

## Constitutional Review - Overview of Key Reform Sectors

Sector	<b>Political Parties</b>
Reforms Needed	Democratization and accountability to Public <ul style="list-style-type: none"><li>▪ Membership</li><li>▪ Leadership</li><li>▪ Funding</li><li>▪ Choice of candidates</li></ul>
Constitutional Change	Similar to Article 21 of German constitution
Change of Law	A law regulating the internal functioning of parties

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### **Elections**

Reforms Needed

- Decriminalization
- Accountable expenditure
- Electoral rolls improvement
- Elimination of rigging and impersonation

Constitutional Change

Nil

Change of Law

- A law to prohibit persons facing criminal charges and listed as rowdy sheeters or history sheeters (with judicial scrutiny)
- A funding law providing for mandatory disclosure, statutory audit and making records public; Exemption from income tax subject to ceiling - severe penalties for violation including removal, disqualification, fine and imprisonment
- Post offices to be made nodal centres
- Easy access to electoral rolls and applications
- Mandatory Voter ID cards and electronic voting
- Mandatory re-polling if tendered votes exceed 1 %

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### **Federalism**

Reforms Needed

- Significant devolution
- Clearer separation of powers
- Special powers to union to preserve Unity, Integrity & National Security
- Fusion of authority and accountability
- Political autonomy
- Legislative Jurisdiction

Constitutional Change

- Schedule 7 -review and split concurrent subjects to give exclusive jurisdiction to Union and states
- Union's responsibility over terrorist offences, Inter-state trade, Inter-state water resources, Protection of linguistic minorities, Equal job and educational opportunities in states to all irrespective of residence
- All India services to be under states' full and exclusive control
- Repeal Article 356 with suitable substitutes or retain it with judicial scrutiny
- Abolish Governors or have elected constitutional Governors
- Remove Governor's powers of reserving for president's assent under Article 200, or severely limit the power and fix a time limit of 60 days for President's assent or otherwise

Change of Law

Corresponding Laws

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### **Stability & Cohesion - Union Government**

Reforms Needed

- Remove dead lock between both houses of parliament
- Provide for greater stability

Constitutional Change

- Restrict legislative powers of Rajya Sabha - only delaying power & forcing reconsideration, not veto or Rajya Sabha members from a state to be co-terminus with the legislative assembly and to be elected afresh with each new assembly
- Constructive no-confidence similar to German basic law, Article 67 & 68

Change of Law

## **Constitutional Review - Overview of Key Reform Sectors**

Sector

### **Stability & Cohesion - State Government**

Reforms Needed

- Remove legislative deadlock
- Clearer separation of Powers
- Honesty and Political survival to be compatible
- Fair elections to represent public opinion
- Legislators not to function as unaccountable executive
- Authority and accountability to fuse

Constitutional Change

- Unicameral legislature
- Directly elected head of government
- All India services to be under exclusive control of states (except recruitment and training)

Change of Law

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### Local Self-governance

Reforms Needed

Adequate Devolution of

- Funds
- Functions
- Functionaries

Anomalies

Constitutional Change

- Schedules 11 & 12 to have the same force as schedule 7
- State finance commission to have substantive powers
- Control to vest in local governments
- Articles 243G & 243W to be tightened
- Proposed 84<sup>th</sup> Amendment

Change of Law

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### **Bureaucracy**

Reforms Needed

- Accountability
- Non-Arbitrary Placements
- Tenure

Constitutional Change

- All India services under states control
- Article 311 to apply only for removals and dismissals
- Prohibition of courts jurisdiction (except on grounds of enforcement of equality before law)

Change of Law

- Civil Service Boards
- Appointment and confirmation by a legislative committee
- Fixed Term

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### Judiciary

Reforms Needed

- Higher Judiciary appointments & Removal
- Focused Writ Jurisdiction
- Limited appeals to higher courts
- Timely Justice
- Separation of crime investigation from the executive
- Increase in the number of courts
- Rural courts for speedy Justice with specific and exclusive jurisdiction (under judicial control)
- Improving competence, integrity & uniformity in sub-ordinate judiciary & improve quality of appointees to high courts

Constitutional Change

- Judicial commission
- Norms for impeachment (repeal of articles 124 (4) and 217 (1)(b))
- Writ to be limited to life, liberty & equality before law
- Only on constitutional matters writs to be heard by high courts & supreme courts
- Guaranteed right to time bound justice - say 1 year in criminal cases and 2 years in civil cases
- Appeals - 3 months for criminal cases and 1 year for civil cases
- Independent prosecutors under quasi-judicial supervision as a constitutional institution
- Creation of a Indian Judicial service as an All India service (article 311)

Change of Law

- Appropriate changes in CrPC, CPC and evidence act
- Amendments to CrPC
- Executive decisions
- A law similar to Gram nyayalaya Act proposed in the 114<sup>th</sup> report of Law Commission

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### Self-Correcting Institutional Mechanisms

Reforms Needed

- Right to Information
- Ombudsman
- Independent appointment of constitutional functionaries
- Separation of crime investigation
- Prevent perpetuation in elective office and dynastic impulses
- Check against abuse of constitutional offices
- Check against corruption
- Citizen's Charters

Constitutional Change

- A Lok Pal with autonomy and substantive powers
- Appropriate constitutional mechanism (collegium) for appointment and removal (similar to proposed Judicial commission)
- Independent constitutional mechanism
- Limitation of terms (say 2 terms & 10 years) for elective office
- A category of constitutional offences with penalties
- Lokpal's directives mandatory

Change of Law

- An appropriate Law
- Tighter Anti-Corruption law
- Independent Prosecution
- Time bound adjudication
- Tougher provisions for confiscation, removal & jail terms
- Executive actions with force of law & equally enforceable penalties for non-performance

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Sector

### Miscellaneous

Reforms Needed

- Women's Reservation Bill
- Fixed terms for legislatures
- Proportional representation
- Rotation of seats reserving for SC's & ST's
- Strength of Lok Sabha or delimitation of constituencies

Constitutional Change

- Amendment to Act & providing for reservations in upper houses
- Not feasible in parliamentary model
- Effective automatically if there is a directly elected head of government in the states
- Not desirable since it may lead to greater fragmentation and instability
- Suitable constitutional amendments to articles 330 and 332
- Amend article 81 & 82 to freeze the strength of Lok Sabha and representation from various states for 25 more years
- Delimitation within a state for Parliament and Assembly constituencies may be permitted

Change of Law

- Alternative model amending RP Act compelling political parties to nominate 1/3 women candidates
- Changes in RP Act
- Suitable changes in RP Act