

**Suggested Agenda
for
Administrative Reforms**

by

Dr Jayaprakash Narayan

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LOK SATTA

401/408 Nirmal Towers
Dwarakapuri Colony, Punjagutta
Hyderabad – 500 082

Tel: 91-40-23350778/23350790; Fax: 91-40-23350783
E-mail: loksatta@satyam.net.in; url: www.loksatta.org

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‘India has the potential to show the fastest growth over the next 30 to 50 years. Growth could be higher than 5% over the next 30 years and close to 5% as late as 2050 if development proceeds successfully.....While growth in the G6, Brazil, Russia and China is expected to slow significantly over the next 50 years, India’s growth rate remains above 5% throughout the period. India’s GDP outstrips that of Japan by 2032.....India has the potential to raise its US dollar income per capita in 2050 to 35 times current levels.’

Goldman Sachs,
Dreaming With BRICs: The Path to 2050,
Global Economics Paper No: 99.

There is a “feel good” factor that characterizes the assessment of Indian economy today. The possibility of stupendous economic growth has become a regular feature in the media. The way we formulate our economic policy will determine whether India will achieve stupendous economic growth as is being portrayed. However, failure to improve our governance process will certainly make it impossible for us to achieve higher growth rates. We need to remember that the economic growth rate of a country is not merely a product of economic policies and productive capacity of its industry and agriculture. The economic growth rate of a country is also contingent on the way it governs itself. The collapse of erstwhile Soviet Union bears testimony to this fact. This combined with the experience of the transition countries demonstrate that corruption and mis-governance are increasingly acting as impediments to growth. Let me throw in a few more examples:

- The “*Anti-Corruption in Transition: A Contribution To The Policy Debate*,” a survey by World Bank and EBRD in 2000 has demonstrated that bribes were acting as regressive tax amounting to 5% of the revenue for small firms, 4% of revenue for medium firms and 3% for large enterprises in East Europe. It is pertinent to ask an important question here, can an economy prosper if corruption acts as a regressive tax?
- A study by Tanzi and Davoodi titled “*Corruption Growth And Public Finances*,” observed that one point increase in corruption reduced the ratio of direct taxes by 1.8 percentage point to/of GDP, while the indirect taxes fell by 1.2 percentage points to GDP. Further, individual income taxes declined by 0.63 percent of GDP with one point increase in corruption.

While the above examples pertain to the impact of corruption on economy there is a growing problem of organized crime impacting the growth in the economy. Many

transition countries and economies of developing countries are increasingly becoming hostage to the activities of the organized crime. The recent stamp scam in our country is also a pointer in this direction. In a well-functioning democracy, the political process ought to find answers to such governance problems. It is through the process of elections that a democratic choice is exercised on solutions to be adopted for various governance problems. Every election holds a promise for peaceful change. People in India have been voting for change time and again. But the political process is locked into a vicious cycle, and has become a part of the problem. There are six factors complicating the political process, perpetuating status quo. First, election expenditures are large, unaccounted and mostly illegitimate. For instance, expenditure limit for assembly elections in most major states was Rs 600,000 until recently, when it was revised to Rs 1 million. In reality average expenditure in most states is several multiples of it, sometimes exceeding Rs 10 million. Most of this expenditure is incurred to buy votes, bribe officials and hire musclemen. Such large, unaccounted expenditure can be sustained only if the system is abused to enable multiple returns on investment. Rent seeking behaviour is therefore endemic to the system.

Most of this corruption is in the form of control of transfers and postings, which in turn sustains a system of retail corruption for a variety of routine services, regulatory functions and direct transfer of resources through government programmes. Large leakages in public expenditure, and collusion in contracts and procurement are extremely common. The economic decision-making power of the state is on the wane as part of the reform process. But as the demand for illegitimate political funds does not decrease, corruption shifts to the core areas of state functioning, like crime investigation. Robert Wade studied this phenomenon of corruption, and described the dangerously stable equilibrium that operates in Indian governance. This vicious chain of corruption has created a class of political and bureaucratic 'entrepreneurs' who treat public office as big business.

Second, as the vicious cycle of money power, polling irregularities, and corruption has taken hold of the system, electoral verdicts cease to make a difference to people. Repeated disappointments made people come to the conclusion that no matter who wins the election, they always end up losing. As incentive for discerning behaviour in voting has disappeared, people started maximizing their short-term returns. As a result, money and liquor are accepted habitually by many voters. This pattern of behaviour is responsible for converting politics and elections into big business. As illegitimate electoral expenditure skyrocketed, the vicious cycle of corruption got further strengthened. With public good de-linked from voting, honesty and survival in public office are further separated.

Third, this situation bred a class of political 'entrepreneurs' who established fiefdoms. In most constituencies, money power, caste clout, bureaucratic links, and political contacts came together perpetuating politics of fiefdoms. Entry into electoral politics is restricted literally, as people who cannot muster these forces have little chance of getting elected. While there is competition for political power, it is often restricted between two or three families over a long period of time; parties are compelled to choose one of these individuals or families to enhance their chances of electoral success. Parties thus are helpless, and political process is stymied. Absence of internal democratic norms in parties

and the consequent oligarchic control has denied a possibility of rejuvenation of political process through establishment of a vicious cycle.

Fourth, in a centralized governance system, even if people wisely use the vote, public good cannot be promoted. As the citizen is distanced from the decision-making process, the administrative machinery has no capacity to deliver public services that are cost-effective and of high quality. A climate that cannot ensure better services or good governance breeds competitive populism to gain electoral advantage. Such populist politics have led to serious fiscal imbalances.

Fifth, fiscal health can be restored only by higher taxes, or reduced subsidies or wages. The total tax revenues of the union and states are of the order of only 15 percent of GDP. Higher taxation is resisted in the face of ubiquitous corruption and poor quality services. Desubsidization is always painful for the poor who do not see alternative benefits accruing from the money saved by withdrawal of subsidies. A vast bureaucracy under centralized control can neither be held to account, nor is wage reduction a realistic option.

Sixth, elected governments are helpless in changing this perilous situation. As the survival of the government depends on the support of legislators, their demands have to be met. The legislator has thus become the disguised, unaccountable executive controlling all facets of government functioning. The local legislator and the bureaucrats have a vested interest in denying local governments any say in real decision making. The vicious cycle of corruption and centralized, unaccountable governance is thus perpetuated.

This vicious cycle of corruption and centralized, unaccountable governance can be addressed effectively through various reform measures listed as follows:

I ELECTORAL REFORMS

a). Candidate Disclosure

The March 13 Supreme Court (SC) verdict on candidate disclosures declared Section 33B of the "*Representation of the People (3rd Amendment) Act, 2002 (Amendment Act)*" illegal, null and void, and reiterated its earlier judgment on May 2, 2002. On May 2, the SC held that citizens have the fundamental right to know the antecedents of candidates for elective office, as part of freedom of expression guaranteed under Article 19(1) of the Constitution. But Section 33A of the Amendment Act provided for disclosure of only part of the criminal record. No other disclosure including assets and liabilities of candidates was required.

Section 33 (B) specifically sought to nullify the Court judgment of May 2, by declaring, "Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or another instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder". It is this provision whose constitutionality was challenged. The

Supreme Court on March 13, 2003 declared that obtaining relevant information about the candidates is indeed a fundamental right under Article 19 (1), and as the Parliament had no power to make such a law abridging fundamental rights [Article 13 (2)], such a law is void.

With the final judgment of the Supreme Court in place, disclosures are now mandatory and irreversible. The Election Commission has issued a revised notification removing the power of Returning Officers rejecting nominations on grounds of false information.

The key provisions of the legislation include candidate's disclosure of his/her:

1. Criminal antecedents
2. Assets and liabilities
3. Educational qualifications

It has been proven by Lok Satta's activism that civil society groups, with media support, by publicizing information and putting pressure on the political parties, can improve candidate choice in the long-term. Lok Satta's experience shows that major parties will refrain from nominating new candidates with criminal record, provided people's movements are strong enough to make candidate choice a key issue. Along with weeding out the criminal elements from politics, the reform efforts should also focus on providing legitimate resources for political activity.

b). Political Funding Reform

Accountable and legitimate political party expenditure and campaign finance is at the heart of the fight against corruption. A law to this effect having far-reaching consequences has seen the light of the day. The Election and Other Related Laws (Amendment Bill, 2003) (Funding Reform Bill) was a crucial change proposed in the Indian electoral process. Lok Satta, CSDS and Lok Niti had been advocating funding reform and direct state funding in elections. The May-June 2001 issue of Lok Satta Times examined the issue of political funding and detailed proposals had been put forward for reform. Presentations were made to ministers, leaders of opposition and key officials. Except for public funding, most of the key provisions proposed by civil society groups found place in the Bill introduced first in Lok Sabha on 19th March 2002, and the revised Bill was introduced in Parliament on 13 May 2003, after incorporating changes recommended by the Parliamentary Standing Committee on Home Affairs. The Election and Other Related Laws (Amendment) Bill, 2003 (Bill No. 18 of 2003) was approved by both Houses of Parliament in August 2003, and became law in September with the assent of the President. The law accomplished the following objectives:

First, it removed the loophole inserted in 1974 with respect to election expenditure ceiling in the form of explanation 1 under Section 77 of the Representation of the People Act, 1951. In a brazen display of dishonesty and political chicanery, the law was amended in 1974, and all expenditure incurred or authorised by a political party or by any other individual or body of persons or association was exempted from election

expenditure ceiling. This amendment made a mockery of the election expenditure limits, and most parties and candidates violated the spirit of the law with impunity. This legal infirmity now stands removed by Section 4 of the new law, whereby only the travel expenditure incurred by leaders of political parties is exempt from election expenditure limits. For recognised political parties, the number of leaders whose travel costs are exempt is limited to forty, and for other parties, to twenty. By any standard, this is a reasonable exemption. Now, all other election-related expenditure incurred by a party, or person will be counted for ceiling purposes and shall not exceed the limits imposed by law – currently Rs 10,00,000 for Assembly constituencies and Rs 25,00,000 for Lok Sabha in major states.

Second, full tax exemption to individuals and corporates on all contributions to political parties is a strong incentive for open contributions to political parties. Parties need money for organization and mobilizing public opinion, and to compete in the marketplace of ideas. Candidates need money to get themselves known and to reach out to the voters and communicate effectively. Our failure to evolve rational incentives for political funding has severely distorted the electoral process. Parties and candidates have habitually abused their political clout to extort money, and the license-permit raj of the past gave ample opportunities for unaccounted resource mobilization. This ambivalence led to several flip-flops in the past. Companies Act was amended in 1960 allowing corporate contributions to political parties. But in 1969, at the height of license-permit raj, such contributions were prohibited.

Then in 1985, Rajiv Gandhi government amended the law again, permitting companies to contribute up to 5% of their average three years net profits for political purposes. However, in the absence of tax incentives, most companies preferred to fund parties clandestinely for a variety of reasons – on account of the ubiquitous black economy, for fear of retribution from rival parties, and as a bribe or extortion money for favours received or anticipated, or avoiding harassment. For the first time, the law now provides for full tax exemption to individuals and corporates for all contributions to registered political parties. Sections 80 GGB, and 80 GGC have been inserted to this effect. Considering this, the tax incentive provided by the recent law is a vital step in encouraging open and accountable funding of parties in the long run.

Third, as a corollary to the previous provision, all contributions of Rs 20,000 and above must be disclosed by the party to the Election Commission, and such information will be in the public domain. This would ensure accountability and curb the inflow of black money in politics.

Fourth, indirect public funding to candidates of recognized political parties – including free supply of electoral rolls (already in vogue), and such items by the Election Commission as are decided in consultation with the Union government.

Fifth, equitable sharing of time by the recognized political parties on the cable television network and other electronic media (public and private). This is by far the most far-reaching reform from a long-term perspective. The recognized parties will now get free

broadcasting time in all electronic media. If the Election Commission applies this provision creatively, not only will parties get free time, but we can have exciting debates between candidates and parties. This has the potential to transform the nature of political campaigning, and will reduce campaign costs dramatically. In one stroke, parties in India have been given a powerful platform to reach voters free of cost.

However, some issues still remain. There are no penalties for donors for non-disclosure of funding. Auditing by a chartered accountant from a panel approved by CAG has been deleted (from the earlier draft). Direct public funding to candidates or parties, if implemented, would promote performance-based candidates and parties. The vibrant functioning of political parties is also contingent on the internal democracy of the political parties and the effectiveness of anti-defection provisions.

c). Political Party Reform

Political recruitment has suffered a great deal, and bright young people are no longer attracted to politics. Centralized functioning of parties is imposing enormous burden on leadership to manage the party bureaucracy, leaving little time for evolving sensible policies or governance. Party leaders are helpless in candidate selection, and the choice is often between Tweedledum and Tweedledee. An important reform to improve the quality of politics and restore credibility would be a law to regulate political parties' functioning, without in any way restricting leadership choice and policy options. A law needs to be enacted to regulate political parties in four key aspects.

Membership and disciplinary action would be a crucial focus area ensuring internal party checks. Leadership choice by regular, secret, democratic ballot is the second key feature. This will be accompanied with formal processes to challenge the party leadership without fear of retribution. The third suggested reform would be transparency and public auditing of party funds and expenditure. Finally, choice of candidates for elective office to be decided by members or their elected delegates through secret ballot. The provisions can be similar to Article 21 of German basic law and federal law to regulate parties.

d). Strengthening Anti-Defection Provisions

The provisions of the Tenth Schedule essentially disqualify a member elected on a party symbol if he voluntarily gives up membership of that party, or if he votes, or abstains from voting in the legislature contrary to any direction ('whip') issued by his party. But, if one-third of the members or more stray from the party line, and claim that the legislature party has split, and they constitute a new group, then disqualification does not apply. The presiding officer of the house concerned is the final authority to determine disqualification. All disqualification proceedings are deemed to be proceedings of the legislature under Articles 122 and 212, and therefore no court shall have any jurisdiction in respect of such matters.

However, anti-defection provisions failed to prevent defections. The only novel feature now is that individual defections invite disqualification, while collective defection is

perfectly legitimate and is amply rewarded! As a result splits are engineered, and constitutional coups are planned with meticulous precision, and careful conspiracy. Several parties 'split' even in Parliament, and as the JMM case testifies, the defecting members benefited immensely.

The 1997 case of defections from BSP in UP proved how partisan speakers could actually create new arithmetic while applying anti-defection provisions! Twelve of the 69 legislators of BSP violated party whip, and in a perverse order, speaker Kesari Nath Tripathi refused to disqualify them, though they clearly constituted less than a third of the legislature party. The matter went to courts, and died a natural death as their lordships could not come to conclusion before the expiry of the term of the house on the weighty issue of what number constituted a third of 69! Recently in January 2003, the roles are reversed, and Mayawati engineered defection of 8 MLAs in the 23 member Congress legislature party, and the same speaker Kesari Nath Tripathi recognized them as a separate party instead of disqualifying them!

There is however one major unintended consequence of anti-defection provisions. The intention was to prevent change of power in gross violation of popular mandate. But in effect, violation of party whip on any vote attracts disqualification. Party legislators who may honestly differ on a piece of legislation are now forced to submit to the will of the leadership. The ill-conceived legislation on Muslim women's maintenance after the supreme court verdict in Shah Bano case is one sad example. If the Congress MPs had freedom of choice, that Bill would never have become law. That folly, and the resultant outcry forced Rajiv Gandhi to overcompensate to appease the enraged public. Unlocking the gates of the disputed structure in Ayodhya, the 'silanyas' under the watchful eye of Buta Singh, the then Home Minister, and the launch of Rajiv's 1989 election campaign from Ayodhya with the promise of Ramraj – all these followed. The rest is history. An even more shameful episode is the direction issued by Congress party to its MPs not to vote on the impeachment proceedings against Justice Ramaswamy in 1991. Consequently, judicial accountability collapsed, and eventually power of appointment of judges has been usurped by the judiciary!

In an effort to rectify the above distortions, the Cabinet's proposed legislation not only makes it mandatory for all those switching political sides – whether singly or in groups – to resign their legislative membership and seek re-election, but also bars legislators from holding, post-defection, any office of profit. For added measure, it puts limit on the size of ministries. Under the proposed changes, applicable both to Parliament as well as state assemblies, the strength of a council of ministers cannot exceed 15 per cent of the size of any legislature. Now that the Cabinet has decided to act, the opportunity must be utilized to remove the distortions in our party system. While defection by one or many should incur disqualification, three safeguards are needed to ensure healthy parliamentary debate, and curtail autocratic tendencies of party bosses.

First, party whip, and disqualification for violation must apply only for a vote affecting the survival of government – money bills, and confidence or no-confidence motions. On all other issues, members should have freedom of vote. Second, there should be

recognition of legitimate splits in a party. If party bosses are utterly autocratic, or if their policies are blatantly unconstitutional, then the members must have an opportunity to rebel, and even split the party. On such occasions, the split should first take place in the party fora in a transparent and public manner after a statutory notice of, say at least a month, and after the members or delegates are allowed a free vote. A resultant split in the legislature wing should be recognized irrespective of the proportion the splitting members constitute. Third, past evidence clearly suggests that a partisan presiding officer loyal to the government cannot be trusted with the power to decide on disqualification. That power rightfully belongs to the Election Commission. Parties would do well to act with foresight and make the EC the final authority on all such matters. If these safeguards are incorporated, the new amendment will be a huge step forward in eliminating horse-trading and promoting clean politics.

Apart from the above mentioned amendments to the Indian Constitution, simple measures such as making Post Office a nodal agency for electoral registration will go a long way in strengthening our democracy by substantially reducing polling irregularities.

e.) Eliminating Polling Irregularities

There is evidence to suggest that the electoral rolls are severely flawed, and false voting by personation is rampant. As a result, many decent candidates are at a disadvantage, when compared to those who muster money and muscle power, and with trained cadres. The compensatory errors of rival candidates neutralize each other, and the final outcome is usually unaffected. However, given the local electoral compulsions in a flawed system, the parties are forced to look for 'strong' candidates who can manipulate the polling process, thus undermining and discrediting democracy and governance.

Simple procedural improvements will substantially ensure the purity of elections. A small yet significant step to facilitate increased access and more transparency is to use the existing post offices as nodal agencies for voter registration. Let us examine some figures to gain more clarity into the problem. About 15 % of rural electoral rolls and 40% of the urban rolls are defective. And last but not the least, voter registration is inaccessible to the people. Incorporating the existing post office as nodal agency is the best solution. Without any massive capital re-allocation, the change would bring the government at the citizen's doorstep.

Display and sale of rolls of local polling stations, sale of statutory forms; receipt and verification of applications for additions, deletions and changes for a fee (if EC accepts the procedure) can all be easily accomplished. Registration of new voters and changes at post offices with provision for appeal (if EC accepts and rules are amended) could also be done. The Election Commission (EC) could also assist during revision of rolls by verifying addresses etc. (if EC seeks it). The issue has been pending for over two years. Limited changes are expected by the end of 2003. Presently, the EC and Postal department have agreed to incorporate post offices in a phased manner. Finally, actual registration at the post office would involve a change in the rules.

Another effective reform would be to make re-polling mandatory whenever tendered votes (proof of rigging by personation) exceed a fixed percentage (say 1 to 2%) of votes polled in polling station. This will significantly reduce the incentive for rigging. Compulsory voter photo-identity cards issued to all voters would be an effective mechanism to check bogus voting. These measures will cleanse the electoral process substantially. However, to reduce the role of caste and religion in politics or to relegate the primordial politics into background there is a need to usher systemic changes such as proportional representation and in ensuring direct election of Head of Government in States and Local Governments.

f.) Proportional Representation

The first-past-the-post (FPTP) system that India has adopted led to several distortions, given the passage of time and ingenuity of legislators. Politics of fiefdom at constituency level has forced the parties to rely on local strongmen. As a result, the political parties and independent candidates have astronomical election expenditure for vote buying and other illegitimate purposes. This has led to a significant weakening of the party platform and ideology, reducing elections to private power games. In many states, national parties have been marginalized where their voting percentage falls below a threshold. Following from this, regional parties have occupied center stage in several pockets, holding larger interests at ransom.

All these failings find expression in bigger and long-term predicaments. The inability of all political parties to attract and nurture best talent is the primary issue. Difficulties of minority representation leading to ghetto mentality, backlash, and communal tension form another facet of the problem. Lastly, leadership is undermined by permanent reservation of constituencies (or regular rotation) in order to provide fair representation to SCs. The solution to this flawed system is adoption of mixed system of election combining FPTP system with proportional representation. This will be broadly based on the German model. The key features of the suggested system are as follows:

- The overall representation of parties in legislature will be based on the proportion of valid vote obtained by them.
- A party will be entitled to such a quota based on vote share only when it crosses a threshold, say 10% of vote in a major state, and more in minor states.
- 50% of legislators will be elected from territorial constituencies based on FPTP system. This will ensure the link between the legislator and the constituents
- The balance 50% will be allotted to parties to make up for their shortfall based on proportion of votes.
 - eg 1): If the party is entitled to 50 seats in legislature based on vote share, but had 30 members elected in FPTP system, 20 more will be elected based on the party list.
 - eg 2): If the party is entitled to 50 seats based on vote share, but had only 10 members elected in FPTP system, it will have 40 members elected from the list

- The party lists will be selected democratically at the State or multi-party constituency level, by the members of the party or their elected delegates through secret ballot.
- There will be two votes cast by voters - one for a candidate for FPTP election, and the other for a party to determine the vote share of the parties.

It needs to be remembered that PR system can be effective only after internal functioning of political parties is regulated by law. Otherwise, PR system will give extraordinary power to party leaders and may prove counterproductive. However, the PR system has one more advantage, which needs to be reiterated. PR system, more than FPTP system, ensures better representation of women in legislatures.

g.) Enhancing Women's Representation

There is overwhelming demand for fairer representation to women under the current FPTP system. Women are moving in the direction of near equal participation in only a handful of countries, such as Germany, Sweden, Norway, Denmark and Finland. In these societies, women have begun to seriously alter the very nature of politics, making enduring, and substantial gains in every field. However, in all other countries, including the supposedly advanced democracies of western Europe and North America, where women exercise certain freedoms and have acquired the wherewithal for economic independence, female presence in legislatures remains small and relatively insignificant.

In India, the problem for women is more serious for several reasons. The participation of women in politics has declined both in quality and quantity. The representation of women in Lok Sabha has basically remained stagnant. Pervasive gender discrimination has resulted in sidelining even veteran women politicians. Also, the few women in leadership positions have not been able to encourage the entry of greater numbers of women in electoral and party politics, and are an ineffective majority within their own respective political groupings.

The 85th Constitutional Amendment Bill introduced in Lok Sabha in December 1999 is both controversial and flawed. Reservation of constituencies with rotation of seats is both unpopular with legislators, and impractical. Such rotation will mean unseating of most incumbents in every election, leading to several problems. The elected women representatives will be unable to establish a political base. Proxy women candidates (family members and close confidants of incumbents) will become a dominant feature, leading to tokenism without empowerment. If an incumbent is sure to lose the constituency in rotation, there will be no incentive to perform well.

It becomes clear how the Bill proves to be counter-productive. An alternative Bill has been scripted to do away with the flaws in the existent Bill. It should be made mandatory for political parties to nominate women candidates in a third (or any other proportion prescribed by law) of the constituencies. Constituencies will not be reserved, and there will be no rotation. Each party will determine its nominees taking into account its own compulsions and local political realities. Certain checks within the system would ensure

effective implementation. First, in order to ensure that parties put up women candidates in all regions and sub-regions in fair numbers, and do not nominate them only in weak constituencies, a group of constituencies (say, three parliamentary constituencies for State Assembly; and the State for Lok Sabha) shall be the unit for women's nomination. Second, if the number of women candidates of a party falls short of the prescribed percentage, for the shortfall of every woman candidate, two male candidates of the party shall lose the party symbol.

h.) Direct Election of Head of Government in States and Local Governments

The other systemic reform that is needed to isolate the executive from unwanted influences, as has been pointed out, is to ensure direct election of Head of Government in States and Local Governments.

As election costs have skyrocketed, candidates spend money in anticipation of rewards and opportunities for private gain after election. Legislators perceive themselves as disguised executive, and chief ministers are hard pressed to meet their constant demands. Postings, transfers, contracts, tenders, tollgates, parole, developmental schemes, and crime investigation - all these become sources of patronage and rent seeking. No government functioning honestly can survive under such circumstances. While the legislators never allow objective and balanced decision-making by the executive in the actual functioning of legislation, their role has become nominal and largely inconsequential. This blurring of the lines of demarcation between the executive and legislature is one of the cardinal features of the crisis of our governance system.

Therefore, separation of powers, and direct election are necessary in States and local governments. At the national level, such a direct election is fraught with serious dangers. Our linguistic diversity demands a parliamentary executive. Any individual seen as the symbol of all authority can easily become despotic, given our political culture. But in states, separation of powers poses no such dangers. The Union government, Supreme Court, constitutional functionaries like the Election Commission, UPSC, and CAG, and the enormous powers and prestige of the Union will easily control authoritarianism in any state. This necessitates adoption of a system of direct election of the head of government in states and local governments. The fundamental changes suggested find mention as under:

The legislature will be elected separately and directly while the ministers will be drawn from outside the legislature. The legislature will have a fixed term, and cannot be dissolved prematurely except in exceptional circumstances (sedition, secession etc) by the Union government. The head of government will have a fixed term, and cannot be voted out of office by the legislature. Any vacancy of office will be filled by a due process of succession. The elected head of government will have no more than two terms of office. Even though these changes may not be panacea to all evils in the present structure of legislature and executive, it will certainly encourage more healthy and vibrant democracy and democratic processes. Further, clear delineation of functions

between Union and States, and among various tiers of local governments is also a necessary condition for a vibrant democracy. It is only a true federal structure that can ensure unity in this multi ethnic and multi religious society.

II Federalism and Local Governments

There is a need to ensure periodic review of the Seventh Schedule to facilitate changes in the Union-State jurisdiction to suit the requirements of changing times. Clearer separation of powers between Union and States can be effected by further subdividing list III subjects (concurrent list), and providing for demarcation with minimal overlap. Special powers would be given to the Union to preserve unity and national integrity. Terrorist offences, inter-state trade, inter-state water resources, protection of linguistics and other minorities, equal employment and educational opportunities' provision across all regions would be key areas where Union will adjudicate.

Fiscal devolution forms a critical aspect of federalism. Finance Commission would devolve the fiscal package and ensure that it is non-discretionary. Centrally sponsored schemes would be abolished, instead lumpsum grants would be given to States, with the exception of a few critical areas. They being population control, critical health schemes, national testing board for comparing educational standards, central fund for improving access to judiciary and enhancing judge:population ratio, fund for expansion and modernization of police forces.

A re-look at the All India Services is due, given the passage of time and the changing scenario. Creation of an Indian Judicial Service would ensure higher standards of recruitment and impartiality in trial courts. This will also serve as recruiting ground for higher courts. The practice of nominating governors needs to be abolished. Governors would either be directly elected chief executives, or the state legislature and local governments would elect a constitutional head of state (on par with the President).

In the area of legislative jurisdiction, the governor's power to reserve a Bill for President's assent under Article 200 needs to be done away with, or severely limited (by fixing a time limit of 60 days for President's assent or otherwise). For effective decentralization of power, Article 243 must be amended making it mandatory for the States to transfer to local governments the subjects listed under Eleventh and Twelfth Schedules. Local government subjects (11th Schedule and 12th Schedule) to be incorporated in the Seventh Schedule, giving such division of powers a mandatory status. Strengthening of local governments is very important as it ensures a link between votes and public good, between taxes and services, and between authority and accountability. Access to justice can also be ensured through decentralized judicial apparatus. Creation of Sthanika Nyayalayas, for a population of 25,000 in rural and 50,000 in urban areas with summary procedures will result in speedy dispensation of justice. There are various other judicial reforms, which need to be implemented in right earnest.

III. Judicial Reforms

People have great respect for judiciary, and in general our faith in judiciary has been vindicated as rule of law has become integral to our democratic process. But a series of events in recent years rudely awakened us out of this complacency. The failure of Justice Ramaswamy's impeachment proceedings in Parliament on partisan and extra-judicial considerations, for all practical purposes, proved that errant judges cannot be removed. And then in a perverse interpretation the Supreme Court effectively held that in matters of judicial appointments, the opinion of Chief Justice is more or less final and binding. The judiciary appoints itself, and cannot be removed by anyone. This self-perpetuation and unaccountability created a Mullah Raj! Such a state of affairs is clearly unacceptable in a democracy. The consequences are predictable. A string of scandals – alleged involvement of judges in corruption in public service commission in Punjab, Shamit Mukherjee's complicity in the DDA scam, and brow beating of journalists who wrote about the Karnataka scandal – exposed and embarrassed the judiciary as never before. The contempt powers invested in judiciary, making the judge complainant, prosecutor and judge, further undermined notions of accountability. The abnormal pendency of cases (25 million) in various courts made justice expensive and delayed. The incomprehensible procedures made it inaccessible to most ordinary people. Thanks to failure of the justice system, rough and ready justice for a price has become the norm. There are increasing concerns about falling standards of probity in judiciary too. Ceaser's wife, alas, is no longer above suspicion!

Several aspects of the judicial system has to be restructured making it more relevant and to enhance its functionality. To start with, instituting a National Judicial Commission that would have the powers of appointment and removal of higher judiciary. The Venkatachaliah Commission recommended a five-member committee, with three senior most judges, Law Minister and one person nominated by the President in consultation with Chief Justice. The government's proposal is very similar, except the fifth member is a nominee of the Prime Minister. The committee on judicial accountability, a body of independent jurists, suggested a NJC with five retired judges - a member each nominated by the Supreme Court, High Courts, government, opposition and Bar Council. In a democracy, we cannot completely delink the NJC from the political process. Public interest may be best served if the government has two nominees, the opposition and the judiciary. Such a collective body must function independently and its decision must be final. Such a committee must notify the names for consideration and hold public hearings, so that known corrupt or incompetent persons cannot be nominated to high judicial office through secret deals. There are far too many undesirable appointees already who do no credit to our constitutional offices. The NJC must also be empowered to remove a judge after due enquiry by a committee of peers. Given the failure to remove a single judge under Articles 124 and 217 of the constitution, we need a simpler, transparent and effective mechanism to remove errant judges, but with adequate safeguards. Finally, contempt powers of judges are anachronistic in this day and age. That even truth is no defence in contempt proceedings is a mockery of justice and fairness. In fact, the ordinary law of civil or criminal defamation is adequate to deal with any transgressions. Only weak institutions need crutches like contempt powers. Our

judiciary is strong enough to preserve its dignity and protect its independence without draconian powers.

Given the number of pending cases and monumental delays associated with courts, appeals to higher courts must be limited to constitutional matters and writs (to be heard by Supreme Court). Guaranteed right to time-bound justice is central to the idea of judiciary. There must exist time frames within which the cases must be disposed. Hearing of criminal and civil cases will not exceed one and two years respectively. In case of appeals, the time frame for criminal and civil cases will be six months and a year respectively. Further, substantial amendments to the civil procedure code are suggested to facilitate speedy trials. A first step in speeding up the procedure would be making the confessions before a police officer admissible as evidence. Further, our adversarial criminal justice system inadvertently encourages and rewards cheating and other unsavoury practices in order to 'win' the case. When evidence before the court is all that matters and the judge is more a passive umpire and not an active seeker of truth, the lawyers have a field day. It is the reputation and skill of the advocate, not the merits of the case or truth, which often lead to 'victory'. Therefore, careful tutoring of witness, inducements, and involved arguments have become acceptable practices over a period of time. This can be supplemented by a shift from adversarial system of criminal justice to the inquisitorial system. Formulation of a new Police Act would ensure a separate, independent police force for crime investigation in each state insulated from political vagaries. An independent prosecution commission to supervise the police force could address the issue of policing the police.

While efficient judiciary and police are necessary for enforcing the rule of law, there is also a need to have strong institutional mechanisms to curtail unlawful behavior of persons manning the state apparatus.

IV Self-correcting Institutional Mechanisms

A democracy must be truly practicable and transparent. For this, a right to information law must be in place. It would make transparency and accountability more than just catchphrases. Institution of Lok Pal is another step towards ensuring transparent governance. It must be handed over substantive powers and adequate autonomy. The directions of the Lok Pal would be binding.

An independent CVC to control corruption; removal of single directive to ensure impartial and independent enquiry would be crucial checks for maintaining functional democracy. The "Single Directive"(SD) policy which earlier made it mandatory for the CBI to seek prior permission of the government to investigate corruption and prosecute senior civil servants is given a firmer footing by incorporating it in the new legislation. This was done contrary to the earlier Supreme Court (SC) ruling that the SD is illegal as it is discriminatory in nature and blurs the distinction between decision-making officers and other civil servants. The SC again sought the government's explanation for retaining the provision in the CVC Act. Defending the inclusion of the SD in the CVC Bill, the Union Minister for Law, Arun Jaitley, argued that this enabled bureaucrats to exercise

their discretion without fear of harassment by malicious investigations. This is exactly the argument that bureaucrats employ to defend the Directive, which they portray as a necessary protection against an investigating agency more than capable of misusing its powers. But in reality, SD has only helped shield many corrupt civil servants. The party in power habitually protects its cronies, and upright public servants are sometimes harassed for being 'inconvenient' and 'obstructive'. It is indeed a startling admission by the civil servants and politicians that crime investigation agencies can be manipulated to settle scores with political opponents. That being the case, what faith can citizens have in the crime investigation and governance process? The solution lies in separating the crime investigation process from political control and placing it under quasi-judicial control. In addition, prior permission of an independent collegium (say CVC) for investigation and prosecution will give the required protection to honest civil servants. Similarly, Constitutional functionaries are to be independently appointed. This could be modeled after the appointment of Judicial Commission by a collegium.

It becomes imperative to have effective checks against abuse of constitutional offices. This could be accomplished by specifying a category of constitutional offences along with the ensuing penalties. It must also provide for an independent mechanism to investigate such offences. The idea of Citizen's Charters must be realized that would list out and provide for all Union services. The procedure for obtaining these services is to be clearly laid down and made as simple as possible for easy access by the citizens. There must exist clearly earmarked areas of responsibility making the Charter user-friendly. The Charter must also provide for well-defined and measurable performance standards enabling ease in citizen appraisal of services. Finally, there must be compensation to the citizen for every day's delay in provision of services.

The key requirements to enforce accountability are plurality of civil society institutions and citizen assertion. We need to create enabling climate for citizen activism through the following measures. A citizen-friendly central cooperative law that is liberal in its postulates and effectively implementable would be a step in this direction. Contributions to non-profit organizations must enjoy full income-tax exemption to promote civil society institutions that can voice citizens concerns. Societies and trusts must be freed of all fetters and controls to encourage vibrant democracy.

V Civil Service Reforms

In the area of civil service reforms, the issue of public appointments (postings) is central. Key postings if recommended by Civil Service Boards would ensure the impartiality of the decision. Following which, the government will choose one appointee chosen by the Civil Services Board. A subject committee of Parliament would confirm the appointment through public hearings. Once appointed, the functionary would have guaranteed tenure of three years with provisions for removal or transfer only on grounds of proven incompetence or corruption. An amended Article 311 then could be applied only for the purposes of removal and dismissal. The court's jurisdiction would be prohibited except on grounds of equality before law.

VI Conclusion

The above-suggested agenda, because of its huge scope and implications, might deter some of us from action. But the complexities of the problems should not cloud our thinking and should not deter us from advocating sensible solutions. Any serious reform advocacy must be based on clear thinking, rational analysis, and sensible goals. Opportunities will always knock the doors, and once the goals are clear, it becomes easier to design campaigns and activities to suit the requirements. A vibrant and informed civil society, media exposure and “political will” to enforce these governance reforms are the vital inputs. And it is only when we assert our rights that we can transform our procedural democracy into a substantive democracy. As Eric Shaub’s aptly sized up the crux of the matter when he said, “Our democracy is ‘out of shape’ because we don’t ‘exercise’ our rights.” The systemic overhaul, suggested here, might not be an overnight phenomenon. Short-term gains will lead to long lasting successes for democracy. The light of the passing ships might prove enticing but it’s the constant light of the distant star that must navigate the course of governance reforms.

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