

# A Review of the Indian Constitutional and Political System

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1. Man, being a social animal, has to live in harmony with fellow human beings. Human society has created the unique institution of organized state in order to maintain public order, defend frontiers, and ensure harmony among individuals and groups. After centuries of struggle, only in the modern era has it generally come to be accepted that the state cannot be controlled by divine right or brute power. Neither hereditary succession nor authoritarianism are acceptable as arbiters of political power in a civilized society. Throughout most of our ancient and medieval history, there is no clear evidence of a theory of state at work. As several scholars have pointed out, personalized despotism was the norm of governance in our society. However, there was a saving grace. While the absolute power of the despotic monarchy was accepted, the relative autonomy of individuals and groups from state power was recognised and respected in large spheres of human endeavour. It is this strength and vitality of institutions other than state that helped to nurture and sustain Indian society over the centuries of turbulence and seeming anarchy. Matters relating to religion and Dharma have always been beyond the realm of the state. Even justice as understood in ancient and medieval times was to a large extent left to various social groups beyond the pale of the state.
2. The relative autonomy of the society from state influence has resulted in two parallel developments. On the one hand, society was remarkably stable, unaffected by vicissitudes of political fortunes and state power. A high degree of harmony and predictability in human relations were thus ensured. On the other hand the insularity of the society from the state had ensured that the vertical fragmentation in society continued and institutions remained static and frozen. New ideas were not easily absorbed, and in Tagore's memorable words "... the clear stream of reason has ... lost its way into the dreary desert sand of dead habit". In addition to this social stagnation, the limitation of state's influence meant that no empire could really unify India and bring all the people together. No authority could submerge the many group identities and differences for the preservation and glory of the state. Thus while the Indian state even in its most absolutist form was never a fascist state, the Indian society even at the height of its glory did not allow the fresh breeze of new ideas and institutions to flow.

## **Philosophers vs. laws**

3. Historians tell us that throughout history in most cultures there were no specific rules of governance. Certainly in case of India this was largely true. Our ancestors have never really developed a theory of state. Consequently personalised despotism of the monarch was the norm. There were, of course, certain social and religious constraints. Subject to such sanctions, the affairs of state were largely unregulated by any framework of formal laws and rules of governance. In his celebrated work 'The Republic', Plato argued that Philosophers alone should be rulers, and when the rulers themselves are philosophers, there is really no need to have a system of laws and rules. As Trevor Saunders points out, "The Perfect Guardians undergo a long and rigorous training in philosophy; they, if any one, really know the moral norms that society must obey. They have absolute and untrammelled power over the rest of the state; in their hands lies the making of such rules and regulations as are necessary. ....The essential features of such a state are that the few who really know the absolute moral standards rule the many who do not, and that such control is willingly exercised and willingly accepted". Thus, the wise and all-knowing philosophers **know** what is best for all people and for the state, and their judgement at any point of time is the best guarantee of public good.
4. However, history taught us that no matter how wise and wonderful a ruler is, we cannot unreservedly trust his judgement alone in dealing with complex human and societal issues at all times. Even more importantly, no matter how all-knowing and altruistic the ruler is, we cannot for a moment assume that he will forever be invulnerable to temptations of personal gain and vanity at the cost of public good. As Lord Acton observed so wisely, power tends to corrupt, and absolute power corrupts absolutely. Even Plato recognised this truth later in his life, when he wrote 'The Laws' years after 'The Republic'. Again to quote Saunders, "Plato now sees law as the supreme, though essentially imperfect, instrument for the moral salvation of society: he calls it the 'dispensation of reason', and the entire life of the community must accordingly be governed by a detailed code

of laws which will express as far as possible the philosophers' vision of the true good". In Plato's conception, however, such laws are immutable, and should never be changed even in the minutest particulars. "Change, we shall find, except in something evil, is extremely dangerous". We shall examine the validity of this assertion later.

5. It is now almost universally accepted that the basis of laws is that human beings are inherently frail, and the state requires a system of laws and rules to moderate human behaviour. Even wise philosophers and rulers are bound by these laws, as the laws are greater guarantee of state's stability and public good than the unchecked will of mere mortals. It is this recognition that made us accept the need for constitution and laws as a matter of course in modern era. Even in Britain, with no written constitution, there is a recognised body of principles and rules which is accepted as the constitution. Britain was fortunate in having at its disposal ample time to evolve a sound democracy over centuries of trial and error. Nascent democracies and new republics however have no such luxury of time. Recognizing this the American Founding Fathers adopted the first written constitution while creating the first republic in modern history. Our own freedom fighters wisely recognised the need for a written constitution to determine the building blocks and architecture of the new republic.

### **Making of the constitution**

6. With the transfer of power in 1947, an earnest attempt was made to radically transform the Indian state. With the adoption of a democratic system of government, universal adult franchise, republicanism and representative democracy became the corner stones of the architecture of the Indian constitution. Independent judiciary, separation of powers, accountable governance and people's sovereignty became the guiding principles which informed the making of the constitution. The turbulence and bloodshed accompanying partition in 1947 did not diminish the great excitement and expectation generated by freedom struggle and independence. Obviously there was enormous pressure on the state to fulfil these expectations in a significant measure. The constitution-makers attempted to reconcile individual liberty with the state's interventionist role in transforming society.
7. Thus the Fundamental Rights guaranteed various liberties to citizens and these liberties ensured that the state could not affect adversely the liberty and autonomy of individuals and groups. The doctrine of reasonable restrictions and the provision for judicial review effectively protected citizens from the traditional tyranny and depredations of the Indian state. At the same time, the Directive Principles of State Policy were enunciated and they were declared to be fundamental in the governance of the country and a duty was cast upon the state to apply these principles in making laws. The Directive Principles attempted to give expression to the aspirations of the people and to the ideals of the freedom struggle through control, regulation and reform of the Indian Society.
8. A constitution is a living document which gives a concrete structure and shape to the ideals in forming the state. Mere pious proclamations and grand declarations remain as empty rhetoric in the absence of a suitable state structure and the myriad details that support the state architecture. In building the edifice of the new India, our constitution-makers relied on time-tested principles of democratic governance and statecraft. A republican form of government based on representative democracy and universal adult suffrage came into being. Given our colonial ties with the United Kingdom and our acquaintance with the Westminster model, a cabinet-system of government responsible to the elected legislature and which survives only as long as it can enjoy the support of the majority of legislators came to be accepted as a matter of course.
9. The holocaust accompanying partition was an extraordinary calamity by any standards, and is unprecedented during peace time anywhere in the world. More than a million people, both Hindus and Muslims, were butchered for no fault of theirs. Hundreds of thousands of families were devastated by the widespread violence, arson, rape and looting. About eighteen million people were permanently uprooted in the largest ever mass migration in human history. Given these cataclysmic events at the time of partition, restoration of order, and preservation of the unity and integrity of the fledgling nation were of paramount importance to the new leaders of government and constitution-makers. As a result, a highly centralized state-structure, with certain quasi-federal features was built. In order to maintain peace and order, it was felt necessary to retain the inherited 'steel-frame' of bureaucracy without any serious effort to reshape it to suit the needs of a democratic India. However, in order to ensure a modicum of fairness in the functioning of the state, apart from the independent

judiciary, several constitutional institutions like Public Service Commissions, Comptroller and Auditor General, Election Commission and Finance Commission were created. However, in keeping with the tradition of unchallenged power of the executive, the appointment of all these constitutional functionaries was left entirely to the executive. This vast centralization meant that the fate of a whole nation, whose vastness, diversity and durability were unparalleled in human history, was left to possibly the smallest number of final decision-makers in any modern democracy.

### **Are constitutions immutable?**

10. Let us now examine whether a constitution is immutable. Ambedkar rightly said that the constitution is only as good as the men and women who operate it. No matter how sound and impregnable the fortress of the constitution is, the termite of human greed and follies is bound to destroy its foundations unless the best men and women assume public office and serve the nation. However, Ambedkar carried this argument too far when he asserted, "Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile". If this argument is taken to its logical conclusion, the constitution cannot safeguard the republic against the depredations of those in power. The people have the responsibility to always ensure that wise and good men and women ascend to public office and only then can the constitution be effective in ensuring good governance. In many ways this is a rehash of the argument of Plato in 'The Republic'. If we accept this assumption, then in fact there is no need for a constitution and all we have to do is to elect wise and good persons to public office and leave all statecraft to their judgement without restraining them by a set of rules and regulations in the name of constitution. However it is with the recognition that such uncircumscribed and absolute power in the hands of any state functionary is not desirable have constitutions come into being. If the constitutional framework and rules cannot operate as checks and balances against abuse of power and to promote the greatest public good, then such a constitution is surely flawed.
11. There are no guarantees ever in any society that only moral giants and men and women of unimpeachable integrity with an eternal sense of public purpose will always occupy public offices. Therefore wisdom demands that a set of rules and institutions is designed to ensure that persons with right qualities will operate the constitution and once they ascend to public office they will function within certain parameters without overstepping the limits of their authority. If a constitution is merely a declaration of good intentions and has no role in shaping the nature of the state, then such a constitution is a worthless scripture. Thomas Jefferson is closer to reality when he argued that constitutions are living documents. "Some men look at constitutions with sanctimonious reverence and deem them like the Ark of Covenant too sacred to be touched. They ascribe to the men of the preceding age wisdom more than human and suppose what they did to be beyond amendment.... laws and institutions must go hand in hand with the progress of human mind.... As new discoveries are made, new truths discovered and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times". Each generation has the benefit of experience of the past and should have the capacity and the right to build upon the foundations of this experience. If certain portions of the constitution have become redundant or dysfunctional over the years, or if new problems arise and new instruments and rules are needed to face those challenges, then constitutions must be revised. If we accept the theory of immutability of the constitution, we are no longer talking in terms of human frailty, limits to state authority, and constitutional checks and balances; we are in fact treading into the realm of religion and spiritualism where the authority of the divine revelation is supreme, unchallenged and immutable. Obviously in modern secular states constitution does not have religious sanction based on divine revelation.

### **India at crossroads**

12. Indian republic is now fifty years old. Let us have a glimpse of the Indian State today, in order to have a better understanding of the constitution in actual operation. India today is at the crossroads. The most likely topic of conversation when any two Indians meet at leisure is the decline of civil society and the condition of the Indian state. The Indian state has become too big, all-pervasive and yet soft, inefficient, and effete. In large parts of the country there is breakdown of order. Virtual lawlessness and anarchy are prevailing. A citizen, whose dignity and self-reliance are paramount for the survival of democracy, is made more and more dependent on the state.

The situation is aggravated by competitive populism, a dangerous permissiveness that tolerates criminalisation of our polity and society, ever-growing nexus between money power, muscle power, and political power, increasing centralisation in a vast and diverse polity and serious erosion of the legitimacy of authority — all of which have become characteristic of the Indian state. In the light of this, we should examine where exactly our democratic model of governance has gone wrong. We all accept that democracy is the best and humane form of government. Modern history has also taught us that democracy is the most successful form of government in terms of economic growth, national power, and human welfare.

13. Happily for us, at least superficially India has consistently upheld democratic institutions and practices. Except for the dark period of the artificially induced 'internal emergency' declared in June 1975 and concluded with the defeat of Congress Party in March 1977, we never wavered in our faith in, and allegiance to, democratic institutions and practices in the political arena. During that infamous emergency period there was partial authoritarianism; our civil liberties were suspended, opposition was jailed, and the life of legislatures was prolonged beyond the term of five years for which they were elected. However, it must be said in favour of Mrs. Gandhi, the architect of that emergency, that she did voluntarily call for elections, though after the expiry of the natural term of parliament, and lifted the curbs on most freedoms. The elections in 1977 were by and large free and fair, and the transfer of power from the defeated ruling Congress Party to the newly elected Janata Party was peaceful and orderly. It is true that elections have often been flawed and power has been habitually abused for personal aggrandizement,. However, peaceful transfer of power, regular competitive elections, multi-party system, basic democratic freedoms and due process of law have been the norms in our political system.

### **Standards of democracy**

14. However, when judged by more exacting standards of democracy, Indian polity is flawed in many respects: There are five key ingredients of democratic polity viz: freedom, self-governance, empowerment of citizens, rule of law and self-correcting institutions of state. Let us briefly examine the performance of Indian polity in the light of these standards. Freedom, in an elementary sense, is the right of an individual to do as he or she pleases, as long as his actions do not impinge on the freedom of others. While the constitution and law have guaranteed these freedoms in a fair measure to citizens, in reality freedom is undermined by the unchecked power of parties and state functionaries to paralyze society at will, to appropriate resources, and to blackmail or bully citizens and groups. Institutional maladies including inaccessible school education and primary health care, delayed justice, unaccountable police, unchecked crime, secrecy in government and inefficient public services have severely eroded our freedoms despite constitutional guarantees.
15. Self-governance is the right of citizens to govern themselves directly or indirectly. Representative democracy means that the elected legislators and governments should be fully accountable to citizens. However, autocratic political parties, flawed electoral process, limited and often unhappy choice of candidates between Tweedledom and Tweedlee, uninformed public discourse, criminalisation of politics, marginalization of citizens and over-centralization have all reduced our self-governance to a mockery. Empowerment is the ability of citizens to influence the course of events on a sustained basis and to make meaningful decisions on matters of governance having impact on their own lives. In effect, people always continue to remain sovereigns. However, rampant corruption, hostility to public participation in governance, centralization, secrecy, red tape, and a culture of touts and middlemen with the backing of powerful party organizations have denied people any meaningful degree of empowerment.
16. Rule of law is the concept of people being governed by law, and all citizens, irrespective of station and rank, being subject to the same laws to the same extent. However, centralized and autocratic political party functioning, flawed electoral system, highly opaque and secretive functioning, habitual abuse of executive authority, ubiquitous patronage system, VIP culture in every public service, gross failure of public order, primacy of political agents, influence-peddlers, touts and rabble rousers in government decision making at the cost of non-partisan citizens, political control of crime investigation and the tardy and inefficient justice system make rule of law virtually non-existent in our society. Self-correcting mechanisms give institutions of state and

polity the capacity to learn from past experience and to constantly improve themselves in order to serve the people better. Our incapacity to design and operate the institutional correctives, constitutional functionaries amenable to political influence, secrecy in government, tardy and inefficient justice system, a political system dependent on uncontrolled corruption, and the moribund party structure incapable of attracting the best elements of society have made sure that the decline of the Indian state is progressive. This impairment of self-correcting mechanisms contributed to near-collapse of our governance structure, and made reversal of the trend within the existing framework a herculean task.

### **Constitutional values vs. colonial instruments**

17. This leads us to the inescapable conclusion that our democracy is extremely flawed, and its poor design ensured the eventual breakdown. The preamble, the fundamental rights and most of the directive principles reflect universal human democratic values of modern civilization. However, the antiquated instruments of governance are largely unsuited to the challenges of today in a vast, developing nation with high proportion of population oppressed under the weight of poverty, drudgery and illiteracy. In the early year after independence, this conflict between constitutional values and colonial instruments of governance was camouflaged. The euphoria accompanying the transfer of power led to a general belief that the moment Indian leaders acquired power, things would automatically improve even with the old instruments of governance. However, the subsequent events belied these hopes. In the first two decades after independence, the aura of freedom struggle, the towering stature of the early leaders associated with that struggle, the hope of better things to come, and the inadequate understanding of the loopholes in the mechanics of governance ensured a certain measure of stability, hope and harmony. As all such hopes are dashed, and as persistent rejection of the parties in power does not seem to result in any significant, tangible improvement, people are increasingly sullen and resentful.
18. It is very easy and tempting for us to blame any particular segment of our polity or governance structure for this unhappy state of affairs. There are many among our governing classes who were, and are, honourable. It would be cynical and dangerous to condemn ourselves and assume that we, as a people, are incapable of self-governance. The Indian people are in no way inferior — they are as good as any other people. Our governing classes are no more venal than in any other society. Our people are no more capricious than those elsewhere. We have the same sense of values and capabilities that made other nations great. The real problem is that our governance apparatus tends to suppress the best and bring the worst out of us. The state structure has been increasingly incapable of rewarding good behaviour or correcting bad behaviour. Power has two manifestations — positive and negative. Positive power can be defined as the power to influence events, resources or human behaviour to promote public good. This positive power is severely restricted in our governance structure. The high and mighty of the land — be it the prime minister or chief minister or other ministers or high officials — have very limited positive power. The outstanding among these functionaries shine by comparison, as they perform several notches above the average. However, even the best performance is far short of what is possible in a well-designed governance structure and what is necessary in a well-run civil society. In the process, every functionary in our constitutional and legal scheme of things has a perfectly rational and plausible alibi for non-performance. However, the negative power which is manifested in pelf, privilege, patronage, petty tyranny or plain nuisance value is more or less unfettered and limitless. Every one of the 18 million public servants, including all elected politicians, appointed public officials and employees of all public sector undertakings, enjoys this negative power in abundance. Understandably, the vast majority of them choose to exercise it, given the climate in which good is not rewarded and bad is not punished. The few who wish to exercise positive power find themselves in shackles and wield limited influence at best. The resultant imbalance has caused incalculable damage to our polity and society, hurtling the Indian nation into a grave crisis. As a consequence, the great institutions of state have all but collapsed, and the crisis of governability is deepening by the day.
19. In the judgement of the people, no arm of state escapes the blame — whether the political class or the bureaucracy or judiciary. The politicians are much more reviled and blamed, because in their case the imbalance in exercise of power as well as the incompatibility between honesty and survival are far more clearly evident. In this demonology, the bureaucracy comes next because in its case there is life-time security irrespective of performance and therefore it is possible to be honest and yet survive. Judiciary is last in vilification, since it is largely immune from the vagaries of politics and there is less interface with the general public on a day-to-day basis. However, judiciary is no less culpable, to the extent that there is gross inefficiency, delay and

inaccessibility, almost amounting to miscarriage of justice in most cases. As the old adage goes, the loser in a civil suit laments publicly in court, and the winner sheds tears privately at home. The root of the problem, in a large measure, lies in the governance structure we adopted and not in our people and politicians or officials or judges. It is easy and fashionable to blame the political class or bureaucracy or judiciary for all our ills. This demonising may find scapegoats but will not help in retrieving the situation, unless we identify the root causes and eliminate them.

### **Political process**

20. Political and electoral systems have played havoc with people's lives and governance process. Political parties are totally unaccountable to people in their organisational functioning. It is impossible for any serious candidate for elective office to get elected without mobilising unaccounted funds and violating law. The people or the members of the political parties have no role whatsoever in the selection of candidates nominated by the parties. In most cases, even a list of members of the political parties is unavailable. There is no internal democracy in political parties. As a result, organisations that function wholly undemocratically and are totally unaccountable are expected to govern the nation democratically! The behaviour of the electorate is increasingly plebiscitary in nature. However, the Westminster model adopted by us recognises only power by acquiring legislative majority by means fair or foul, without reference to public opinion or people's mandate. As people's mandate and power are easily divorced, the rulers are increasingly obsessed with survival in power at any cost. As a result, it is now axiomatic that integrity in public life and survival in public office are no longer compatible.
  
21. In this milieu, the vote, instead of being an unifying, cleansing and energising tool, has become a divisive force, or at best a means for expression of anger and frustration. The electoral behaviour in most parts of the country over the past 25 years clearly shows that the dominant mood of the electorate is to reject the party in power. Often this rejection is despite the perception of the elites that the government has performed creditably, and the alternative chosen by the people is even less attractive on careful analysis. Obviously the voter perceives the issue differently. As far as he is concerned the government of the day failed to fulfil his expectations. Even populist governments, which successfully transferred assets and resources to the people through direct subsidies and welfare schemes, incurred the wrath of the people as much as those governments that had long-term perspective. This only shows that people are disgusted with the political process itself, and there is deep-seated resentment and unrest about the exercise of power, the imbalance between the exercise of positive and negative power, marginalisation of their own role in the governance process and their disempowerment.
  
22. This rejection of the governing class by the voter can be construed to be both positive and negative. The positive significance is the demonstration of the voter's yearning for a comprehensive reform and rejection of status quo. The negative impact is the increasing instability and fear of the ruling classes to face the electorate. All these maladies constitute a first class recipe for corruption, greed, and short-sightedness on the part of those in authority. Corruption has become endemic and is widely perceived to be an ubiquitous feature of our governance. No class of public servants is exempt from this. People who are victims of this day-to-day corruption do not have effective institutional mechanisms for resisting it, and therefore succumb to it. Those who have the will to resist do not dare to do so for fear of greater personal loss than the potential gain resulting from resistance. As a result, it is more convenient and less cumbersome to become a part of the process, than to fight against it. Every individual in this vicious cycle therefore prefers the status quo either to maximise personal gain or minimise personal pain, even as the society at large loses more than individual gain, and is increasingly debilitated. To explain this phenomenon, Robert Wade coined the expression, 'dangerously stable equilibrium'.

### **Election verdicts**

23. The election verdicts at various levels in the country have an important lesson to offer to us. At the macro level, when we examine a whole state or the country, the verdict does broadly reflect public opinion. We have

already seen that, more often than not, this verdict of rejection is a reflection of people's anger and frustration. But when we go to the constituency level, we find the picture far more disturbing. At the local level, caste or subcaste, crime, money and muscle power have become the determinants of political power. All parties are compelled to put up candidates who can muster these resources in abundance, in order to have a realistic chance of success. As a net result, irrespective of which party wins, the nature of political leadership and its quality remain largely the same and the people end up being the losers. This is followed by another rejection vote in the next election, and the vicious cycle keeps repeating. Where the candidate cannot muster money or muscle power, he stands little chance of getting elected irrespective of his party's electoral fortunes. Increasingly in several pockets of the country people are spared even the bother of having to go to the polling station. Organised booth-capturing and rigging are ensuring victory without people's involvement.

24. If we examine the new entrants into politics over the past three or four decades in the country, hardly any one with intellect, integrity, commitment to public service and passion for improvement of the situation could enter the political arena and survive. Almost every new entrant has chosen politics exactly for the wrong reasons. A careful analysis shows that heredity and family connections are the commonest cause for entry into politics. This is closely followed by those who have large inherited or acquired wealth and have decided that investment in politics is good business. In recent years, many local muscle men, whose services were earlier sought for extortion or vote-gathering, are now directly entering the fray and gaining political legitimacy. A few persons have entered politics out of personal loyalty to, and close contacts with, those in high public office. Film stars, whose faces are widely known and admired, have predictably started converting their popularity and image into elective office. Occasionally, accidents of fate are pitchforking certain individuals into elective public office. If we exclude these methods of heredity, money power, muscle power, personal contacts, stardom, and accidents of fate, there will not be even a handful of persons in this vast country of ours, who have entered politics with passion for public good and survived for any length of time over the past four decades. There is no activity more vital and nobler than governance. In the true sense, politics is about promotion of happiness and public good. But if the best men and women that society can boast of are either prevented or repelled or rendered incapable of surviving in the political arena, then that governance is bound to be in shambles. Over the past fifty years of our republic, the unsuitable constitutional and legal mechanisms that we evolved landed the Indian republic in an extraordinary crisis of governability.

#### **Legislator as disguised executive**

25. One of the main causes of this decline in politics and political discourse is the fact that the legislative office is not perceived by the candidates as well as the general public as one of law making and keeping the executive under check. Legislators are seen by the people, and themselves, as the disguised executive. The Indian Union and even States are too large for any social group to gain complete dominance or decisive influence. The sheer diversity of our society ensures that no group can really exercise control over a whole State or nation. When we come to the constituency level, it is an altogether different proposition. The local dominant castes or groups can, and do, exercise near-total control. When these groups elect the disguised executive in the form of a legislator, what they are looking for is control of the executive branch of government through that legislator. There is little concern for law making. Those few people's representatives who discharge their legitimate public duties fairly and diligently are likely to either lose support of dominant groups, or fall prey to the rejection vote in the election. What the dominant groups want is a legislator who can get a local police or revenue official transferred, who can intervene on behalf of the accused in a criminal case, or at best one who can be a dispenser of patronage in the form of many government welfare schemes. In our constitutional scheme of things, these legislators' support is critical for the survival of the government. Rarely is this support given on the basis of principles or ideology or public opinion. Invariably, there is a price extracted for such support, which can be in many forms. The executive is then at the mercy of the legislators, on whose continued good will and support its survival depends. As a consequence, integrity and survival in power are not compatible any longer.
26. In addition, as the local legislator is elected more as a representative of the dominant castes or groups, he doesn't stand for an ideology or a mandate or poll platform. His main purpose is to further the interests of the dominant groups or castes as a legislator, or as a minister, if he can muster enough support to become one. As the people have to choose between two or three contenders of similar unsavory background, the choice is often between Tweedledom and Tweedledee. As the political executive is drawn from those elected in this process, it

is almost always certain that we have ministers, who have neither common purpose, nor larger vision, nor deep understanding of public affairs. The council of ministers is very often a loose collection of warring tribes, perpetually feuding for crumbs of office or to further their own group or caste interests. This situation, coupled with the public anger and frustration in the political process as evidenced by the rejection vote, makes it impossible to have any honest or far-sighted governance.

27. All governance is then reduced to patronage, and transfers and postings of bureaucrats. As Robert Wade pointed out, there is a well-developed market for public office in India. Money habitually changes hands for placement and continuity of public servants at various levels. These public servants in turn have to collect 'rent' from the public. The hafta paid to a policeman, the mamool charged by the excise official, the bribe collected by the revenue functionary or the corruption of a transport officer are all part of a well-integrated, well-organised structure. This vicious cycle of money power, bureaucratic placements, political power, muscle power and election battles based on dominance of local factions is extremely well-entrenched and resilient and cannot be dismantled by a few good deeds of a few good people or by incremental reform or tinkering with the system. It is this vicious cycle that leads to the pervasive corruption that large sections of citizenry in all walks of life are disenchanted with, and which is enfeebling ordinary citizens. With the exclusion of the people from the political process or governance, except for voting once in a while in favour of a candidate who is imposed on them, most people are sullen, resentful, angry and frustrated. No matter how many times they reject a government or party, no matter how often they give vent to their anger and frustration through public protests, demonstrations, and at times violence, the real character of governance does not seem to change; the local public servant behaves in the same manner as always — corrupt, greedy, arrogant and arbitrary.
28. Often the fear of rejection compels governments to adopt highly short-sighted and populist measures. However, as a general rule they do not help, as the exchequer is soon depleted, and the people have no respect for a government that is venal irrespective of the direct subsidies. In any case, they realise that even when a government makes earnest attempts to improve their lot, its power to do good is extremely limited, while its capacity for harming public interest is enormous. A large and important part of people's lives is neither touched by the government, nor are the people given control over it to guide their own destinies. Many perceptive observers noted this extra-ordinary crisis of the Indian polity over the years and commented on the ungovernability of India. Galbraith, for instance characterised India as a "functioning anarchy" decades ago. Increasingly today, it has become a dysfunctional anarchy.

### **Is economic liberalization enough?**

29. There are many who believe that the economic liberalisation process initiated in 1991 would somehow find answers to our governance crisis. It is well recognised that such a reform process is long overdue. However economic reform, while it is necessary, is by no means sufficient to resolve our national dilemmas. Even if the role of the state is redefined with sharper focus in a narrower area, an efficient and just state in a free society is a vital precondition for economic growth and human happiness. Even in a liberalized economic environment, the state still has the duty to discharge vital responsibilities. Public order, crime investigation, speedy justice, good quality school education accessible to all children, universal primary healthcare, maintenance of minimal standards of sanitation and civic amenities, and building of vital infrastructure like roads and facilitating economic growth through other infrastructure development like power and ports — all these are the legitimate functions of the state irrespective of the economic system we choose. It is this failure of the state to provide good governance and to enforce rule of law that explains in a large measure the partial success of economic reforms. In the absence of good governance, economic reform in itself will lead to modest growth at best for some period and the fruits of reform will be transient and self-limiting. Inadequate human development and the failure of our delivery systems have led to appallingly low levels of literacy and skills, poor health coverage and hopelessly inadequate infrastructure. The vast majority of Indians are thus left outside the pale of the productive process of the nation.
30. The situation is further complicated as abuse of power is now finding expression in the critical sovereign areas of state function as opposed to the earlier days when economic patronage of state was abused for personal gain. As long as license-quota-permit raj was in vogue, most players of the power game were content with distorting competition and extending patronage on selective basis for a consideration. The political class and bureaucracy



have thus lined their pockets at the cost of fair competition, creating monopolies and distorting market forces and hurting the hapless citizens. However since 1991 the role of Indian state in licensing and other related economic activities has been on the decline. But in the absence of effective institutional checks against abuse of authority, the state continues to have a wide latitude in areas of sovereign functioning like public order, crime control, administrative justice, crime investigation and related matters. No matter how much we limit the role of state, there are vital areas which will always be within the state sphere. When conditions for good governance are not fulfilled, abuse of power becomes the norm. When economic decision making power is denied to the state, such abuse of power will find expression in these sovereign areas and society will be deeply hurt. Over the past several years there is mounting evidence of such a phenomenon resulting in increased criminalisation of politics, greater politicisation of crime investigation, and increasing nexus between political class, state agencies and organised criminal gangs and operators. In effect such abuse of power in the critical areas of state functioning leads to complete lawlessness and undermines the firm foundations of our society and civilisation. In any case, even with economic liberalisation the state will continue to play an important role to ensure fair competition. A rogue state whose legitimacy is in question, whose appetite for ill-gotten funds is uncontrollable, and whose actions are not accountable to the people will continue to use the limited economic decision making power under its control for private gain and personal ends at the cost of public good and economic growth. Therefore mere economic liberalisation is not a panacea to resolve our governance crisis. There is no substitute to good governance characterised by liberty to all citizens, self-governing institutions, empowerment of people and stakeholders, rule of law and institutional safeguards against abuse of authority.

### **Is political stability the answer?**

31. Those who believe that political stability is the answer to our crisis are forgetting the lessons of the past fifty years. For about forty-six years since transfer of power, we had stable single-party rule in India with only five prime ministers, with three prime ministers from a single family presiding over our destiny for nearly forty years. Such extraordinary stability did not help us realise our potential as a nation, nor did it promote human dignity and happiness any more than the remaining period of instability. Undoubtedly stability of governments and smooth and predictable policy changes are necessary for good governance. However, mere stability of the graveyard is no substitute to good governance and accountability and people's empowerment. In fact, long periods of instability in a democracy may actually lead to major reforms, as evidenced by the collapse of the Fourth Republic in France in 1958. Indian experience shows that major policy shifts and reforms are often engineered by compulsion than by conviction. The failure to dismantle even the more glaring, obnoxious and counter-productive elements of the license-permit raj until the nation was in danger of default and perilous economic ruin is an example of such criminal inertia. Similarly, there is no evidence to suggest that the governing classes will herald political and governance reform in periods of stability. In fact, major reform is likely to be initiated only when status quo is unsustainable. If the average politician has the stable tenure to recover in multiples the 'investment' made in the elections, he has no real incentive to change the rules of the game.

### **Do we need constitutional reforms?**

32. Let us now briefly examine the need, if any, for a review of the Indian constitution and the extent of reforms needed. As we have seen earlier, the constitutional principles are fundamentally sound. Ambedkar was right when he asserted confidently, "I feel that it (the constitution) is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time". The grand architecture of the Indian constitution is impressive and sublime. However over the years several detailed features have become quite disabling to our governance structure and require to be critically examined. No matter how wise the constitution-makers are, problems are bound to crop up from time to time. In the case of our own constitution and governance structure the need for certain changes has arisen out of four basic considerations. Firstly, there has been glaring failure in translating the noble constitutional principles into tangible, practical instruments. Secondly, we have discovered with experience that certain features of the Constitution are not suitable for a vast, complex, diverse, multi-lingual, multi-ethnic society like ours. Thirdly, certain distortions have crept into our fragile democratic system in the absence of well-established systems of accountability. Finally, the economic imperatives of a modern, fast-growing technological era necessitate restructuring of government to enable it to fulfil the rising expectations of the people.

### **Constitutional principles vs tangible instruments**

33. In some respects, the constitution, impressive though it is, has failed to translate noble principles into tangible, practical instruments. This glaring inadequacy is seen in dispensation of justice, protection of basic liberties, enforcement of bureaucratic accountability and appointments and accountability of constitutional functionaries. Securing to all citizens justice — social, economic and political — is one of the avowed goals of the constitution. However, there is glaring failure to translate this into practical action. The failure of justice system, our incapacity to ensure at least a few years of school education to all children, the continuing shame of child labour and a highly centralized polity negated this constitutional promise of justice for all. Unnecessary litigation, needless appeals, dilatory procedures, obsessive concern with the advocates at the cost of justice and indiscriminate application of writ jurisdiction have actually denied justice to the people. The facts are incontrovertible. There is no time limit for adjudication of cases. Some 38 million cases are said to be pending in various courts — many for decades. People have lost faith in courts and are taking recourse to extralegal methods for rough and ready justice. The result is rise of criminal gangs with political connections to settle disputes through extortion and strong-arm methods. As courts are no longer capable of enforcing contracts, they have lost all sanctity, retarding economic growth. Practically every case can end up in higher courts with escalating costs and lost time. The principles of judicial review and writ jurisdiction have been extended to all manner of cases including transfers and postings of employees. As a result, the truly vital freedoms of right to life and liberty have suffered. The plight of tens of thousands of juvenile undertrials languishing for years in inhuman conditions is an extreme example of the failure of justice system. Anarchy, rise in crime, break down of public order and criminalization of society and polity are some of the glaring consequences of this failure of justice system.
34. Article 53 of the constitution states that the executive power of the Union shall be vested in the president and shall be exercised by him either directly or through offices subordinate to him. Article 154 makes a similar provision in respect of the States. However, the provisions of chapter 1 of Part XIV and their interpretation by the courts have ensured that the bureaucracy is largely unaccountable to the public or elected representatives. At the same time, bureaucracy has no security of tenure in any office, and has become a plaything of unscrupulous politicians. Similarly, several constitutional offices have been created with secure tenure and protection to insulate them from political pressure. However, the appointment has been left entirely to the discretion of the executive, thus undermining their impartiality and independence. The appointments of judges of higher courts has now been practically usurped by the supreme court, making the whole process incestuous and unaccountable. Even more worrisome is the fact that removal of judges of higher courts and certain other constitutional functionaries following the cumbersome procedure prescribed under Article 124(4) has become virtually impossible, making them unaccountable. Our experience in Justice Ramaswamy impeachment case shows that the parliament is incapable of acting as an impartial court in judging the conduct of constitutional functionaries.

### **Suitability to our conditions**

35. A constitution cannot operate in a vacuum. Even otherwise sound constitutional design might fail if it does not take into account the specific nature and requirements of a society. It is by now axiomatic that India is a vast, complex, multi-cultural, multi-lingual polity with disparate groups struggling to coexist and achieve a measure of cohesion and national integration. In such a plural democracy, true federalism and local self-governance are the only effective ways of managing the polity. All successful plural democracies followed this route. However, our constitution-makers opted for a largely unitary state with a few federal features. The pronounced bias in favour of the Union on legislative matters, the obnoxious emergency provision under Article 356, which has been a constant source of abuse of power striking at the very roots of federalism and democracy, and the use of pliable nominated governors as crude partisan political tools have undermined our nascent democracy and often negated people's mandates. The other constitutional provisions for the creation of all-India services for administration have led to the anomaly of public servants functioning in a State being held accountable to the Union, thus undermining democratically elected governments.

36. The most neglected aspect of federalism in our constitution is local self-governance. Despite the pious proclamation in Article 40 directing the state to take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, such local self-governance has not been made integral to the design and functioning of the Indian state. As a result, centralized, unresponsive, inefficient, and largely unaccountable governance has been the norm. The much-talked about 73rd and 74th amendments to the constitution are but very hesitant initial steps in the direction of democratization of our polity. However, these amendments have not ensured true empowerment of local governments as Article 243-G, and 243-W left transfer of powers to panchayats and municipalities to the discretion of State legislatures. Nor has the constitution provided for direct empowerment of citizens as stakeholders at least in areas where they can be identified clearly. As a net result, people have been marginalised in our governance process, and most decisions are highly centralised. Even as Rs.1200 crores of public money is being spent every day by the governments at various levels, precious little of it reaches the people in the form of public goods and services. In the absence of this clear nexus between taxation and public services, and between costs incurred and benefits realized, corruption has become rampant. Legal plunder of state resources and constitutional brigandage have become the hallmarks of the state. The citizen, who is the alleged sovereign in a democracy, has become the mendicant seeking favours, and the public servant has become the master dispensing patronage. The unsuitable centralized model of state has made this anonymous tyranny possible.

### **Distortions over time**

37. Over the past fifty years several distortions have crept into our state structure. As Ambedkar pointed out, " The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of these organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics...." Over the years, parties have become centralized, autocratic, unaccountable instruments for power in the hands of unscrupulous, self-seeking coteries. Elections have been perverted beyond belief and criminal gangs, money power and exploitation of the loopholes in election process have become the determinants of power. This, combined with a patron-client based democracy in which the elected representative is seen as a leader dispensing patronage and the citizen is a recipient has distorted our democratic process. Absence of voter identity cards and effective mechanisms to prevent bogus voting and to ensure legitimate exercise of franchise, and abnormal use of money power to purchase votes have made elections a costly gamble. Once elected, a legislator is obsessed with monetary rewards to ensure a good return on his investment, and to insure for the future. Corruption has thus become ubiquitous.

38. The Westminster model accepted at all levels so uncritically by our constitution-makers has been distorted a great deal. As the council of ministers survives only as long as it commands legislative majority, and as loyalty of legislators has a price attached to it, the political executive is perpetually on tenterhooks. In fact a vast proportion of time, energy and power are spent only to survive in office, and honesty has become increasingly incompatible with survival. As legislative election in a first - past - the post system determines the formation of government, there is enormous incentive for abuse of electoral process. As people's mandate is easily divorced from power, and as legislators are often up for grabs by the highest bidder, governments have become notoriously unstable. As power is seen as a highly personal treasure, and as institutional checks against abuse of power are ineffective, elections are only leading to change of players, without any meaningful change in the nature and functioning of the state. As the political process has become highly incestuous, and elections are distorted, the best men and women are often discouraged from entering public life. All these distortions have undermined the legitimacy of the governance structure, and led to a near collapse of the state.

39. As the domination of a single - party has become a thing of the past, the working of the bicameral parliament has been distorted. As the Rajya Sabha is a permanent body with a third of the members indirectly elected by State legislatures every two years, it ceased to reflect the will of the people at any point of time. Even governments with a clear mandate in the Lok Sabha have found it difficult to get legislation through the Rajya Sabha. The coequal legislative powers of both houses except in respect of money bills meant that law-making is increasingly difficult. For instance, during the life of the 12<sup>th</sup> Lok Sabha, practically no legislation was possible. As members vote predictably on party lines, Union legislature is nearly paralyzed.

40. The well-meaning 52<sup>nd</sup> Amendment and 10<sup>th</sup> schedule have led to grievous consequences. While individual defections are discouraged, group defections are rewarded. 'Split' in a political party is so loosely defined that these provisions have actually ended up encouraging group defections through midnight coups and endless conspiracies. People's mandates are negated at will, and democracy has been reduced to a farce. As seen in Uttar Pradesh, at times a whole new arithmetic is invented to escape the provisions of the tenth schedule. At the same time, even on matters not affecting the survival of a government, the individual legislator has no choice to deviate from his party's whip. The most blatant abuse of such a whip is in respect of Justice Ramaswamy's impeachment hearings, reducing the high duty of a constitutional trial into a partisan numbers game.

### **Economic imperatives**

41. The combined fiscal deficit (borrowings plus deficit financing) of the Union and States is of the order of 12% GDP in the current year. Already, nearly 50% of all Union tax revenues are spent for debt servicing. Despite mounting budgetary expenditure, the state's capacity for providing quality public goods and services is in serious question. Our economy is stagnating at moderate levels of growth on account of failure of public order, incapacity to enforce rule of law, poor level of skills as a result of low literacy, low level of health care and inadequate infrastructure. Even in a liberalized economic regime, we need competent state sharply focused on vital public services. Market in itself is not a panacea to our crisis. Effective and fair monitoring is critical for healthy and productive competition to generate real wealth. The issues of glaring poverty, child labour, poor sanitation, inadequate water supply, and other basic amenities and services can no longer be glossed over. It is widely recognised that market is not a substitute to effective democratic governance and people's empowerment. At the end of this millennium, there is a revolution of rising expectations on account of rapid spread of telecommunications and satellite television, and economic stagnation can no longer be tolerated by the people. Unemployment is growing and unless there is high level of sustained economic growth with employment generation, it will be very difficult to maintain any degree of stability and social harmony.

42. The Indian state, which is guzzling vital national resources without commensurate returns to society, has become an impediment to economic growth and harmony, instead of being a promoter. We need to reinvent government, and make it a potent instrument for promotion of human happiness. If such an effort is not successfully made soon, there could be paralysis of governance and fiscal collapse. The erstwhile USSR faced a similar crisis. Sadly, the Russian society and leadership failed to respond to the challenge in time, and the results are horrendous for the people. Not only did USSR break up, but even now there is economic decline, social chaos and paralysis of governance, leading to anarchy, rampant organized crime and collapse of a once-mighty state. We need to review the institutions of state and design new instruments to make government function effectively. Speedy justice, rule of law, accountable bureaucracy, democratic decentralization, transparency in government, fair elections and democratic party functioning are all vital not only to build a sound modern state, but also to build a vigorous and fast-growing economy.

### **Contours of reform**

#### **Genuine federalism and local self-governance**

43. In respect of federalism, the objectives of reform should be significant devolution of powers and resources to States, clearer separation of powers between the Union and States minimizing overlap and dual jurisdiction, vesting the Union with special powers to preserve unity, integrity and national security, steps to ensure greater accountability of the administrative machinery and measures to ensure genuine self-governance in States within their legitimate sphere.

44. In order to translate these goals into concrete action, several constitutional reforms will be required. The Seventh Schedule requires to be carefully revised to suit the needs of modern administration. At present in the Seventh Schedule too many subjects are with the Union or in the concurrent list. Also under item 97 of List 1, the residual subjects automatically vest in the Union government. What is required is a systematic and periodic review of Seventh Schedule so that devolution of powers keeps pace with the requirements of good governance. It is appropriate that all residual subjects should vest with the States and local governments instead of the Union. Any special subject that needs to be brought under the Union's control could be added to

the Union list from time to time through a constitutional amendment. List III, which gives concurrent jurisdiction to the Union and the States has led to needless overlap and considerable confusion. A significant part of the problem can be easily overcome by subdividing these subjects in such a manner that the Union or States will have exclusive jurisdiction on each of those items. However any review and revision of the Seventh Schedule cannot be a mechanical affair merely transferring the Union's powers to States. Past experience shows that the Union ought to be entrusted with certain special powers to preserve national unity, integrity and security. A persuasive case could be made for making the Union responsible for investigation of terrorist offences, regulation of inter-State trade, sharing of inter-State water resources, protection of linguistic minorities, and ensuring equal educational and job opportunities to all irrespective of residence by including them in List I. Also the subjects entrusted to the Union and the States cannot be frozen for all time. There should be a provision for periodic review of the Seventh Schedule to ensure that changes are carried out regularly to suit the requirements of good governance.

45. In respect of fiscal devolution, the system has by and large worked in a satisfactory and non-discretionary way. With the recent acceptance of recommendation of the Tenth Finance Commission to transfer 29% of all Union's tax resources to States, the financial relations between the Union and the States are on a better footing than ever before. However nearly 12-15% of the Union's revenues are transferred to States through Planning Commission grants and centrally sponsored schemes. There is a strong case to ensure that all resource transfers from the Union to the States are through the non-discretionary Finance Commission mechanism. The practice of dual control of All-India Services needs to be reviewed. While recruitment and training may be retained by the Union, their control and disciplinary action should be fully and exclusively under the States' jurisdiction. Abuse of Article 356 is one of the sorry chapters of Indian federalism. The judgement of the Supreme Court in Bommai case has significantly improved the position. Therefore two options are available now — either repeal of Article 356 with suitable safeguards to prevent secession or gross failure of public order, or retaining Article 356 with judicial scrutiny as a safeguard. There is an even more urgent case for reviewing the institution of nominated governors in States. The experience so far shows that the appointment of governors is often a partisan political tool in the hands of the party in the power at the Union level. Therefore the balance of convenience lies in either electing the governor as a head of government and State with clear separation of executive from the legislature, or indirectly electing the governor as the constitutional head of State. Finally the governors' power of reserving a Bill for President's assent under Article 200 has become a source of irritation, delay and transgression into the legislative powers of the States. Therefore there is a strong case for removal of this power of reserving a Bill for President's assent or, severely limit the power to only concurrent subjects and fix a time limit of 60 days for President's assent or otherwise. The Bill should automatically become law after 60 days from the date of reservation for the President's assent, if the rejection of the President is not communicated within that period. In such cases rejection should be justiciable in the Supreme Court.
46. More importantly, genuine local governments with an inviolable and clearly defined legislative and executive jurisdiction, effective control of local bureaucracy and adequate non-discretionary fiscal devolution, and direct empowerment of stake-holders over local institutions and public services — these are among the major initiatives needed to correct the serious distortions and imbalances in our plural democracy. The seventy third and seventy fourth amendments merely provided for local bodies and regular elections, without empowering them as institutions of local self-governance. In fact, the constitutional provisions did some damage by prescribing rigid and uniform election process snapping the links between the three tiers of panchayats, and precluding the possibility of direct election of presidents of second and third tiers. These provisions need to be amended, giving greater flexibility to State legislatures. The eleventh and twelfth schedules now are merely recommendatory. Instead, the subjects to be transferred to local governments should be mandatory in a manner similar to list II of seventh schedule, and State legislatures should have no discretion. If necessary, the list of subjects in eleventh and twelfth schedules could be reviewed to make such a transfer relatively smooth and uncomplicated. Our state structure today has become an obstacle to empowerment of people. Genuine empowerment of local governments, and fusion of authority and accountability at the local level are the most important steps in resolving our crisis of governance. State legislators and officials are extremely reluctant to part with powers. Local self-governance and people's empowerment should be constitutionally mandated, and cannot be left to the sweet will and discretion of self-serving coteries and power-brokers. Democracy and self-governance are not gifts of legislators. The constitutional principle of popular sovereignty should find expression in the appropriate state structure.

## **Judicial reforms**

47. Urgent and far - reaching judicial reforms are the need of the hour, even as care should be taken to preserve and strengthen the independence of judiciary. Such changes should include the fundamental right to speedy justice within a specified time limit, rural courts for speedy justice under judicial control, simplification of judicial procedures to minimise delays, more focussed and sharper jurisdiction of higher courts, limitation of appeals, and a broad-based judicial commission for appointment and removal of judges of higher courts. In addition, crime investigation, which is now under political control, should be brought under judicial supervision in order to ensure fair and non-partisan treatment of the accused, and to prevent the obnoxious and inhuman practices of torture, third degree and extra-legal executions in fake encounters. Writ jurisdiction should be more sharply defined to effectively protect right to life, liberty and equality before law. Creation of Indian Judicial Service as an All India Service is an idea whose time has come in order to improve competence, integrity and uniformity in subordinate judiciary and to enhance the quality of the appointees to High Courts. These judicial reforms are critical to strengthen the public image of judiciary and ensure speedy and efficient justice possible without usurping the functions of the other organs of state.

## **Accountable bureaucracy**

48. Indian bureaucracy is vast, unresponsive and largely unaccountable. Government accounts for 18million employees in organised sector in India, which constitutes a high 70% of all organised workers. This sheer size of bureaucracy in a poor and largely illiterate society made it a powerful Leviathan. Centralized governance and absence of empowering instruments in the hands of citizens made bureaucracy increasingly unaccountable to people. The extraordinary degree of life-time security given to a bureaucrat, with virtually no chance of being brought to book, made it impossible to enforce any degree of accountability. Article 311 and the court verdicts over a period of time made bureaucracy virtually unamenable to any meaningful disciplinary control. In the absence of mechanisms for proper selection of public servants for specific assignments (as opposed to recruitment), elected politicians could abuse power of transfers and postings at will. As a result of this arbitrary functioning, public-spirited functionaries are demoralized, even as corrupt and incompetent functionaries are unafraid of any disciplinary action on account of life-long tenure. We have too large a class of unproductive public servants (clerks and peons), and too few teachers and health workers. Even those available have no incentive to serve the public. In order to correct these distortions, constitutional mechanisms should be evolved to transfer the bulk of public servants along with funds and functions to local governments. Article 311 should be repealed to make it easy to remove corrupt or erring public servants. Strict limits to judicial intervention in disciplinary cases except on grounds of unfair discrimination, power of retrenchment or discharge of surplus employees, retraining and reallocation of duties depending on the need, tenurial appointment through transparent, fair and non-arbitrary processes for all key public offices — these are a few vital reforms that ought to be incorporated while reviewing the constitutional provisions.

## **Greater separation of powers**

49. The Westminster model had obvious attraction for Indians at the time of independence on account of its familiarity. Ambedkar justified its adoption on the ground that the constitution-makers preferred accountability to stability. In reality, our system has by and large been stable, but has not proved to be accountable. Any change should be on grounds of enhancing accountability, and not merely to provide for stability. Over the years, several distortions have crept into our cabinet system. As local legislative elections determine the fate of a government, winning legislative office by hook or crook became the essence of political activity. As people's mandate and power are easily divorced, the rulers are increasingly obsessed with survival in power at any cost. Formation of governments has at times become exceedingly difficult, and sometimes downright absurd. As the legislator's support sustains the political executive, he is extracting his pound of flesh for such support. As a result, the legislators became disguised executives, and all democratic norms of fair administration, rule of law and equality before law are thrown to the winds. Patronage, personal power, arbitrariness and corruption became integral to our governance. When a government enjoys a

comfortable majority, the executive becomes tyrannical, given its control over legislature and the anti-defection provisions of tenth schedule. Legislators have no real say in law-making. However, the executive is stymied constantly in its legitimate sphere of action. If the government is rickety and unstable with a thin majority, then it becomes captive in the hands of capricious legislators. As a consequence, integrity in public office and survival in power are increasingly incompatible.

50. The vicious cycle of money power, bureaucratic placements, political power, muscle power, and patronage is extremely well-entrenched and resilient defying all efforts of reform within the Westminster model. In such a patronage-based system corruption is endemic. If a person somehow manages to win legislative office, any thing is possible through manipulation, midnight coups, conspiracies and corruption. Legitimacy and public support have no role in the power game today. The choice of ministers is limited to elected legislators in the Westminster model. Given the revulsion generated by the political process today, the incapacity of parties to attract the best elements, and the flawed electoral process which rewards money power and muscle power at the local level, the cabinet is often devoid of talent needed to face mounting challenges in modern era. As parliamentary system does not impose term limitations, perpetuation of individual or family rule has become the norm. Self-serving oligarchies have become dominant in our political process. With frequent by-elections, there is a perpetual election atmosphere with political contention and irresponsible populism dominating public discourse.
51. Given these distortions, it is imperative that legislature is separated from the executive, particularly at the State and local government levels. With direct election of the head of the government and individual legislators separately, one will act as a check against the other. The term of both legislature (lower house) and executive should be coterminous. The reforms should include limitation of terms of office at any level — executive or legislative. There should be a clear line succession in case of vacancy of any office, making elections time-bound and regular without resort to mid-term polls and by-elections. The advantages of this separation will be many fold. There will be fixed tenure for both the executive and legislature ensuring stability. Each organ can function independently and act as a check against the other organ. Ministers can be drawn from the public, thus attracting the finest talent to serve in government. In an election of the head of government in a whole state, the role of money power, violence and electoral irregularities will be effectively curbed. Political power will always correspond to people's mandate. There may be an occasional logjam between the legislature and the executive. However, as the terms of both are coterminous, such an eventuality will be much less common than is feared. The need to carry the legislature without control over it will compel the executive to work for consensus. As legislative office has no disguised or unaccountable executive power, incentive to rig or manipulate the polls will diminish, and public-spirited citizens will be attracted to politics. As elections to the Union and State will be simultaneous, there will be no strains in federal polity, with governments at both levels compelled to coexist. State governments cannot be dismissed on any pretext. If any functionary indulges in serious constitutional offences affecting the unity and integrity of India, or undermining the democratic system, then such persons could be unseated through a constitutional process.

### **Dangers of bonapartism**

52. While a clear separation of powers is desirable and necessary at the State and local government level to resolve our governance crisis, there are formidable obstacles to such a reform at the Union level. Many vocal sections harbour legitimate fears of authoritarianism if a head of government is elected directly for a fixed term. We, in India, do have a latent streak of authoritarianism coupled with excessive deference to those in power. The history of emergency in 1975-77, the personality cult in public life and dynastic politics all over the country show that if a single person is perceived as the focus of executive authority, there are always dangers of bonapartism. The travails of our South Asian neighbours — Pakistan and Bangladesh — over the years, and the recent coup in Pakistan serve as reminders of this incipient authoritarian tendency. It is true that

in a well-designed system of checks and balances the danger of authoritarianism is minimal. It is also true that a prime minister enjoying a clear majority in parliament is far more powerful than a directly elected head of government. However, logic and rationality are no substitutes to broad acceptability in a democracy. Therefore, the balance of convenience lies in continuing with the Westminster model at the Union level and resorting to clear separation of powers at the State and local government level. There is no danger of authoritarianism at the state and local level as long as the Union government has the duty and power to defend the constitution. With greater devolution, it is State and local governance that has greatest impact on citizens' lives. Therefore our focus in reforms should be on democratic decentralization and empowerment of citizens with separation of powers. The excessive obsession with the Union government even on matters relating to basic public services and local infrastructure should cease. In any case, politics is the art of the possible. Therefore it is best not to attempt clear separation of powers at the Union level.

### **Checks against abuse of power**

53. Whatever be the design of a governance system, there is always a likelihood of abuse of office by those in power. Therefore constitutional checks against abuse of office should be integral to any review and reform. Right to information with penalties for non-compliance, limitation of terms in all elective public offices, insulation of crime investigation from partisan politics by bringing it under judicial supervision, creation of a constitutional machinery for appointment to, and removal from, high constitutional office, and an independent ombudsman with effective authority, personnel and resources to control corruption in public life are such vital constitutional checks to safeguard public interest, enforce rule of law and prevent abuse of authority. In addition, there should be a well-defined class of offences involving wilful violation of constitution or undermining unity and integrity of the Union. There should be a definite mechanism for dealing with such offences and if proven, for removal of the guilty persons in high office, disqualification from any office of state and other punishment. Limitation of tenure of any elective public official to two terms at that level should be considered seriously. In the absence of such term limits, dynastic politics, perpetuation of individual control of political levers and abuse of authority have become endemic. All these safeguards are necessary to preserve freedom, prevent abuse of powers, arbitrariness or authoritarianism, control corruption, curb dynastic impulses and protect the integrity of state.

### **Certain contemporary issues**

#### **Women's representation**

54. Adequate representation of women in legislatures, a possible proportional representation, fixed term for legislatures and radical steps to hire and fire appointed public servants are some of the suggestions debated in recent times. Let me briefly touch upon these issues, as they all have a direct bearing on the constitutional design of our state structure. The issue of representation of women in legislatures has occupied centre-stage in our public discourse in recent years. Despite the broad acceptance of the idea, the logistical difficulties blocked progress on the issue. The proposed Bill in the present form provides for reservation of a third of the parliament and State assembly constituencies for women. However, there are legitimate fears that such a constituency reservation on such a large scale is highly distortionary and will undermine representative democracy. With the existing reservation of constituencies for scheduled castes and scheduled tribes, the total reservation will be close to 50%. Obviously permanent reservation on such a large scale is not feasible. Rotation of seats in every election means that every sitting member will be unseated in every election, making a mockery of the electoral process. The incentive for reelection having disappeared, our politics will be even more predatory. The elected legislators will not be able to establish a political base of their own. The women members elected in reserved constituencies will be regarded as 'proxies', without their own power base. Ultimately the reform will be symbolic of the tokenism, which has been the hallmark of most governance today.
55. Considering all these formidable difficulties, other more effective models should be considered carefully. Two-member constituencies, with one seat open to all candidates and another reserved for women, scheduled castes or scheduled tribes is one option. This was adopted in the first two general elections in 1952 and 1957.



In such two-member constituencies, there will be no need for rotation of reservation, as one seat is open for all. However, it is cumbersome and confusing to the voters, and the women members so elected will still lack their own political base. Also the constituencies will be twice the present size.

56. A practical and effective model for enhancing women's representation in legislatures is legislation to make it mandatory for political parties to nominate for at least one third or half of all constituencies only women candidates. This will ensure a large pool of serious women party candidates and will lead to high representation of women in legislatures. Empirical evidence shows that as of now a greater proportion of women party candidates are getting elected than men, and there is no need to fear that women will not be elected if specific constituencies are not reserved for them. The parties will then have the freedom to choose their women candidates and constituencies, based on political calculations and relative strengths of potential candidates in each constituency. In order to guarantee fair representation, the State should be taken as the unit of such reservation for parliament, and a district as the unit for assembly. This will ensure that parties cannot nominate women candidates in areas where they have no chance of winning. Such a procedure will obviate the need for rotation of seats, and will cause little distortion in the political process. A winning woman will have been elected on her own strength backed by party support, and she is not a mere 'proxy'. The elected women will have their own political bases and can nurture their constituencies and emerge as major public figures in their own right. This process will give parties the required flexibility, and will give them freedom to change candidates depending on political necessity; parties can take into account the social, caste and other factors while nominating women candidates and identifying constituencies for women. A constitutional amendment should also be made simultaneously providing for women's reservation the Rajya Sabha and State Legislative Councils.

#### **Proportional representation (PR)**

57. Introduction of election by proportional representation (PR) whereby parties will announce a list of their nominees to be elected in proportion to the votes they received is another measure being debated in India. Several scholars have argued in favour of it on the grounds that it will promote fair elections and will enable parties to nominate honest and capable candidates. Such a list system will certainly reduce the role of money in elections and minimise electoral malpractices. Most parties are in favour of this system since it gives the parties greater flexibility in nomination of candidates, and the campaign can be better organised at the State and national levels. PR system is a common feature of many democracies, and is being contemplated in the UK. In Germany 50% of the legislators are elected from constituencies, and the remaining are drawn from party lists, while the total share of legislators for each party is based on the share of votes obtained by it. Many countries of continental Europe have similar PR system in operation in their elections. The law commission also recommended that the strength of parliament should be increased by 25% and all these additional seats should be elected by proportional representation. It is true that given the state of our party system, social stratification and political instability, PR system is fraught with some difficulties. Most mainstream political parties are run by unaccountable feudal oligarchies as if they are their private estates. Already their discretion in nominating candidates for elective office is near-total. The only check now is the fear of voters' rejection of a candidate. In the list system, the control of party bosses over the electoral process may be perpetuated. The candidates on the party slate will be automatically elected depending on the proportion of votes received by the party. There may also be proliferation of many small parties in the PR system, leading to further fragmentation of our polity.
58. However, if political parties are democratized and certain safeguards are provided, the advantages of PR system will outweigh the difficulties. In Germany, there is a combination of constituency based election and list-based proportional representation. With a similar system in India, there is a realistic possibility of parties shifting emphasis from victory in the constituencies by hook or crook, to enhancing their overall vote share. This is because the ultimate strength of the party in the legislature will be based on its proportionate vote. There is evidence to suggest that the illegitimate efforts to win a few constituencies may actually run counter to the larger objective of enhancing the overall voting share. Once PR system is introduced, the nature of campaigning and electoral process will undergo a radical positive transformation. Several influential and well-meaning groups which have some political base, have no realistic chance of winning an election now on account of the unscrupulous and illegal use of muscle power and unaccounted money and the polling

irregularities associated with the present first-past-the-post system. In the PR system, the role of money and muscle power will be substantially reduced, and there will be much less incentive for booth capturing and rigging. This will create political space for the entry and participation of honest and capable persons who are now repelled by the distortions in the political process. Persons now outside the pale of politics can then enter the political process with a realistic chance of success and will become serious players, improving the quality of politics and governance. Introduction of PR system will also democratize parties, compelling selection of candidates on the list through member participation. Therefore it is desirable to introduce PR system combined with constituency election broadly based on the German model. In such a system, half the seats will be won in constituencies as at present, and the overall representation of parties will be based on their voting share, with the balance members drawn from party lists. There will be a 5% voting share requirement to entitle parties to quotas in PR system. However, there will be safeguards to protect the interests of regional and small parties. Such a system will be practical, effective and truly democratic, even as it curbs the unhealthy tendencies in elections and promotes entry of the finest citizens into political arena. As most political parties favour this measure, it may be relatively easy to introduce it in India.

### **Fixed term for legislatures**

59. One idea which is capturing the imagination of the middle classes and parties is a fixed term for legislatures. A variant of this is the German model of 'constructive no-confidence' motion. Parties which are tired of facing the electorate so often, particularly after three general elections in forty months, candidates who are forced to expend too much money and energy with too little security, and voters who are showing signs of election fatigue — all of them find a 'fixed term' an attractive proposition. However, the governance crisis we face is too complex to be resolved by such quick-fix solutions. Within the ground rules of parliamentary democracy, once a government loses majority support in the legislature, it is anyway a lame duck government with no ability to push legislation through parliament. Even now, the Rajya Sabha has become a stumbling block for legislation. During the term of the 12th Lok Sabha, pactly not a single legislation could be enacted. If the government cannot even carry Lok Sabha with it, what then is the remedy? If a major partner in government embarks on an adverturist path, and if the opposition is unable or unwilling to form an alternative government, then dissolution of the lower house to seek fresh mandate from the people is the only realistic and legitimate solution. Finally, if a fixed term is ensured, what prevents legislators and small parties from changing loyalties ever so often for short-term gain? With the sure knowledge that they won't have to face the electorate for a full five years no matter what happens, the chances are there will be a government a month, with the exchequer plundered at will, and public interest compromised irreparably.
60. It is true that the German constitution provides for a constructive vote of no confidence (Art 67), whereby "the House of Representatives can express its lack of confidence in the Chancellor only by electing a successor with the majority of its members and by requesting the President to dismiss the Chancellor." But it is also true that Article 68 provides for dissolution of the house if a motion of the Chancellor for a vote of confidence is not carried by the majority in the House, and if the chancellor proposes dissolution. The check against casual dissolution is two fold : the dissolution takes place within 21 days and not immediately; and the right of dissolution shall lapse as soon as the house elects another chancellor with the majority of its members. The German constitution also provides for legislation in case of impasse — when the chancellor no longer enjoys majority support, but a new chancellor could not be elected by the majority, and house is not dissolved. In such a situation, "the President may at the request of the Government, and with the consent of the Senate (Upper House), declare a state of legislative emergency with respect to a bill, where the House of Representatives rejects the bill although the Government has declared it to be urgent. ....Where, after a state of legislative emergency has been declared, the House again rejects the bill or adopts it in a version stated to be unacceptable to the Government, the bill is deemed to have become a statute to the extent that the Senate consents to it. The same applies to the bill not passed by the House within four weeks of its introduction." (Article 81).
61. Therefore, a close reading of the German constitution shows that these provisions merely make it necessary for the opposition to form an alternative government before voting out a chancellor. There is a gap of 21 days between the chancellor's recommendation and dissolution of the house, so that the house has an opportunity to elect a new government. It is unlikely to help in the Indian situation. Such a provision merely encourages unchecked house-trading. When even governments with majority support are not able to get legislation

through on account of the Rajya Sabha, the question of a legislative emergency resolving the impasse after losing the majority support in the lower house does not arise. For all these reasons, fixed term of Lok Sabha is unlikely to bring greater political stability, and may in fact undermine our democracy greatly. In a way, fixed term of parliament amounts to sustaining an unaccountable government in the guise of Westminster model. A fixed term is possible only when the legislature and executive are clearly separated, both are independently elected, and each does not depend on the other for survival.

### **Impasse on legislation**

62. In the light of contemporary experience, one issue that should cause concern to all is the incapacity of both houses of parliament to agree on legislation. As the single-party dominance is a thing of the past, and as a third of Rajya Sabha members are elected indirectly by State legislators and as the upper house is a permanent house which cannot be dissolved, we have the anomaly of the two houses in a bicameral legislature almost never concurring. The constitution provides for an effective mechanism to resolve the impasse in case of disagreement between both houses only in respect of money bills and other financial bills. In all other cases, both the houses have co-equal powers of legislation. In effect, the Rajya Sabha, which is indirectly elected over a period of six years, and does not reflect public opinion at any point of time, has the power to veto any bill other than a money bill passed by Lok Sabha, which is directly elected by the people. The provision in Article 108 for joint sitting of both houses is not helpful in most cases as the numerical superiority of a government in Lok Sabha is often not large enough to overcome the shortfall in support in Rajya Sabha. In such a situation, it is likely that any popularly elected government will find it very difficult to implement its legislative agenda despite popular support. Obviously such a crisis undermines the very foundation of parliamentary democracy. A similar crisis in Britain was resolved by a series of elections following the Lords' rejection of Lloyd George's budget. During 1909-1911, twice the commons was dissolved on Liberal Party's prime minister Asquith's recommendation on this issue. Finally, the king promised to nominate the required new members to Lords' and the upper house had to relent by enacting the Parliament Act in 1911. We need to incorporate similar provisions in our constitution. The legislative powers of Rajya Sabha in respect of matters affecting States' powers, and constitutional amendments could be retained. In respect of all other legislations, Rajya Sabha should have the power to delay a bill or suggest a modification. If, after a delay of, say 3 months, the Lok Sabha again passes the bill, then such a bill should become the law. Such a provision will respect the verdict of the people; ensure protection of the rights of States, which is the primary objective of Rajya Sabha; and give the upper house an opportunity to give its opinion and to delay a bill before it becomes law, so that vigorous public debate can be generated and Lok Sabha can reconsider its views.

### **Public Servants**

63. One other topic being discussed is the need to incorporate provisions of hire and fire of bureaucracy. It is true that bureaucracy is largely perceived to be unresponsive, ineffective and unaccountable. There is also a great need to redeploy government personnel on the basis of priorities — for example, have more teachers and health workers in place of clerks and peons. However, a hire and fire system without any institutional checks could lead to serious dislocation and is prone to tremendous abuse. Therefore the basic approach should be to provide for non-arbitrary decisions even as accountability is enforced. Selection of officials for key public offices should be from a panel of persons drawn from permanent civil services as well as professionals, academics and experts from outside. The selection of the official should be by a transparent and accountable process, and once such a person is appointed for a public office, he should have a fixed tenure of, say 5 years, except for removal in case of proven incompetence and corruption. Arbitrary and frequent bureaucratic changes should be prevented by such constitutional and legal mechanisms. This provision, coupled with genuine decentralization and transfer of the bulk of public servants to local governments, will significantly improve bureaucratic accountability and eliminate arbitrariness.

### **Other concomitant reforms**

#### **Political parties**

64. Any constitutional review and reform will be incomplete unless it is accompanied by other relevant reforms in the political and governance system. The most important of these reforms should be in the political parties and elections. As we have seen, parties are largely autocratic and unaccountable in India. Unless mechanisms are evolved to make parties function democratically in an open, transparent and accountable manner, they will undermine our democracy. It is unrealistic to expect undemocratic parties to sustain and strengthen a democratic polity. Constitutional and legal reforms should be introduced to make membership in parties open, leadership choice democratic, funding transparent and accountable, and choice of party candidates for elective office through the will of the members as expressed in democratic primary elections. Article 21 of the German constitution dealing with the political parties, for instance, mandates free and democratic functioning of parties. "The political parties participate in the forming of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They have to publicly account for the sources and use of their funds and for their assets. Parties, which .....seek to impair or abolish the free democratic basic order .....are unconstitutional. The Federal Court decides on the question of unconstitutionality. Details are regulated by federal statutes." We need similar provisions in our constitution, and appropriate laws to enforce such provisions. Only then can public funding of election campaigns and other such reforms be considered seriously. It is absurd to provide public funds to unaccountable oligarchies which seek and exercise power as an expression of self-aggrandizement and for private gain.

#### **10th Schedule**

65. The 10th Schedule of the constitution incorporated by the 52nd amendment has by and large failed to prevent defection. By this provision, while individual defections invite disqualification, collective defections are rewarded. At the same time, once the law provided for disqualification in all cases of violation of party whip on any vote, party legislators who may honestly differ on a piece of legislation are now forced to submit to the will of the leadership. The use of party whip in the impeachment case of Justice Ramaswamy bears ample testimony to this. While defections continue in a systemic and organised manner thwarting people's will, all legitimate dissent is stifled and smothered.

66. Obviously major reforms are needed in the anti-defection provisions if we are to preserve even the limited sanctity of electoral verdicts. All defections, by individuals or groups, should incur automatic disqualification. If there is indeed a legitimate split of a party, it should first take place in the formal party organization with adequate public notice and through voting. Only after a party splits in a transparent and public manner after a statutory public notice of, say at least one month, and after the members of the party are allowed to vote on that at every level, can the legislature party reflect such a split. A sudden overnight change of heart by a group of legislators and midnight meetings with the President or Governors cannot be recognised as split of a party, no matter what proportion the 'splitting' members constitute. All such legislators who split from a party and form a separate group after the transparent party process should be prohibited from holding ministerial office for at least one year from the date of such split. Any other defection or leaving a party to join another party during the legislative term should incur automatic disqualification irrespective of the number of members resorting to such defection. The Election Commission should be the competent body to decide on disqualification, instead of the Speaker. The other major reform required is limiting the scope of whip under Anti-defection Act to only such issues, voting on which might bring down a government. Only on a no-confidence motion, or a finance bill, the defeat of which will force a government to resign, should party whip be operative. A whip in all other circumstances should be prohibited by law. Fears of large scale indiscipline in legislative matters other than those affecting the fate of a government are highly misplaced. The party leadership has several inducements to offer, and penalties to impose on dissenting members. Therefore only conscientious objectors and honest dissenters on a specific issue will usually vote against the party position. Such freedom of voting is the essence of representative democracy.

#### **Electoral reforms**

67. Much has been, and is being, said about electoral reforms. The three basic reforms which ought to be in place are to reduce the role of money power, and provide for strict regulation of expenditure and disclosures; prohibition of persons with criminal record or pending cases from contesting; and prevent personation and rigging by having compulsory photo- identity cards and electronic voting. Already a broad consensus has emerged, but despite recommendations of Dinesh Goswami committee, law commission and election commission, genuine political will is manifestly absent. Public funding of election campaign, however, cannot be considered until parties are democratized and regulated as discussed earlier. Even the funding norms as proposed by Indrajit Gupta committee ought to be reexamined. If the committee's recommendations are accepted, small national parties will have a right to funding for parliamentary candidates in areas where they have no base, while popular regional parties will have no funding for parliament elections in their states. Such anomalies will be politically unacceptable, and are offensive to common sense and fair play.

### **Institutional Checks**

68. A law protecting freedom of information, a constitutional mechanism with sufficient powers and resources to combat corruption at all levels, a strong anti-corruption legislation, citizen's charters to enforce basic public services of reasonable quality through legal entitlements, a mechanism for speedy, effective and accessible local justice under judicial supervision, insulation of crime investigation from political control by bringing it under judicial or quasi-judicial supervision of independent prosecutors, empowerment of local governments — all these are vital requirements to make our political and governance system truly democratic, effective and accountable. All or most of these measures can be undertaken through legislation within the frame work of the constitution, and do not need constitutional amendments. Only when a government demonstrates its credentials through effective action to legislate these measures can its legitimacy and intentions in embarking upon major constitutional reforms be accepted.

### **Conclusion**

69. In conclusion, much needs to be done urgently to resolve our governance crisis. Our constitution is a fundamentally sound document, and its preamble, fundamental rights and most of the directive principles are as relevant today as even before. However, the detailed working of the state structure requires a careful review and reform in keeping with these basic constitutional principles. Short-term self-serving reform is counterproductive and damaging to the polity and society. An attempt to wholly rewrite the constitution is a potentially dangerous enterprise which may lead to an illiberal, authoritarian state structure. Over the years the contours of reform have become clear to most discerning observers, and around most of these reforms there is already a broad national consensus. Such a reform need not be an all-or-none exercise. A few critical reforms could be the vital first steps leading to other vital reforms later. Many reforms of our political system can be brought about by ordinary legislation. For instance reform of political parties and elections need not necessarily wait for constitutional amendments.

70. The nature and magnitude of our crisis are undoubtedly daunting and we are witnessing the collapse of the Indian republic. However the Indian crisis is by no means intractable or immutable. The resolution of this crisis lies in the recognition that what we need is not merely a change in players, but a fundamental transformation of the rules of the game. Such a reform process should encompass several spheres of governance ranging from political parties to justice system.

- Democratization of political parties to enable our best men and women to participate actively in the political process
- far-reaching electoral reforms to ensure free and fair elections enabling the best leadership to emerge, democratic decentralization and empowerment of citizens to an extent that the relationship between the citizens vote and their welfare, between the tax collected and public services provided is clearly established
- a public service reform to make bureaucracy an effective instrument of good governance
- greater separation of executive from legislature to make honesty compatible with survival in public office; a speedy, efficient, accessible justice system and

- institutional self-correcting mechanisms and safeguards against abuse of public office — all these should be integral components of our governance reforms.

In this all-pervasive crisis of governability, the only practical realistic realisable way out is a peaceful, democratic, holistic transformation of the Indian governance structure. The people are ready and impatiently waiting for a change. The time to change is now before the all-pervasive restlessness is transformed to revolution or resignation. The meaning of the people's verdicts over successive elections is clear. The ball is in the court of politicians and public opinion makers. The task is difficult, but vital; the struggle is hard, but necessary; the risks are high, but cannot be avoided. The time for concerted action is now.

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