of the House. Generally it was to be in proportion to the membership of the political parties in the House. This would mean that the government
party will have a larger number and the other parties would comprise the rest. The committees were to operate on a by-partisan basis and feel free to critically analyze the matters before them. They were to be empowered to invite expert witnesses, special interest groups and the public. If required, the committees could travel to various parts of Fiji to have public discussions and do fact finding. It was anticipated that all Bills be referred to the Sector Committees.

This strategy was to get the members more actively involved in the affairs of the Parliament and to play a far more active role in the formulation of laws of Fiji. Also it was believed that such a system would take parliamentary democracy to the people. Hopefully the people would become more knowledgeable about the process and the contents of the laws of the land. This will enable the people greater sense of participation and ownership. Thus the role of scrutinizing a Bill will become part of the responsibility of government and backbenchers of other parties in the House. Given our socio-political make up, it seemed that this kind of constructive evaluation and assessment of Government Bills and proposals would be far more meaningful than the West-Minister type engagement with pre-dominantly one racial group proposing and pre-dominantly another racial group opposing. The perceptions of the two races quarrelling continuously was the one which the founding fathers wanted to avoid without sacrificing the principle of holding a Government accountable.

A clear expectation was that the workings of the Sector Committees will also help develop parliamentary skills of back-benchers who would be free to criticize the Bills pointing out the short-comings and in recognising the value of adopting a by-partisan style and lobbing with each other to ensure that their recommendations were taken seriously by the Cabinet. Members of the Sector Committee were expected to take the committee discussions to their own caucuses and influence the remaining colleagues, including the Minister responsible for the particular Bill.

The burden of responsibility on Sector Committee matters rested with the Government members to persuade their front bench members that the recommendations made by Sector Committees were meaningful and desirable. It also meant that once a Bill was proposed, the Minister responsible and his/her civil servants would have to be engaged in the exercise of persuading his/her back benchers on the merits of the Bill. If required, it was also expected that Ministers would take the draft Bill around the country to interested parties in the first round of discussion to see that the Bill as formulated already has resolved differences amongst the stake holders.
The expectation was that the Ministers would be constantly engaged in persuading the members of the Sector Committees and the backbenchers would be attempting to persuade the Minister on the merits of their recommendations. In a multi party system it was also the expectation that there will be some across the Chamber discussion between the Minister and the backbenchers of other parties, the non- government members and only in this way there would be a safe passage of the Bill through the House.

The system would also empower the public to have a direct input on the Bills before its passage through the House. The Parliament was expected to become a hive of activity. The assumption was that well informed members would dwell less in acrimonious debates and will depend less on Sunday Sermons for the contents of their speeches. The entire culture of the House of Representatives was to change. From a docile House where backbenchers took instructions from the front bench and used their time and the occasion to talk about extraneous matters, to one in which the Ministers are seen to be courting the back benchers, informing them, lobbying with them to support the Bill. The corridors of the Parliament was to become a busy place with groups of people, talking, sharing ideas rather than one in which people walk briskly from one end to reach the other and get out of the precincts of Parliament.

The Parliamentary library would become a busy place as well, where members would spend considerable time seeking research help, researching themselves and bracing themselves with more informed point of views.

All of these were to bring to bear on the work of the Sector Committees and back-bench members would be demanding better explanations from their front benchers.

In these ways the JPSC hoped to take the ‘Opposition’ away from the public view and make debate in the House more meaningful. The Opposition in a sense would be taken in doors, the arguments would take place in the Sector Committees with expert advice, if the members needed it, and therefore discussions would be conducted in a more informal way and on issues involved rather than relying on generalizations and falling into emotive racial supremacist’s arguments.
In a racially polarized society where there is a constant danger of all debates taking the ugly racial stance, turning the Parliament into a place of thinking and research and taking debates and discussions into smaller groups was seen more desirable. Most importantly these discussions would take place in a non threatening manner which could result in either side changing their points of views. The acceptance or rejection of a point of view is not seen as a victory for one party or a loss for another, which is normally the case in a protagonist model of the West-Minister type.

**In what other ways was the parliament expected to hold the government accountable without an ‘Opposition’**.

The Innovators decided to build into the Constitution provisions for some specific types of legislations that would empower the people in more realistic ways so that the various communities would feel less threatened.

**Bill of Right** – was to protect individual and group rights.

**Social Justice Provisions:**

In an attempt to minimize possible communal or class conflict arising out of perceived or real differences in wealth and opportunities, a Social Justice Act was to assist those most needy through affirmative action programs.

**Freedom of Information** – a Freedom of Information Act was to permit citizens direct access to information from the state. This alone would have been a deterrent to rash civil service or ministerial decisions based on erroneous or biased information.

**Code of Conduct** – the Constitution also required a Code of Conduct Bill which would prescribe acceptable behavior in the conduct of public affairs by Ministers, Civil Servants and Members of Parliament.

**Media Freedom:**
Crucial to the functioning of a multi–party government, and in the context of a restructured parliament, media freedom was essential. The government was to facilitate the structures necessary for a free media.

**Non–Government Organizations:**

Government was to assist establishment of a number of non-government organizations working on a fulltime basis dealing with wider issues of a growing democracy and providing a useful check on the activities of Government and indeed of Parliament itself. Independent criticism provided by the Civil Society was also seen as a healthy development which would allow greater participation by the people.

**Minimizing Conflict through Entrenchment:**

In addition to the thinking of the members of the JPSC and in addition to the specific provisions in the Constitution to hold Government accountable, some other possible conflict areas were to be appeased by providing protection through entrenchment. Thus the Council of Chiefs found a constitutional existence, laws regarding Fijian affairs and Fijian land cannot be amended without meeting special requirements, thus making them impervious to change unless Fijians themselves wanted to change them, e.g. it needed six out of eight nominees of the Council of Chiefs in the Senate to agree before an amendment could be made. For the Indo–Fijians, and as a small counter balance, ALTA would also require special majority in the Lower House from the communally elected Indo-Fijian members if it were to be amended.

Having provided for more effective mechanism of accountability from Government, it did not matter whether an alternative Government set opposite to the majority party in the House or set alongside the majority party. Those are the mind- sets that the Constitution expected to have changed for the Constitution to work.

**Conclusion:**

Apparently the multi-party provisions are not working in the way they were envisaged. This has thrown open questions of legitimacy and acceptability of these provisions of the constitutions.

Why is it not working?
Did the innovators deal with these provisions in a manner divorced from the wishes of the people?

If people had wishes in this area, how were they conveyed to the negotiators? Did they listen?

Were the framers of the Constitution too idealistic and provided provisions far forward looking than the capacity of the people to absorb?

How much and what of the provisions can be explained and defended and the campaign in defence of the constitution kept alive? How much of the opposition to these provisions just has to do with the uncompromising, arrogant and insensitive approach of the present Government.

Fiji Constitution like most other Constitutions of the world is a visionary statement. A way forward for the challenges of our times.

No matter how goal oriented we are in our approach, changes happen only incrementally. The driving force in making such instruments work is not theories of negotiation and bargaining and not just public participation, faked or real, and search for legitimacy by the people. All this can help in giving a better understanding of the processes and workings of constitutions but the driving force remains with personalities who are charged by the people to make it work.

It was a combination of liberal minded forward looking individuals who gave us the Reeves Report, it was a combination of liberal minded and forward looking individuals who gave us the Constitution. It needs a combination of liberal minded and forward looking individuals to make it happen.

We cannot loose hope at the present impasse. We need to mobilize liberal minded and forward looking people to ask honest questions, seek honest answers and carry the torch further.