

Entry Barriers in Politics – Time for Change

by

Dr Jayaprakash Narayan

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LOK SATTA

401/408 Nirmal Towers

Dwarakapuri Colony, Punjagutta

Hyderabad – 500 082

Tel: 91-40-23350778/23350790; Fax: 91-40-23350783

E-mail: loksatta@satyam.net.in; **url:** www.loksatta.org

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Enduring Document

1. Let us now briefly examine the invaluable features of our Constitution which make it a noble and enduring document. Our Constitution-makers were great men and women of wisdom and virtue. They understood that man is born free, and democracy is the only moral and practical form of government. They were imbued by a sense of fair play and justice. They were not content with mere preservation of status quo and maintenance of order and stability. Our Constitution was informed by a vision of a modern, humane and just India. The preamble is a remarkable testimony to this quest for a free and fair society. In keeping with that spirit, fundamental rights were enshrined in the Constitution not as gifts of a benign ruler, but as natural rights flowing from the very concept of democracy. The Constitution recognised the need for checks and balances, and great care has been taken to prevent concentration of authority in the hands of any individual or organ of State. The special needs of Indian society and state were fully recognised, particularly keeping in view the turbulent events surrounding the creation of our republic. Harmony, unity and integrity of the nation, continuity with change, separation of powers and justice were the dominant themes of our Constitution.
2. The whole history of our Constitutional evolution from Golaknath case to Kesavananda Bharati judgment has reinforced these Constitutional values. We can now safely say that the certain basic features of our Constitutional edifice are integral to our state structure, and are inviolable. The fundamental rights which are the essence of a free society have the pride of place in our Constitutional scheme of things. Democracy, as characterised by universal adult franchise, direct elections, representative government and liberty, is the cornerstone of our republic. Ours is a system of laws, and not a rule of arbitrary despots. Therefore rule of law and independence of judiciary are integral to our state architecture. Dispersion of power is the key to preserving freedom and harmonious existence in our plural and vast society. Therefore federalism, separation of powers and independent Constitutional authorities are our vital safeguards against concentration of authority and tyranny. A modern state cannot exist without a moral purpose. Democratic discourse and freedom of choice constantly revitalize a nation, and help us reinterpret that moral purpose from time to time. There are no eternal truths in public policy. Policies are thus wisely left to political contention in the battlefield of public opinion, and are mediated by free and fair elections. The Constitution-makers nevertheless gave us the benefit of their wisdom and laid down principles of state policy to help our nascent democracy chart its turbulent course in early years. All in all, our Constitution is a wise and time-tested document, whose basic premises and fundamental principles are as valid today as they were fifty years ago. The strength of our Constitution is validated by our impressive record as a democracy.

3. Let us now examine some of the lessons learnt from past experience. While the Constitution has stood the test of time, and our democracy has proved to be robust and resilient, certain distortions and institutional rigidities have crept in over a period of time. I would like to focus on two specific issues which need to be addressed in contemporary India. They relate to the politics of fiefdoms and representational distortions and inadequate horizontal separation of powers, and legislators functioning as disguised executives making honesty in public life and political survival increasingly incompatible.

Problems of FPTP System

4. Article 81 and 170 of the Constitution provide for election of members to Lok Sabha and State Legislative Assembly respectively from territorial constituencies with one or more members. In this first-past-the post system(FPTP), the candidates have enormous incentive to resort to every trick in the trade in order to edge ahead of their rivals. In the winner-take-all system in a plural society, all that matters is to somehow ensure the support of local traditional power groups and oligarchies. The electoral malpractices which have become endemic in our system made it easy for a few families to dominate the political scene in most constituencies. The party has become merely a label to garner the vote. Real power is concentrated in the hands of a few individuals and families. Little dynasties have sprung up in many pockets of India. Their political and bureaucratic connections, money power largely acquired through state patronage and corruption, nexus between politics and crime, and local caste domination help perpetuation of politics of fiefdoms. A constituency is seen as a modern Zamindari, and no matter which party is elected to office, power alternates only between a few select individuals and families. Politics has truly become an entrenched profession, and great money-spinner.
5. The flaws in electoral system are well-documented and widely understood. There is a crying need for major electoral reforms. Voter registration should be made transparent and accessible. Criminalization of politics needs to be checked urgently. Illegitimate and unaccounted money power needs to be curbed and far-reaching political funding reforms should be introduced. Political parties have to be democratised, so that unaccountable coteries and feudal oligarchies will not perpetuate their stranglehold over state power. All these electoral reforms are long overdue, and once introduced will significantly improve the health of our polity. However, the situation is far more complex and mere electoral reforms cannot restore health and sanity to politics. Many political players now enjoy a near monopoly of power, and they exercise it for private gain with impunity. Unbridled corruption and arbitrary exercise of power have given them control of enormous resources, and political funding reform, however wise and ingenious, cannot regulate their election expenditure and vote-buying. The FPTP system which we adopted largely because we were familiar with the British practices has led to serious distortions of representation.

6. FPTP system has the propensity to exaggerate the importance of larger parties and undermining the influence of the majority of voters. Actually no single party at the national level ever obtained the support of the majority of voters who went to polls, and yet governments have been formed with overwhelming majorities in Lok Sabha several times. Large, but scattered social groups are always underrepresented. The consequent marginalization of large segments of public opinion in a plural society has evidently led to ghettoization of numerically important groups like minorities and dalits. In order to overcome the problem, demands for reservation of constituencies have been raised from time to time. Even such reservation failed to ensure justice to Scheduled Castes. As the seats are reserved almost always in areas where SCs are in a numerical minority, the candidates put up by major parties do not enjoy independent political base, and often have no real political clout. Reservation is often reduced to tokenism. In any case, the political system cannot extend such constituency reservation on a large scale for fear of reducing elections to a quirk of fate by draw of lots as rotation of seats becomes inevitable with large-scale reservation. Large-scale reservation will also undermine the legitimacy of democratic process and may invite backlash from the other segments of the population, thus proving counter productive.

7. Also in FPTP system, a party is desperate to somehow win the election in the constituency by all means fair or foul, as each seat becomes critical in the legislative numbers game to form government. For the local candidate, who is often a symbol of dominance of a local caste or social group or faction, victory at the hustings is of critical importance to acquire influence and extend patronage. Thus, both the candidate and the party have a great stake in the constituency election, unmindful of consequences in other constituencies across the region or the country. The ugly practices adopted by a party or candidate at the constituency level become somehow acceptable in the quest for electoral success. Once a candidate obtains nomination of a major party, he and his caste or group often make it an issue of personal prestige to be elected in the winner-take-all electoral and power game. Use of exorbitant amounts of unaccounted money, vote-buying, bribing officials, hiring hoodlums, criminalization of politics, deployment of muscle power to brow beat voters and rigging of polls – all become the norm in most constituencies. As election in each constituency runs on similar lines, the parties and candidates are not inhibited by the fear that their illegitimate efforts to win a few constituencies might undermine the larger objective of enhancing the voting share in a whole State or the nation.

8. Another feature of the FPTP system is that reform of the polity becomes more and more difficult. Genuinely reformist groups with significant public support scattered across the State or the country, but with limited resources and no desire to resort to illegitimate practices have no realistic chances of success in the FPTP system. As a result, truly public-spirited groups tend to wither away. Only entrenched parties willing to raise resources illegally, and deploy muscle power and money power in abundance can remain in the fray. Also extremist fringe elements which can raise money and resort to violent methods can gain political influence in pockets where they are strong. In a system in which winning the seat by somehow obtaining the largest number of votes is all-important, honest individuals or reform parties fighting

against electoral malpractices and corruption have very little chance of success. This tends to perpetuate the status quo, and people have to live with the often unhappy choice offered between candidates and parties resorting to the same ugly practices and misgovernance. Political process in India has thus become increasingly incestuous. Even as power alternates between parties, the nature of the power game and the quality of governance remain unaltered, undermining the legitimacy of representation and faith in democratic system.

Rationale for PR

9. With a view to correct many of these distortions and encourage equitable representation and inclusion of marginalized groups in the political process, several scholars, activists and opinion makers have been arguing in favour of proportional representation (PR). As Michael Dummett explains, "The rationale of PR is obvious. The principle is that the seats in Parliament (legislature) should be allotted to the political parties in the same proportion – or as near to it as is feasible – as support for those parties is divided among the national electorate. PR is often applied with a threshold. If a party has failed to obtain a certain minimum percentage of support – often fixed at 5 percent – it will get no representation in Parliament, at least unless it has succeeded in getting one or more candidates elected to represent constituencies; parliamentary seats are then divided among the other political parties in the same proportion as their national support. The principal purpose of threshold is to deny representation to extremist parties.

Best-suited Model for India

10. The German system is the simplest one combining the best features of FPTP system with PR distribution in a corrective way, and is therefore ideally suited for Indian conditions. We need to adapt proportional representation to suit our special requirements. Given the largeness of the country, the need to freeze the seats in Lok Sabha State-wise, and the imperatives of democratic choice of candidates on the party list, it is best to make the State the territorial unit for proportional representation and determining the voting threshold. As 5% is too low a threshold, and is likely to lead to fragmentation of parties, a minimum 10% threshold is desirable in large States with 10 or more members of Lok Sabha, and a higher percentage of vote in smaller states determined by the formula: $100 \div \text{number of Lok Sabha seats}$. Parties with fewer votes are disqualified while distributing the PR seats. All registered parties may offer their lists for PR distribution. This is the only fair and practical method, since prior disqualification on the basis of past record or absence of earlier record would be discriminatory, undemocratic and plainly unjust if the party does cross the threshold in the current election. The threshold of 10% in large States and more in smaller States is a sufficient safeguard against proliferation of parties in the legislatures. If a recognized party fails to cross the threshold and unrecognized party does cross it, and if both are disqualified for different reasons, it would be a recipe for political strife.

Therefore there should be fair and uniform standards applicable to all registered parties. Recognised parties may however get other recognition-related benefits including state-funding, if any. Half of the Lok Sabha seats may be filled by the present method of FPTP election in single-member territorial constituencies. For this purpose, the Lok Sabha constituencies in each State may be reorganized. All such seats won by FPTP system shall be retained by the parties, irrespective of whether the party crossed the threshold of votes for PR distribution of seats in those States or not. There shall be only one threshold for PR distribution, and that is the percentage of votes obtained in the State, and not the minimum number of, say 3 seats, won in FPTP system. This is necessary to prevent proliferation of parties in large, plural society. If a small party wins a few seats in a local area on the basis of its sectarian appeal to a caste or religion, it will still be unable to get the proportional representation in the State unless it crosses a high threshold of 10% of the valid votes or more. The PR seats, which constitute 50% of the total strength of the legislature, shall be distributed among parties which cross the threshold. To determine the party's voting percentage, all votes cast in the second vote (party ballot) are counted. Two votes, one for the candidate, and other for the party will give voters a genuine choice to select a desirable candidate and an acceptable party. Candidates in constituencies should then strive to appeal to all sections, without merely relying on the party, and the party should broaden its appeal without merely encasing the charisma of local candidates.

11. In conclusion, the requirements of fair representation can be met by a corrective method of PR combined with constituency based FPTP system of election to retain the best features of both systems. The majority-run off system is probably too cumbersome and impractical to be applied in India, and may lead to further marginalization of scattered groups. Election in multi-member constituencies is a feasible proposition and is much fairer than FPTP system, and offers a greater choice to voters, and forces competition among candidates of the same party, and between parties. But when it is based on plurality and not proportionality, there is a danger that the candidates with greater muscle and money power will eliminate all other candidates. Therefore multi-member electoral districts with party lists chosen democratically, and seats distributed by PR system is the ideal combination. This is exactly what PR system with manageable electoral districts (of say 10 seats) and party lists is. In other words PR system combines all the best features of both. And when this is combined with half the seats filled by FPTP, the best of every system is retained. Alternative vote, by which the last candidate is eliminated and votes are transferred to other candidates based on second preference and so on, is fair but impractical, given the low level of literacy and very complicated counting. Similarly the single transferable vote system, by which the surplus votes of the winning candidates in multi-member candidates are transferred to others based on second preferences and so on, until all the seats are filled, is again impractical and cumbersome on account of voters' illiteracy and very complicated and delayed counting methods. Given all these circumstances, corrective PR combined with FPTP system, with 50% seats filled by each method, and two votes for each voter, one for a

candidate, and the other for a party, with party lists chosen democratically in electoral districts is the most appropriate model for adoption in India.

Legislator as Disguised Executive

12. Let me now turn to second major problem I wish to address – that of legislator as disguised executive in states in our system of drawing government from legislature, and surviving only with its support. There is ample evidence to show that the parliamentary executive model which served to unite India has actually proved to be counterproductive in States. 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.
13. 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 very unsatisfactory. 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 with the political process as evidenced by the rejection vote, makes it impossible to have any honest or far-sighted governance.

14. 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.

Captive Parliamentary Executive in States

15. Given this dominance of local entrenched groups and the culture of disguised executive, two consequences follow. Firstly elections at the local level are often a test of supremacy of the local oligarchies, and public opinion and popular sovereignty are a far cry given the dominance of the local elites. As the legislative office is key to executive power at the State level, getting elected as a MLA is of crucial importance for political survival. Therefore all means – money, muscle power, other inducements, threats, brute force – are liberally employed to get elected locally. Party affiliation and ideologies have no real meaning to these local oligarchies, and what matters is supremacy in faction struggle. Thus the parliamentary executive system has exacerbated electoral irregularities, voting fraud and vote buying at the assembly constituency level. Secondly, the legislator is elected not to legislate and monitor the government's functioning, but to exercise executive authority in legislator's garb. As a result, the legislator's role in routine executive sphere is awesome. Even in a directly elected executive with separation of powers, the legislator does exercise enormous influence. But that influence is in the legislative sphere and in budget allocations. The executive is forced to negotiate with the legislators to get their support for the enactment of key legislations and for budgetary appropriation. The legislators often use this leverage skillfully to help promote investment and job creation in their constituencies, hence the so-called pork-barreling. But this power of legislators where

separation of powers is in vogue is inevitable and salutary. It is a part of the negotiation of spheres of influence between the executive and legislature, and is addressed by the institutional checks and balances. While the legislators press for a favoured policy or allocation of resources to a particular sector or location of projects in a State or region, they cannot influence day-to-day executive functioning and specific decisions and transfers and postings of officials. Legislators' interference in executive functioning is thus self-limiting. In the ultimate analysis a group of legislators cannot threaten to withdraw support to the executive and affect its continued survival. As the executive is directly elected by the people, and owes its mandate to the voters and not to the capricious majority in the legislature, the executive cannot be browbeaten beyond a point. But in a parliamentary executive model, every decision is captive to the whims or self-interest of individual legislators.

Reversal of Roles

16. In fact in States, parliamentary executive system has led to a curious reversal of roles. The legislator's real concern is to function as the disguised and unaccounted executive. Therefore he has little concern for legislation. Laws are often enacted perfunctorily, without the serious attention they deserve. Budgets are approved with utmost casualness, all the legislative bluff and bluster ultimately signifying nothing. A strong chief minister with comfortable majority in the legislature, particularly with a commanding role in his party, can ride roughshod over both his cabinet colleagues and the legislature. With complete control of the legislature and executive, the chief minister can be a highly authoritarian figure. The executive thus completely controls the legislative agenda, and the legislators in turn control the local executive decisions in an unaccountable manner. This development has led to another reversal of roles in day-to-day administration. The elected political executive is busy with day-to-day management of politics of survival. Therefore much of the executive's time and energy are spent in retaining the legislators' support, leaving little attention to governance and policy making. Therefore much of the policy making, except in respect of short-term populist policies, is left to the bureaucracy. Thus, the politician is content to pay attention to day-to-day policy implementation, patronage and transfers and postings, and the bureaucracy is fulfilling the task of policy formulation. This unhealthy tendency has severely undermined our democracy and made our political process increasingly self-serving and unaccountable.
17. With this confusion of roles, blame-throwing and finding alibis for non-performance have become endemic. As authority is often divorced from accountability, and de facto power is delinked from de jure authority, accountability suffered. While things deteriorate, there is no one to assume responsibility. This again resulted in short-term populism and high centralization of power through patronage-distribution. In view of the systemic nature of the problem, electoral verdicts and change of governments do not necessarily improve the situation. As high and illegitimate expenditure is the necessary accompaniment of the constituency-based election of the legislator as disguised political executive, power is bound to be abused for private gain.

Corruption is thus ubiquitous as most public services are controlled by rent-seekers in this vicious cycle of 'dangerously stable equilibrium', as described by Robert Wade. Elections often change the players, but the rules of the game are unchanged.

18. As explained earlier, given the compulsions of the patronage-based political culture dominated by local oligarchies, the talent available in State legislatures for executive office is extremely inadequate. As the parliamentary executive can be drawn only from the legislature, the quality of the cabinet suffered grievously over a period of time. This led to significant decline in the quality of governance and decision making. Even when a party has a clear mandate and there is clarity in goals, and even if legislators' interference in day-to-day executive decisions is kept under check, the quality of ministers is often less than adequate to meet the complex requirements of modern democratic governance. As a result, even sound policies have failed to yield dividends for want of the ability to translate ideas into effective action. School education, health care, police reform, population control, employment generation, investment promotion, sustainable natural resource development, anti-poverty measures, policies for promotion of equity and social justice have all suffered even when the governments have recognised the need to pursue sound policies for their own political gains. For a complex country with myriad problems of great magnitude, the political talent available in State legislatures is woefully inadequate.

Direct Election of the Executive in States

19. These unhappy circumstances lead us to the conclusion that the cabinet drawn from the legislature, and surviving at the behest of the legislators is not necessarily the most suitable model of political executive in States. There is a strong and compelling case for a directly elected political executive and separation of powers in States. The arguments against separation of powers and direct election of the executive which are valid at the Union level do not hold good in States. There cannot be any serious fear of authoritarianism in States. The Union is the ultimate repository of sovereignty and guarantor of the Constitution and our democratic governance. The armed forces are controlled by the Union. The supreme court, a strong parliament, election commission, finance commission and Union executive are effective safeguards against authoritarianism in States. No elected State government has the power to undermine the essential features of the Constitution, or the basic freedoms in a democracy. The need for a sense of participation and sharing of power among all regions and linguistic groups is a unique requirement of the Union, necessitating a parliamentary executive. In States, these imperatives no longer operate. Given these features of governance in States, there are no genuine reasons against clear separation of powers and direct election of executive in States.
20. Direct election of the executive and separation of powers have several clear and decisive advantages in States.
 - The legislator can no longer be disguised unaccountable executive. Therefore, the local legislative election ceases to be a symbol of oligarchic domination. As

- legislative office is largely meant for law making and checking the abuse of executive authority, the power of patronage will not be available to legislators.
- Serious minded, public-spirited citizens will aspire for, and be elected to legislature.
 - As constituency legislative election does not determine executive office, the incentive for vote-buying and local electoral irregularities disappears. At the same time, as the executive is directly elected for the whole State, no group or oligarchy will have sufficient dominance or incentive to resort to vote-buying and electoral malpractices across a whole State. The very nature of elections will be transformed.
 - As the executive will be untrammelled by day-to-day interference of the legislators in local executive decisions, there can be effective governance. The alibis for non-performance will no longer be available, and authority and accountability will be together.
 - At the same time, the legislature will have real control in law-making and budget approval. Therefore, the executive is kept constantly in check in institutionalized manner, and it will have to carry the legislature with it in carrying out its legislative agenda and policies.
 - As the executive's survival is independent of legislators' support, honest and unbiased action will be possible in matter of governance. Corruption can then be curbed, as honesty and political survival become compatible.
 - As the political executive can recruit the finest talent outside the legislature for executive responsibilities, the quality of governance will dramatically improve.
 - As there will be no need for nominated governors, federal relations will significantly improve, and democracy and States' autonomy will be strengthened.
 - As the executive and legislature would be elected separately for fixed terms, the Union can no longer abuse Article 356. Failure of Constitutional machinery in States as commonly interpreted, viz. in capacity to form a stable, majority government, will no longer be an issue. However, new mechanisms may have to be evolved to deal with other Constitutional failures. Many federal countries have such mechanisms. In the US, the federal government can send its troops or marshals to enforce the Constitution, maintain order or implement a court directive. Dismissal of a State government is not a necessary requirement to preserve the Union, except in extraordinarily grave emergencies like secession and civil war.
 - Finally local governments can be really strong and effective once the State legislator does not perceive a threat to his position from the local government executive. As the State legislator's position is not based on patronage, he often becomes the effective interlocutor for local government's powers and initiatives, instead of being an adversary.
 - A similar separation of powers in local governments, and a directly elected executive at the local level would be appropriate for the same reasons. Thus the authority and accountability will fuse at State and local levels and a new political culture will be evolved, making good governance a reality.

21. In conclusion, our democratic institutions have served us well. For the first time in our history the ideals of rule of law, human dignity, liberty of citizens, people's sovereignty, and universal adult suffrage have taken root in our society. However, there is need for correcting the distortions which have surfaced over the years. Our economic liberalization process eliminated the entry barriers in productive sectors, and promoted competition. The incentive structure has been altered, and as a consequence there has been a significant spurt in growth. The productive potential of the nation is now being unleashed. A similar effort is needed in the political process to remove entry barriers and alter the incentive structure. These changes are minimal in nature, and the Constitution is preserved intact in fundamental respects. A switchover to mixed PR system does not require any changes in the Constitution, and a change of electoral law will suffice. Separation of powers through direct election of the executive is proposed only in States, where there can be no fear of unchecked arbitrariness of the executive. The federal government, judiciary and constitutional authorities can act as checks and balances. At the federal level, the continuance of parliamentary executive will ensure due representation and "ownership" to all the multiple social groups – social, regional, linguistic and religious. Gandhiji's admonition should be the guiding principle in building institutions of state. "The real Swaraj will come, not by the acquisition of authority by a few, but by the acquisition of the capacity by all to resist authority when abused."

Jayaprakash Narayan

The author, is the National Coordinator of LOK SATTA movement and National Campaign for Electoral Reforms. E-mail: loksatta@satyam.net.in; url: www.loksatta.org
