

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

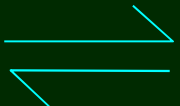
Key Governance Reforms


- 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

Decentralization

- Legislative Councils as Councils of Local Governments
- District Government
- Union Finance Commission and State Finance Commission
- Accountability
- Structure of Panchayats
- Reservation for Women
- Ward Committees
- District Budgets

Legislative Councils as Councils of Local Governments

- Emergence of local governments as the constitutionally mandated third tier of governance
- Article 171 of the Constitution provides for the formation of Legislative Councils in states.
- We need to emulate Rajya Sabha in the composition of Legislative Councils
 - Changing the composition of the Legislative Council, and making it the Council of Local governments

Legislative Councils as Councils of Local Governments

- Article 171 (3) may be amended as: “(3) Of the total number members of the Legislative Council of a State –
 - a) As nearly as may be, five-sixths shall be elected by electorates consisting of elected members of panchayats and municipalities
 - b) The remainder shall be nominated by the Governor in accordance with provisions of clause (5)”

Legislative Councils as Councils of Local Governments

Article 171 (4) may be amended as

- “(4) The members to be elected under clause (a) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament; and the elections shall be held in accordance with the system of proportional representation by means of the single transferable vote.”

District Government

- There is no single, undivided government at the district level
- Zilla Parishad and Municipality is seen as just another body
- The District Collector is the real symbol of government
- District Planning Committee is too weak, and is a non-starter in many States
- Amend Art 243-C to provide for a single elected district council that will function as a true government for the entire district

Union Finance Commission and State Finance Commission

- Article 243 - I mandates constitution of SFC “at the expiry of every fifth year”
- No synchronization between SFC and Union Finance Commission
- SFC Reports not being relevant to the periods covered by the Union Finance Commission
- Article 243 (I) may be amended as follows: “ or at such earlier times as the Governor considers necessary,” will be inserted after “at the expiration of every fifth year.”

Accountability

- Citizens Charters
- Right to Information
- Ombudsman – for each district
- District Audit Units
- Ward committees
- Stake-holder empowerment: schools, irrigation, hospitals, market yards etc.

Structure of Panchayats

- There is an over-structured and underpowered local government
- States should be given leeway to design the structure of local governments
- Need to amend Art 243-C and 243-Q and empower the state legislatures to decide the structure of local governments, subject to the overall constitutional provisions

Reservation for Women

- Art 243-D provides for one-third reservation for women in all elected local governments
- They are demitting office as the reserved seats have to be rotated every five years
- This provision is blatantly unfair to women representatives
- Need to amend Art 243-D(3) to enable women representatives to seek two terms from the same constituency
- Proportional Representation in local governments to ensure representation without rotation of seats

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

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 appointed as constitutional functionaries
- The criminal courts should hold the prosecutors and the crime investigation police force accountable to them in their overall functioning

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)

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

Judicial Reforms

Law's Delays - Cases Pending (2002)

- Supreme Court : 23,012 (1,04,936 in 1991)
- High Courts : 3.62 million (2.65m in 1993)
 - Allahabad : 0.87 m
 - Kerala : 0.41 m
 - Madras : 0.35 m
 - Bombay : 0.30 m
 - Delhi : 0.18 m
 - Andhra Pradesh : 0.15 m
 - Gujarat : 0.14 m
 - Rajasthan : 0.13 m
 - Average : 5600 cases / Judge

Law's Delays - Cases Pending

- District and Subordinate Courts : 20 million (2002)
 - Civil : Less than 1 year : 2.52 m (1998)
 - 1 - 3 Yrs : 2.2 m ,,
 - 3 - 10 yrs : 1.73 m ,,
 - Over 10 years : 0.34 m ,,
 - Criminal : Less than 1 year : 5.56 m ,,
 - 1 - 3 Yrs : 4.52 m ,,
 - 3 - 10 yrs : 2.85 m ,,
 - Over 10 years : 4.84 m ,,
 - Average : 1660 cases / judge

Missing Cases

- A large number of injustices never go to courts
- Victims swallow injustice and suffer silently
- A huge industry of racketeers and criminal gangs has cropped up to provide rough and ready justice for a price
- There is a market demand for criminals in society

A Model of Local Courts

- Honorary magistrate:
 - Lawyer or retired official or reputed person
 - 3 – year tenure
- One per 25,000 for rural; one per 50,000 for urban
- Appointment and removal by District Judge
- Honorarium + fixed travel and secretarial allowance – total not to exceed Rs 15,000 per month
- Existing infrastructure
- Representation through lawyer or agent or parties themselves

A Model of Local Courts

- Exclusive jurisdiction
 - Rs 100,000 civil
 - 1 year's imprisonment: criminal
- Court in area of cause of action / offence
- 90 days for disposal – day-to-day hearings
- Appeal to Senior Civil Judge / Asst. Sessions Judge
- Inspection by JMFC

Judicial Reforms

- Increase number of courts
- Removal of corrupt judges – Maharashtra model
- Independent crime investigation
- All India Judicial Service
- National Judicial Commission

Democratic Reform Agenda in 2003 – Major Steps Forward

- Mandatory disclosure of candidate details
- Significant devolution of powers to local governments in AP
- 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
- National Judicial Commission in pipeline

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

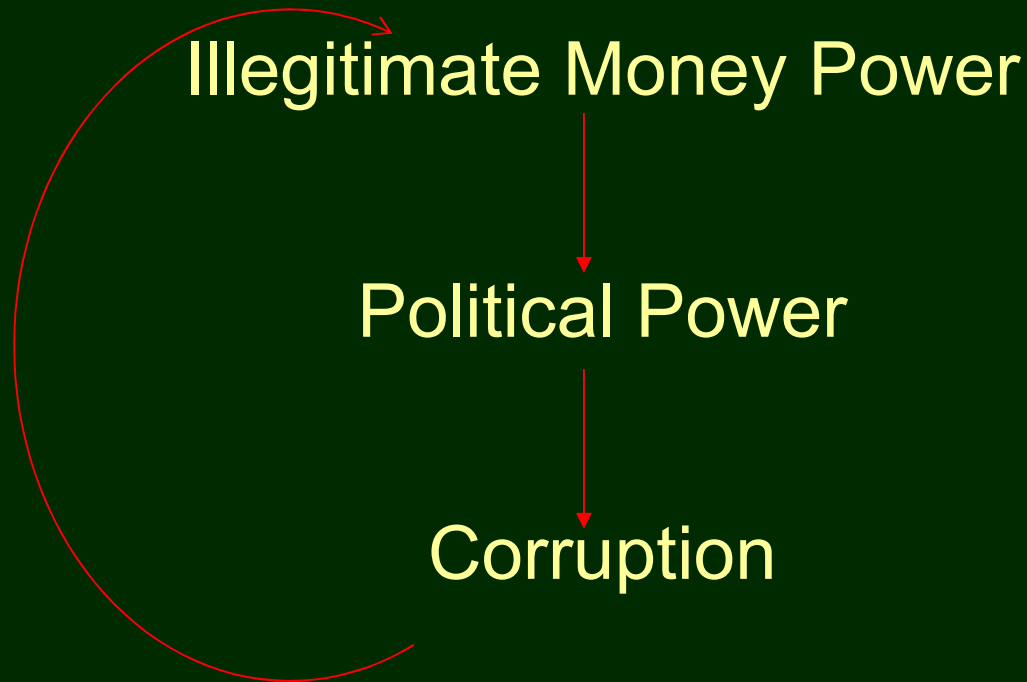
System Caught in a Vicious Cycle

- 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..

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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..

Lok Satta

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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..

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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..

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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

Contd..

Contd..

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..

Lok Satta

Political Reforms

- Intra-Party Democracy
- Direct Election of Head of Government in States
- Proportional Representation

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

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

Proportional Representation

- 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 maximise 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

Proportional Representation

- 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 of Proportional Representation

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
- Mixed system combining Proportional Representation with FPTP

A Suggested Model for India

- Mixed, compensatory Proportional Representation
- A threshold of, say 10% vote in a major state for Proportional 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

- PR enhances the power of party bosses
- Party list becomes the basis of election
- The order of appearance in party list is critical
- Unlike in FPTP, a simple, list-based PR does not allow voters to judge candidates
- 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

Mixed System

- Suitable for India
- 50% seats filled through FPTP system
- Balance seats filled such that final composition reflects voting percentages of each party – compensatory PR
- Parties with less than 10% vote will be disqualified, and the qualifying parties will share the 50% seats
- Independents, or candidates of small parties (below threshold) may be elected through FPTP. In such cases, those seats will be extra, and supernumerary seats will be created to accommodate them

How will These Reforms Help?

Vicious Cycle

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

Solution

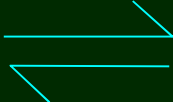

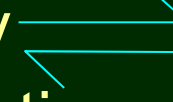
- Decentralization
(Vote \rightleftharpoons Public good)
- Direct election (No incentive to 'buy' legislative office)
- PR (marginal vote not critical)
- Demand Side: Decentralization
- Supply side: Direct election PR

How will These Reforms Help?

Vicious Cycle

- Rise of political fiefdoms
- Vote delinked from public good

Solution

- PR: 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 \rightleftarrows Services
Authority \rightleftarrows Accountability
- Direct election: executive free from vested interests (in states)
- Direct election: Separation of powers with institutional checks
- PR: 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

- PR: Multi-member constituencies; marginal vote unimportant
- Direct election:
 - Appeal across the state decisive
 - Cabinet from outside legislature
- PR: 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 PR 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, PR and Party Democracy go Together

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

What will the System Look Like?

- Citizens have two votes - one for a candidate in the constituency; one for the party of their choice
- Party vote determines overall seat share. The party gets seats allocated from the list (Its seat share less seats elected in constituencies)
- 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