

Governance Reforms Agenda

Presentation to National Advisory Council

by

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The purpose of a government is to make it easy for
people to do good and difficult to do evil

- William Gladstone

Distortions of State Power

- Positive Power restricted
Negative power unchecked
- All organs are dysfunctional
- A system of alibis
Victims of vicious cycle
- Change of players
No change in the rules of the game
- Political process ought to be the solution
But has become the problem itself

Four Approaches to Reform

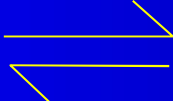
- Horizontal delegation (ICDS case study)
- Vertical devolution (Local governments and stakeholders)
- Domain expertise and professionalization
- Fusion of authority with accountability

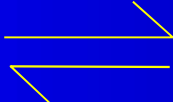
Key Governance Reforms

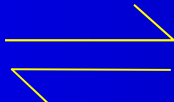
- Empowerment of local governments
- Instruments of accountability
- Speedy and efficient justice
- Comprehensive Political Reforms

Empowerment of Local Governments

- Decentralization

Vote  Public good

Taxes  Services

Authority  Accountability

Instruments of Accountability

- Right to Information
- Citizens charters
- Independent crime investigation
- LokPal / Lokayukta
- Independent appointment of constitutional functionaries
- “CVC and Single Directive”
- Forfeiture of Property – Law Commission’s Recommendations
- False Claims Act
- Civil Servants’ placements

Citizen Charters

An ideal charter should have the following components:

- Clear responsibility - who will provide the service?
- What does the citizen need to do – application, fee, information etc.
- What is the time frame in which the service shall be delivered
- What is the compensation for delay
- Instant redressal mechanism

Independent Crime investigation

- Independent wing of police force fully in charge of crime investigation and functioning under the direct control of independent prosecutors
- An Independent State Commission should hold the prosecutors and the crime investigation police force accountable to them in their overall functioning
- The Commission will report to the Legislature

CVC and Single Directive

- “Single Directive” (SD): CBI to seek prior permission of the government to prosecute senior civil servants
- SD is illegal and discriminatory
- Many state governments have been sitting tight on files seeking permission to prosecute scores of civil servants for alleged corruption
- Immunity from prosecution, lack of accountability, and partisan and arbitrary decisions in dealing with errant civil servants
- Instead, CBI can take permission of an independent collegium (say CVC)
- Amendment of S.197 of CrPC to facilitate prosecution of public servants

Forfeiture of Property – Law Commission's Recommendations

- The very holding of, or possession of illegally acquired properties is made an offence
- Any public servant may be called upon to disclose by way of an affidavit the particulars of the assets held / possessed by him, his relatives and associates
- Any person including authority, officer, bank or other organization may be called upon to disclose information with respect to a person to whom this Act applies

Forfeiture of Property – Law Commission's Recommendations

- Refusal to furnish or furnishing false information is made punishable
- Certain relevant powers of the Civil Courts are also vested in the Competent Authority to enable him to function effectively, including the power to attach properties, to order any enquiry, investigation, search and seizure
- Bar on courts granting injunctions

False Claims Act

- Need to tackle collusive corruption in government agencies
- Incentives to citizens for uncovering corruption
- The supplier (of goods or services) should not supply to the federal government at a price higher than that charged to his best customer
- False Claims Act allows individuals to file suit on behalf of the US against those who falsely or fraudulently claimed federal funds, including Medicare, Medicaid, disaster assistance and other benefits, subsidies, grants, loans and contract payments

Placements of Civil Servants

- Professionalization and domain expertise
- Lateral entry for all key public offices above certain level
- Transparent selection, competition between permanent civil servants and experts from outside
- Tenure of 5 years for key offices with adequate authority
- Free movement between government and society

Judicial and Police Reforms

- Increase number of courts (including Local Courts)
- Removal of corrupt judges – Maharashtra model
- Independent crime investigation
- All India Judicial Service
- National Judicial Commission
- Procedural reforms

Combating Judicial Corruption – Maharashtra Model

- Over 150 judicial officers removed – over 10% of total
- Special inspecting judges looked into complaints of corruption.
- Credible complaints – option to retire (with benefits)
- Resistance – face departmental enquiry – dismissal
- Supreme Court: Departmental authorities have unlimited powers
 - Framing rules of conduct
 - Rules of enquiries
 - Full discretion in appreciating evidence
 - Awarding punishment following rules of natural justice

Independent Crime Investigation

Problems

- Several functions in one police force
- The police forces have become inefficient and increasingly partisan
- Government control over crime investigation – partisan politics
- Inhuman practices – torture, third degree and extra judicial executions

Remedies

- Separation of crime investigation wing
- Crime investigation – controlled by an independent commission
- Insulated from the vagaries of politics
- Independent commission appointed by a bipartisan collegium, and reports to legislature

All India Judicial Service

- Subordinate courts: delays and varying levels of efficiency.
- Indian Judicial Service (IJS) – Article 312
- Offices of the District and Sessions Judges – to be held by IJS
- A substantial proportion of the High Court Judges – from IJS
- Advantages
 - Meritocratic service
 - Competitive recruitment
 - High quality uniform training
 - Probity and efficiency
 - Ensure speedy and impartial justice

National Judicial Commission

- The judiciary appoints itself, and cannot be removed by anyone
- Self-perpetuation and unaccountability
- NJC – independent body to appoint and remove judges
- Composition: Seven member committee
 - Vice President, Prime Minister, Speaker, Law Minister, Leaders of Opposition in both Houses and Chief Justice
- Removal with adequate safeguards, Article 124(4) to be repealed

Empowered Legislative Committees

- “Congress in session is Congress on exhibition
Congress in Committees is Congress at work.”
- Woodrow Wilson
- Empowered Committees (not ‘advisory’)
- Decisive say in
 - Policy formulation
 - Confirmation of key appointments
 - Oversight and accountability

Democratic Reform Agenda – Major Steps Forward

- Mandatory disclosure of candidate details
 - Criminal antecedents, Assets and liabilities and educational qualifications
- Post office for voter registration accepted in principle
- Anti-defection law
- Limiting the size of council of ministers
- Changes in Rajya Sabha election
- Progressive law on political funding

Criminalization of Politics

Current situation:

- Sec 8 of RP Act provides for disqualification for certain convictions
- Sec 8(4) gives immunity to incumbent legislators until appeal is disposed of
- Many known criminals in legislatures
- Disclosure of criminal record is now mandatory (EC notification dated 27th March 2003 pursuant to Supreme Court's final judgment)
- Certain anomalies in law regarding period of disqualification corrected in RPA by amendments

Criminalization – What Can be Done

- Disqualification for grave and heinous offences
 - The draft ordinance of July 2002 could be the basis
 - Charges of murder, abduction, rape, dacoity, waging war against India, organized crime, narcotics offences are adequate grounds
 - Fair reconciliation between the citizen's right to contest and community's right to good representation
- Sec 8(4) should be amended to give immunity only for the current term. In the next election all candidates stand on the same footing [Recent Supreme Court judgement has in effect repealed Section 8(4)].

Criminalization – What Can be Done

- Disclosure norms should include past acquittals
 - People have a right to know all records
 - The Supreme Court judgment of 2002 provided for it
 - Empirical evidence shows that several of the worst criminals have no charges pending. Past acquittals in respect of serious charges are a better guide
 - In AP – 13 candidates of major parties with notorious criminal history have no charges pending, but were acquitted of murder – several murders in some cases – of them three were elected to legislature
 - Our conviction rate is only 6%

Recent Developments – Post Office as Nodal Agency

- Post office
 - Display of electoral rolls
 - Receiving of applications
 - Ascertaining residential address
- Modalities
 - Designated officer in all delivery offices
 - Forms supplied
 - Forms received only from the citizen or family member
 - No bulk applications
 - Checking report by Post Office (address)

What More Needs to be Done

- Permanent mechanism at Post Offices
 - Display and Sale of Electoral Rolls
 - Voter registration on application at Post Offices
 - Assist EC in revision of electoral rolls on permanent basis
 - Access, transparency and appeal to check abuses
 - Mass communication campaign for public education

What Can be Done

- 100% voter identity cards
- Amend rules to ensure mandatory repoll if tendered votes exceed 1% of votes polled. (Tendered vote is proof of false voting)
- Wide publicity to tendered vote
- Citizen ID cards wherever illegal immigrants are in large numbers

Amendments to the Tenth Schedule (Anti-defection law changes) – 91st Amendment

Key features

- Disqualification of all members who defy a party whip, irrespective of whether they constitute one-third or more
- Defecting members cannot be ministers until reelection or expiry of normal term

Impact

- Collective defections by inducement will be prevented
- Governments will be more stable

Amendments to the Tenth Schedule (Anti-defection law changes) 91st Amendment

Deficiencies

- Whip applicable not only when the government's survival is affected, but for all voting
- Party bosses will be all-powerful
- Members cannot stop bad laws or decisions. eg: Muslim Women's Bill, Ramaswamy impeachment

Changes in Rajya Sabha Election (Amendments to RP Act)

Key features

- Eligibility to contest for Rajya Sabha from any state
- Open voting by MLAs

Impact

- Helps parties get competent persons elected to Parliament
- Minimizes vote buying in Rajya Sabha

Deficiencies

- Dilutes the representation of states in Rajya Sabha
- It is a knee jerk response to a real problem parties face
- Does not provide for democratic choice of candidates by parties

Unaccounted Money Power

- Recent Developments
 - The Sept 2003 amendments are far-reaching. India has one of the best funding laws.
- Key provisions
 - Full tax exemption to donors (individual or corporates)
 - Mandatory disclosure of all contributions of Rs 20,000 or more
 - Free air time on all electronic media – private or public – to recognized parties and candidates.
 - Removal of loopholes under sec 77 of RPA

Funding Law – Unfinished Agenda

- Free media time not implemented as rules are not framed
- No incentive to disclose, except tax exemption to donor. Severe penalties on donor for non-disclosure will be salutary. No donor will risk jail term for undisclosed contributions. But parties and candidates have incentive to avoid disclosure
- Compulsory statutory auditing of party accounts must be provided for
- Election Commission to be the final authority for determination of compliance

Funding Law – Unfinished Agenda

- RPA must prevail over Cable Television Network Rules, 1994, which prohibit political advertisements (Sec 39A of RP Act)
- The law must explicitly provide for political advertisements – in the light of SC directives for monitoring and pre-censorship. All such pre-censorship should cease. There can be fines for violation of broadcasting code
- Much more creative and imaginative use of media time – live party and candidate debates at all levels.
- US debates format. Law provides for free time in all electronic media including cable networks
- Rules under RPA must cover these details, while EC will decide allocation of time based on a party's past performance

Is This Enough?

- Some of the reforms are in the right direction, but are not enough
- Systemic deficiencies in all spheres of governance left untouched
- If they are not addressed immediately, will undermine the unity of the nation and severely cripple the economic growth

Shifting Nature of Corruption

- Inexhaustible appetite for illegitimate funds
 - Telgi stamp scam
 - Satyendra Kumar Dubey's murder
 - CAT exam papers' leak
 - Warrant against President Kalam and Chief Justice VN Khare
 - CGHS scam

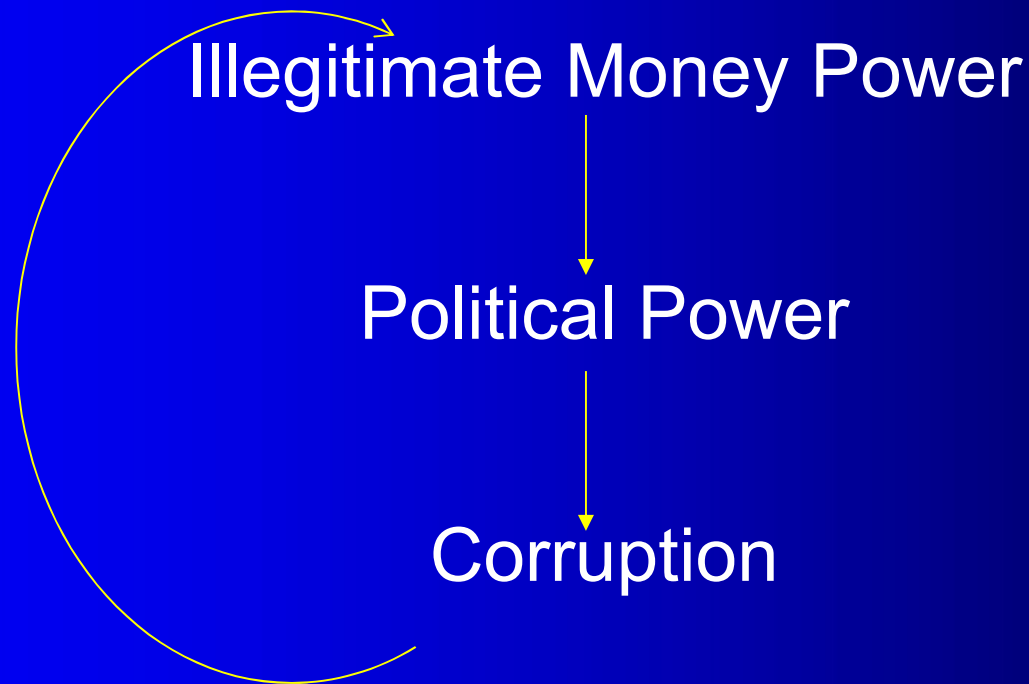
System Caught in a Vicious Cycle

- Inexhaustible demand for illegitimate funds
- Most expenditure incurred for vote buying
- Rise of political fiefdoms
- Vote delinked from public good
- Taxes delinked from services
- Political survival and honesty incompatible
- Social divisions exacerbated
- Competence and integrity excluded
- National parties marginalized

Failure of Political Process

Interlocking vicious cycles

Inexhaustible demand for illegitimate funds



Most Expenditure is to Buy Votes

Voter seeks money & liquor

More expenditure

Large spending may or may not lead to success, but failure to spend almost certainly leads to defeat

Greater corruption

Greater cynicism

Voter seeks more money

Contd..

Contd..

Rise of Political Fiefdoms

Need for money, caste and local clout



Parties are helpless in choice of candidates



Rise of political fiefdoms



Absence of internal party democracy



Competition among a few families in most constituencies



Oligopoly at constituency level

Contd..

Vote Delinked From Public Good

Centralized polity



No matter who wins, people lose



Vote does not promote public good



Voter maximizes short term gain



Money, liquor, caste, emotion and anger become dominant



Vicious cycle is perpetuated

Contd..

Taxes Delinked From Services

Only 16% of GDP collected as taxes (Union & states)

Fiscal deficits and crisis

Higher Taxes

Unacceptable because of corruption and poor services

Desubsidization

The poor do not see alternative benefits for the subsidies given up

Wage Reduction

Centralization and Art 311 preclude it

Deeper fiscal crisis

Poorer services and public goods

Perpetuation of poverty and backwardness

Contd..

Contd.

Political Survival and Honesty Not Compatible

Parliamentary executive

Government survival depends on legislative majority

Legislators spend a lot of money to get elected

They need multiple returns to sustain the system

Corruption and misgovernance endemic

Government has to yield to legislators' demands

Corruption is perpetuated even if government has the will

Honesty not compatible with survival

Contd..

Social Divisions Exacerbated

FPTP

↓
Scattered minorities unrepresented

↓
Marginalization and Ghettoization

↓
Strategic voting and vote bank politics

↓
Obscurantists become interlocutors drowning voices
of reason and modernity

↓
Politicians pander fundamentalists

↓
Counter mobilization of other groups based on
primordial loyalties

↓
Communal polarization and strife

Contd..

Competence and Integrity Excluded

FPTP

↓
Need for money power and caste clout

↓
Honest and decent elements have little chance

↓
Bad public policy and incompetent governance

↓
Deepening crisis

Oligopoly of Parties

FPTP

Only a high threshold of voting ensures victory

Parties with 35 - 50% vote, or social groups with local dominance get elected

Significant but scattered support pays no electoral dividends

Voters prefer other “winnable” parties

Marginalization of reformers, and national parties

Regionalization of polity & perpetuation of status quo

Contd..

Representational Distortions

FPTP

↓
Women & deprived sections not represented

↓
Reservation with rotation is arbitrary and leads to proxies

↓
Perpetuation of dominance of traditional groups

↓
Representational illegitimacy

Contd..

Political Reforms

- Intra-Party Democracy
- Multi Member Constituencies
- Direct Election of Head of Government in States

Political Party Regulation

- Membership**
- Free, open and voluntary
 - Uniform, objective conditions / no restrictions
 - No arbitrary expulsion
 - Due process for disciplinary action
- Leadership choice**
- By regular, periodic, free and secret ballot
 - Opportunity to challenge leadership through formal procedures with no risk of being penalised
- Choice of candidates**
- By members at constituency level through secret ballot
 - By elected delegates through secret ballot
 - Central leadership cannot nominate candidates

Multimember Constituencies (MMCs)

- Competent and honest persons can be inducted into the cabinet
- Incentive to buy votes in a constituency will disappear
- Interests of local candidate will run counter to party's need to maximize overall vote
- Will give representation to small parties, scattered minorities and legitimate reform groups, forcing change
- Voting will be based on party image and agenda, not local expenditure
- Ignored sections will find voice and get representation
- A party's image and platform, not local clout and money power, matter
- Genuine competition among political groups and ideas

Multimember Constituencies (MMCs)

- Fair reconciliation of social and political groups
- No 'wasted' votes
- Disenchanted sections will find 'voice'
- Political fiefdoms will disappear
- Political process will get into a virtuous cycle

Problems with MMCs

Problem

- Political fragmentation in a plural society
- Party bosses will be autocratic
- Link between voters and legislator is snapped

Solution

- Reasonable threshold level
- Democratization of parties and choice of candidates
- Candidate choice can be regulated to ensure identification with constituencies

A Suggested Model for India

- Multimember Constituencies
- A threshold of, say 10% vote in a major state for
Representation
- State as a unit for representation

Threshold Requirement

- Necessary to prevent fragmentation in a caste-ridden society
 - Must be high enough to force interest aggregation and promote ideology-driven politics
 - Must be low enough to allow real competition to entrenched parties and force reform
 - Must take into account current political realities
 - Must suit our diversity
- A model: - 10% of valid votes polled in a major state
- suitably higher thresholds in smaller states

Selection of Party Candidates

- Party list becomes the basis of election
- The order of appearance in party list is critical
- Unlike in FPTP, a simple, list-based MMC system not allow voters to judge a single candidate
- Democratic selection of candidates on the list, and their priority of election is critical

A model: - List will be for each electoral district
(of say 10 seats)

- Elected delegates of the party will select candidates and their order through secret ballot – district wise

Direct Election of Head of Government in States

- No one can buy a whole state electorate
- Image and agenda of leader will be decisive
- With separation of powers, there will be no incentive to overspend for legislative office
- At state level, there is no fear of authoritarianism as Union government, Election Commission, Supreme Court etc., will act as checks
- Once survival of the executive for a fixed term is guaranteed, there will be no need for compromise and corruption

How will These Reforms Help?

Vicious Cycle

- Illegitimate money power leading to political power and corruption
- Voter seeks money and liquor

Solution


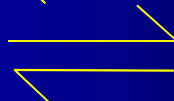
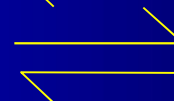
- Decentralization
(Vote \rightleftharpoons Public good)
- Direct election (No incentive to 'buy' legislative office)
- MMCs (marginal vote not critical)
- Demand Side: Decentralization
- Supply side: Direct election, MMCs

How will These Reforms Help?

Vicious Cycle

- Rise of political fiefdoms
- Vote delinked from public good

Solution

- MMCs: Marginal vote not critical
 - Direct election: Legislator has no 'disguised executive' role
 - Party democracy: members can act as check
 - Decentralization
- | | | |
|-----------|---|----------------|
| Vote |  | Public good |
| Taxes |  | Services |
| Authority |  | Accountability |
- Direct election executive is unencumbered

How will These Reforms Help?

Vicious Cycle

- Deepening fiscal crisis
- Political survival and honesty incompatible
- Under-representation of scattered minorities and growing polarization

Solution

- Decentralization
Taxes  Services
Authority  Accountability
- Direct election: executive free from vested interests (in states)
- Direct election: Separation of powers with institutional checks
- MMCs: Each group has representation
- No wasted votes

How will These Reforms Help?

Vicious Cycle

- Competence and integrity excluded
- National parties and reform parties marginalized

Solution

- MMCs: Marginal vote unimportant
- Direct election:
 - Appeal across the state decisive
 - Cabinet from outside legislature
- MMCs: Gives representation once the party crossed a threshold

What will Direct Election Address?

- Illegitimate money power and corruption (supply side)
- Voter seeking money (demand side)
- Rise of political fiefdoms (Legislative office and local clout have no bearing on executive)
- Vote delinked from public good (executive unencumbered)
- Deepening fiscal crisis (free from vested interests)
- Political dynasties (term limitations)
- Honesty and survival incompatible (survival depends on people's mandate alone)
- Competence and integrity excluded (State wide appeal matters. Cabinet from outside legislature)

What will MMCs Address?

- Illegitimate money power in elections (supply side)
- Voter seeks money and liquor (supply side)
- Political fiefdoms (marginal vote not critical)
- Representational distortions (Vote share, not local concentration, matters. No wasted votes)
- Competence and integrity excluded (decent candidates can win in list system)
- National parties/ reform parties marginalised (vote share gives representation - not constituency victory alone)

What will Party Democracy Address?

- Rise of political fiefdoms: Members decide candidates
- Honest and competent candidates will be able to win nomination
- Political dynasties will vanish
- Political process will gain legitimacy

What Will Decentralization Address?

- Illegitimate money power in elections
- Vote buying
- Vote delinked from public good
- Fiscal crisis

How will Direct Election, MMCs and Party Democracy go Together

- MMCs lead to fragmented legislature. Direct election will ensure stable executive independent of legislature
- MMCs have the propensity to make party leadership more powerful. Party democracy gives power to members preventing arbitrary choices
- MMCs may lead to small, caste-based parties. Reasonable vote threshold requirements will eliminate the danger

What will the System Look Like?

- Citizens vote for the party of their choice
- Party vote determines overall seat share. The party gets seats allocated from the MMCs lists.
- In states, citizens directly elect the head of state, who forms a cabinet of his choice, and has a fixed term. There will be term limitations
- Citizens vote for a party based on its image, platform and the slate of candidates presented in the local electoral district (say, 5-10 seats)

“Strategy without tactics is the slowest route to victory. Tactics without strategy is the noise before defeat ”

- *Sun Tzu*